



Report on Roundtable Discussion on The Control of Smoking Products for Public Health Bill:

Room for Improvement

22nd August 2023 (Tuesday) | 9.00 am until 3.00 pm | Majestic Hotel KL

The Ministry of Health of Malaysia tabled the first reading of the Smoking Products Control Bill for Public Health 2023 on 12 June 2023 in the Malaysian Parliament. After that, this bill was referred to the Special Select Committee on Health to be refined and examined further.

In general, this bill aims to control the sale and purchase of tobacco products, smoking materials, tobacco substitute products and smoking devices for public health in order to create a new generation that is smoke-free through the cessation generation.

Although this bill has the support of many parties but there are also received a lot of criticism because the process of engagement with stakeholders was not done comprehensively and transparently. Threatening individual freedom in making choices and an ineffective and hasty ban strategy and unwillingness to accept alternative methods.

In addition, regulatory details such as nicotine limits, packaging regulations, warning labels, retail regulations, retail licensing and valid product standards are still not presented in detail by the government. Currently, there is an urgent need to discuss the issue openly, comprehensive and based on facts and science.

Therefore, the Consumer Choice Center has held a roundtable discussion on the bill. Based on the problems mentioned above, the objectives of this round table discussion are:

1. Provide a platform to get an alternative views from a practical and innovation-led experts,
2. Evaluate and scrutinize the bill comprehensively taking into account health, legal, economic and feasibility aspects,
3. Provide proposals for improving the Bill to the Special Select Committee, the Ministry of Health and policy makers.

Program introduction by the organizer by Tarmizi Anuwar | 9.00 am

He began with the bill having been tabled for first reading in the Parliament. Currently, this bill was referred to the Special Select Committee on Health to be refined and examined further. Until today, we have not seen a proper framework and guidelines on the bill (e.g. on the packaging, nicotine level etc). Generational End Game (GEG) is something that has not yet been implemented. Therefore it is very important for us to see how it is going to be implemented clearly. From the discussion session, the Consumer Choice Center (CCC) would like to submit a report to the select committee. We are very honored to have Tuan Sivarasa Rasiah with us today, who is one of the Parliamentary Special Select Committee (PSSC) in the first committee. This is very important in understanding the evaluation process in the select committee done before. He later explained the format of the discussion will be 1-hour for each session, 10 minutes for each speaker and another 45 minutes to discuss or debate on the issue.

Session 1: Efficacy of the Bill: Setting guidelines | 9.15 am to 10.15 am

- 1) Bill Wirtz, Senior Policy Analyst at Consumer Choice Center
- 2) Tharma Pillai, Co-Founder Undi18

Bill Wirtz

There are two premises of government consumer product regulation; the product will not poison you and the government will nudge towards a healthier lifestyle (e.g. even though cigarettes are available, they will push for ways to reduce smoking consumption). In Sweden, the way they reduce consumption of tobacco is by the availability of other consumable products such as e-cigarettes. In the United Kingdom, tobacco users, including pregnant women, [can swap their cigarettes](#) for free for vapes which are 95% safer. In France, GPs recommend vaping to stop smoking. Meanwhile in Malaysia about 62% of tobacco consumption is in the illegal market. If the government bans cigarettes, the illicit trade for tobacco can increase up to 200%. Sweden has one of the world's lowest smoking consumption. They are not being draconian like Malaysia. There is a need to look at price elasticity for cigarettes as well as doubling the price would not settle the problem of cigarette consumption as what we do is just strengthen the illicit trade for cigarettes.

Tharma Pillai

He says the introduction of the bill will increase the health authoritarian which similar things happened during the pandemic whereas there is legislation on managing the Covid-19 pandemic, as well as the attempt to amend the Act 342 such as harsher punishment for not using masks etc. The primary concern is on human rights. This gives power to the Ministry of Health (MOH) not only on tobacco, but also on how to live our life. We need to think about the possibility of abuse such as the issue of body check if we are suspected to have tobacco products – this is a violation of civil society. The details in the bill and how to regulate the bill is vague and unclear. Other countries have no centralization of power and enforcement is still an issue. Besides that, criminalization will have a negative perception on individuals at large as 20% Malaysians are smokers. Smoking prevalence will not be reduced by introducing the bill as illicit trade is rampant and we have poor enforcement. Stronger jail terms and criminalization must be resisted. We must have a mechanism that is anti-corruption and no centralization of power by MOH.

