



Juridical Analysis of the Crime of Illegal Cigarette Distribution According to the Excise Law

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ABSTRACT

This study is titled "Juridical Analysis of the Crime of Distributing Illegal