Discussion

1. Question from YB Datuk Wan Saiful Wan Jan to Bill

Is there a proper debate on this issue in Europe?

Answer:

There is but not a significant amount of interest. In Europe, there is a term of lazy legislators in which they do not want to invest their time to determine which regulatory framework makes sense. For instance, in the Netherlands, they ban flavours for vape for adult or non adult flavours.

2. Question from YB Datuk Wan Saiful Wan Jan to Tharma Pillai

Is there any conversation among youngsters about this?

Answer:

The government is legislating something to someone that is not capable of speaking up. The most important is that the children are not at the age where they can speak up and do not have the power to vote now.

3. Question from Abbas Rasid to Bill

How to combat illicit trade?

Answer:

We do not know how to combat either because illicit trade is pervasive and organized. For instance, two largest ports in the Netherlands and Belgium but only 1% was checked. We have to understand that the illicit trade is a lucrative business and price difference in the market will make a huge impact on illicit trade development.

4. Question from Abbas Rasid to Tharma Pillai

We have a mandatory review of 2 years for the bill. Any comments on that?

Answer:

Mandatory review is something interesting. But we have no clear guidelines for failing something. Statistics can be manipulated in the way that we want. For me there must be criteria which are not just banning one aspect and not addressing the illicit trade because this will just shift the demand to somewhere else (illicit trade). It takes a decade to make an amendment. Once introduced, we cannot change the course 10 to 15 years later. In Malaysia we need to make sure that the law to be implemented is really good and ready. In addition, if the results show that this banning is not successful, does the government have the courage to remove this banning again and do regulation. This is the answer that needs to be answered.

5. Question from Tarmizi Anuwar to Bill

In New Zealand, they set the timeline for product approval. For example, on the ingredients for vape flavours, it will take about 4 weeks. Do you think it is necessary in Malaysia?

Answer:

Importance of any rules that are transparent and clear on objective. We have done an impact assessment,

there's a hearing process for people to express their views. Most important factors are in the law.

6. Question from Tarmizi Anuwar to Tharma Pillai

Recently, the MOH said that they will display guidelines but we are unsure whether they will consult the public or not. Do you see this will be the experience in Malaysia? Will the government display the guideline and people will respond to the bill properly?

Answer

We cannot just introduce the guideline without consulting the public, the harsher measures are the ones that don't work. In Hungary, the mortality rate from tobacco is 4 times higher and the government has state monopoly but it does not reduce the rate. Not only that, we know previously, the bill involves everyone but no one can see the bill until just a few days before it is tabled in the parliament and this is fact. Therefore, we need clarity in the legislative process.

Conclusion

Bill Writz

The most important part to note is that the effect of tobacco is serious. The aim of any government is fundamentally not a bad one. However, the question is what is the most effective way, the alternative usage of cigarettes and what can stop the people from smoking cigarettes.

Tharma Pillai

The bill needs to be great to start, and not that we need to amend in 10-15 years to come. We need to ensure that the mechanism is the right one and have been consulted enough as well as to have a proper legislative process. We need to ensure this bill has been debated properly and not try to rush through the bills as what we have been doing in the past.

Session 2: Generational End Game: Impact on consumers and the economy

- 1) YB Datuk Wan Saiful Wan Jan, Member of Parliament for Tasek Gelugor
- 2) Benedict Weerasena, Research Director at Bait Al Amanah

YB Datuk Wan Saiful Wan Jan

He thinks especially for PSSC members, the media needs to test them how much they care and know about this topic or is it only just driven by a small number of people. This is because Malaysians at large are not talking about this and they are talking about anything else. In public policy, we must be driven by a certain philosophy and code of ethics. In this matter there is no demand on this topic (no memorandum) and no moral guidelines. For me public health is not a philosophy. It is a political movement, not guided by moral values – if not guided, what is the extent of using public health to implement other rules or slippery slope? (e.g. sugar, fast food, *maksiat*). When the government regulates, it must give power to people to make choices. We have implemented mandatory death sentences for drugs, but we still have those cases everywhere. The government should nudge by using information, knowledge and education, and not by regulating and legislating as people will substitute for other illegal things. We have Undi 18 – which means we are clever enough to vote, but the government thinks we are not clever enough to make decisions.

Benedict Weerasena, Research Director at Bait Al Amanah

In public policy, the foundation of the bill must be an evidence-based policy and practice supported by scientific research. It should be a combination of idealist and pragmatic approach. We have to emphasize that freedom of choice in policy making is very important. As of May 2021, illegal cigarette incidence has remained elevated. How much more will GEG contribute? In Sabah and Sarawak, especially, only 1 out of 10 are consuming legal cigarettes. During the pandemic, South Africa in March 2020 a ban was enforced on tobacco product sales. But 93% smokers still can continue to purchase cigarettes. Average price increased by 250%. Because of that, we must ensure illegal or illicit trade under control before implementing GEG. Besides that, the impact on GEG for retailers is loss of revenue, compliance cost, equipment cost, monitoring cost, opportunity cost and legal fees. Based on our research, the total enforcement cost for GEG is estimated at RM 303 million per annum including cost of tobacco track, public awareness campaign, administrative cost, additional enforcement to curtail the growth of illicit cigarette market. The groups like B40 and M40 will be affected the most which lower income households. Beside that, impact on investment will be declined in terms of GDP/FDI. It produces a negative perception that our country favors smugglers over legitimate sources.

Bait al-Amanah has proposes several policy recommendations:

1. Intensify meaningful engagement sessions with relevant stakeholders
2. Ensure the mandatory periodic review of the effectiveness of the Act is conducted independently by Jan 2025 (Before the law applies to generation of GEG)
3. Differentiated approach according to Relative Risk Assessment (similar to NZ's smoke free generation model)
4. Uphold decriminalization – focus on counseling and cessation services

Discussion

1. Question from Bill to Benedict Weerasena

Different countries have different consumer claims. What are Malaysia's consumer choice claims?

Answer

Malaysia has no stance but more on Asia as a whole. People are willing to make sacrifices for greater good and not very much individualistic in nature.

2. Question from Dr. Muhammed Abdul Khalid to YB Datuk Wan Saiful Wan Jan and Benedict Weerasena

Interested in knowing this issue from a political economy point of view and political dividend for this bill. How are they going to replace the revenue loss of the excise imported cigarettes?

Answer YB Datuk Wan Saiful

I think Khairy Jamaludin (KJ) has been misguided by activist civil servants, behaving more like an NGO rather than civil servant, KJ wants to make a name for himself. Don't get me wrong, I respect KJ. In Malaysia, there needs to be Regulatory Impact Assessment (RIA) and Regulatory Impact Statement (RIS) but none has been done on that. The reason why it is going through PSSC is because many people have opposed the bill. The Member of Parliaments (MPs) are lining up to speak, even though from the

government MP themselves.

Answer Benedict Weerasena

On how to replace revenue, it is not clear, but the way they are trying to justify is that Loss of revenue = Save health spending. Until today, there is no real debate about it as people are not interested in it.

3. Comment from Sivarasa Rasiah

Why does the current government want to continue the bill? There has been two (2) days of debate and it will not finish. On this matter in the parliament, they decided to go back to PSSC, appointing YB Datuk Seri Dr. Dzulkefly Ahmad as the Chairman of the committee. Let's just let them prepare their report and go through the proper processes.

4. Response from YB Datuk Wan Saiful Wan Jan to the Sivarasa Rasiah

The question is priority. Why political financing act has not been approved yet, why not debate on the separation of law. I cannot find the logic other than personal agenda.

5. Comment from Tarmizi Anuwar

Believe that this is a global issue, so our country wants to do it too.

6. Comment from Bill Wirtz

Georgia decided to use plain packaging in which the timeline of the implementation is very short. It turns out that the World Health Organization (WHO) has been advocating on this matter.

7. Comment from YB Datuk Wan Saiful Wan Jan

Malaysians when we quote somebody, WHO or United Nation they think it must be the right thing to do. We must understand the politics behind WHO and international bodies. This has not been discussed properly.

Conclusion

Benedict Weerasena

Important to understand the behaviour before bills are being tabled, or else it will always lead to unintended consequences, have adverse effects, and need to be balanced between idealism and pragmatism.

YB Datuk Wan Saiful Wan Jan

These issues need to be discussed deeper, how it will affect the country in the long term, people who will be affected by it are still in primary school, and need to shift the conversation to policy debate, preferably guided by a certain set of beliefs.

Session 3: Smoking Products Control Bill for Public Health 2023: Constitutional Challenges

- 1) Tuan Sivarasa Rasiah, Former Deputy Minister of Rural Development
- 2) YB Dr. Afif Bahardin, State Assemblyman for Taman Medan

Tuan Sivarasa Rasiah

My personal opinion, if the bill is passed, 100% will be challenged in the court because this issue is very sensitive and has received various reactions from various parties. We have to understand, the GEG is a process. When the bill is implemented there will be a 3-year review period (provided under our report) on whether the bill is effective or not in terms of achieving its objective. On discrimination issue (generational endgame group) of this bill is not absolutely prohibiting it, but the objective is reducing the consumption of it progressively. And reducing the damage and detrimental effect of it for over 30 years. So that tobacco will be a sunset industry in the future. In the processes of law making and regulations, this is a systemic issue and institutional reform is needed. YB Datuk Wan Saiful mentioned about WHO, the latest issue is how WHO is drafting amendments to existing international health organizations to change from policy recommendation to mandatory. We need to persuade countries to vote against it. However, the right to choose does not help us answer the policy issue and most law making is based on harm principle. We have to understand, there is no absolute freedom and will look at how it harms the society and environment. From a law perspective, we need to look at the harm that we intended to prevent.

YB Dr. Afif Bahardin

Smokers have the right to smoke but not in public space, because other people have rights to get clean air as well. There is a lack of resources and human capital even though the initiative is there but the state government did not manage to secure Penang as a smoke-free zone (during the time as EXCO in Penang). MOH to accept that there will be people who smoke. Not to crusade smokers, same as gambling issues. In Malaysia, illicit trade is rampant and from my point of view the GEG will fail, just like how Penang tried to do it before. We need to focus on how to regulate cigarettes. Currently there is no vape regulation and no regulation on nicotine level. This is not much more on public health goals, but on personal ego by the Ministry. Need to focus on regulating tobacco products for instance areas you cannot smoke, age limit etc. Buy in from everyone not only from enforcement but also for the community, rather than focusing on introducing the new bill. The eateries still have people smoking, the enforcement needs to be there. I think advocating and community education is far more important than imposing new laws.

Discussion

1. Comment from Tarmizi Anuwar

GEG is not the sole strategy to make Malaysia smoke-free. There are other strategies as well.

2. Question from Tharma Pillai to Sivarasa Rasiah

Reasonable rational difference between 23 & 24 years old that can or cannot smoke under GEG, based on age not birthdate and do you think this will be a constitutional challenge. Any comments on that?

Answer:

Arguments from pro GEG, this is progressive 60 years process. Inadvertently, there will be a one year difference at some point.

3. Question from Benedict Weerasena to Sivarasa Rasiah

Answer

There were some suggestions given by the PSSC when I was still in the committee, which were then given attention by the government at that time. I have to take credit for issues regarding fundamental rights that I raised such as body check in the committee meeting and it was removed from the bill.

4. Comment from Bill Wirtz to Sivarasa Rasiah

On the harm principle, John Stuart Mill only applied to non-consensual harm. There is also another harm issue other than tobacco that can be debated which is sugar, air pollution from cars, etc.

5. Response from Sivarasa Rasiah to Bill Wirtz

The harm that we look at now is the harm that we cause to others which is the society, economy and environment. Smoking debate has gotten the point to self harm anymore, but harm you create to others as well, the disproportionate burden to others.

6. Comment from YB Dr. Afif Bahardin

Statistics and data is important in implementing policy. Traditional approach for MOH does not apply anymore. Lack of consultation from MOH itself. A lot of reforms need to be implemented for policy change in public health. Need to implement e-cigarette regulation as we do not know what is the content. Most of the research for e-cigarette also often quoted in other countries.

Conclusion

Dr. Afif Bahardin

MOH acts holier than thou. The e-cigarette is there but there is still no regulation as their concern is that if they start regulating it, they are allowing or recommending this to society, and as a doctor it breach their principle.

Sivarasa Rasiah

The bill was drafted to include vaping products as well. However, there is no clear definition on the content. There's also a financial element to it, which is on the tax collection.

Tarmizi Anuwar

Can regulate vape outside GEG but MOH do not want it to happen that way.

Session 4: Towards practical law enforcement in Malaysia

- 1) Kue Kok Meng, President of PJ Coffeeshop Association
- 2) Datuk Adzwan Ab Manas, President of MRECA

Kue Kok Meng

We have been invited by PSSC for an engagement session regarding illicit trade. Imagine until now, MOH or law enforcement cannot even regulate the current bill such as smoking at eateries. Petaling Jaya has a lot of foreign workers and illegal cigarettes are all there in the outskirts. Previously, RM3.50 per packet for illicit trade of cigarettes, but now it is RM5. At the coffee shops I didn't see the law enforcement come to ban people from smoking. The government has done all the ads but people still smoke. The shop never pushes people to buy cigarettes but people still wanna buy it anyway. Beside that, the second dealer problem needs to be addressed. Even in the field of retailers they think the sales will be going up because of the buy ride concept. I think this will be a funny scenario to watch. The most important is the responsibility of enforcement should be done by the enforcement body and not the coffee shop.

Datuk Adzwan Ab Manas

In 2015, Public Health of England stated in the report that using vape is 95% safer than smoking. Meanwhile, in Malaysia, Program Berhenti Merokok has no impact. This is why vape is not introduced in the program. In the UK, the rate of smoking dropped because of the alternative usage of vape. Vape does not have tar, but has the same amount of nicotine as cigarettes. Tar is the primary cause of cancer and not nicotine. Tar has 4000 chemicals including arsenic (the same ingredient in rat poison). Vape cannot be advertised. So society does not know the correct way of using vape or what is the new product of the vape. This does not encourage the industry to grow. The pharmaceutical company will be the ones who benefited from this failure of Program Berhenti Merokok. The pharmaceutical advertisement was once advertised on the government website. Khairy Jamaludin wanted to develop a system if the GEG was going to be implemented but finally exposed the application that wants to make. Beside that, the enforcement is not there and there is no proper research on vaping and its effects. Based on my engagement with YB Datuk Seri Dr. Dzulkefly Ahmad and YB Dr. Kelvin Yii on harm reduction, both of them are agreed on that but they do not suggest the usage of vape as an alternative. There is one more issue, nicotine has been outlisted from the poison act, so the government does not actually care about the nicotine addiction among the children. There is even nicotine chewing gum nowadays. We have to know that the abuse of vape is wrong but not the vape itself. EVALI happened because of the usage of THC drug using vape

Discussion

1. Question from Sivarasa Rasiah to Datuk Adzwan Ab Manas

What is your suggestion to regulate the vape industry?

Answer

Industry players' fine should be increased to RM 100,000 and 2 years in prison. In 2014 to 2015, to pay a fine of RM 100,000 is no issue because it's too little RM100,000. However due to war prices, from 300% margin now has been reduced to only 25% profit margin. Now the retailers think that RM100,000 is a lot. I also suggest no online sale of vape and must have a license from PBT. Education in school must be used to collaborate with the National Anti-drug Agency (AADK) to organize talk that vape is for smokers that want to quit smoking and not for children. Media always play the issue and put the blame on vape. But sometimes, the fault is the parents. Most students learn from parents at home and not from industry.

2. Question from Tarmizi Anuwar to Kue Kok Meng

You said the responsibility of enforcement should be from the enforcement body and not the coffee shop. Enforcement on checking the ID before buying cigarettes. Any comments on that?

Answer

It is bothersome to check people's ID. We do not want the difficult circumstances to happen at our shop.

3. Comment from Bill Wirtz

In the Netherlands, cannabis is legal, however in certain Dutch cities, it can be purchased only if you are Dutch. Dutch people become the second dealer and it creates an entire section where they are incentivized to do the job. Fake IDs also become an issue. Need to hire another professional to differentiate between fake IDs and original IDs.

Conclusion

Datuk Adzwan Ab Manas

Hope that the GEG that will be tabled in October will be reviewed deeply. We need to look at countries like the United Kingdom, Canada and United States on how they regulate the products. We must ensure the regulations do not put a burden on companies and the citizens.

Kue Kok Meng

No government in the world would like to be a failure of GEG. The GEG will be a laughing stock of the whole world if it comes into effect.

Policy recommendations

The goal of each aspect of the tobacco bill and the regulations governing the enforcement mechanism should be to keep consumers within the confines of the legal market. Malaysia already represents one of the most prosperous illicit trade hubs in the world. This means that the government should refrain from policies that implement blanket prohibitionist policies, or those that will hit a certain age group within the population. On the illicit market, combustible cigarettes and e-cigarettes will continue to be sold, with or without a GEG prohibition – in fact there is the risk that with the GEG rules, the black market in Malaysia will increase in power and reach. The only place in which the regulatory state is effective is on the legal market.

All involved stakeholders should also get access to a thorough impact assessment that analyzes the impact of the tobacco bill on the economy, public health, illicit trade, crime, product safety, youth smoking, and law enforcement. Without a proper impact assessment made available to parliamentary members, members of the press, consumer advocates, as well as manufacturers, the government cannot be expected to make a decision that carefully considers the consequences of the legislation.

The threat of the tobacco bill ending in increased illicit trade and the lack of a thorough impact assessment lead this report to conclude that there should be a moratorium on the tobacco bill of at least three years, in order to involve all relevant stakeholders properly in a consultation process.

A review process of the bill should not include any elements of punitive law enforcement, or any other punishments for that matter that overtly implicate law enforcement officers to make more time

commitments. Law enforcement ought first and foremost be available to persecute violent crime, not lifestyle misdemeanors. Instead of seeking ways to punish consumers, the government should in fact consider ways to more stringently enforce existing age limits on tobacco products. Protecting children from harm before they are old enough to make their own decisions is vital.

Until now, the current bill has no proper timeline for approval. The government should consider that in taking care of public health it must be a balance between health and business. Since the Malaysian government wants to implement GEG, at least impose good industrial standards and practice. This is important to ensure that the economic cycle in the business sector can be controlled and not interrupted suddenly. These guidelines must be prepared and displayed in order to get a response from all parties involved, whether consumers or industry.

Beside that, there is a review process every two years. Government needs to be transparent on what will be the criteria. This matter is very important in evaluating whether this generational endgame policy is effective or otherwise. If not every government of the day will change their standards and no proper assessment will be done. In this process as well, it should be emphasized that if this policy does not meet the appropriate standards, the government needs to withdraw this policy. This is important in ensuring that the policy made is the best for all parties involved and can be implemented such as regulating safer products and strengthening enforcement.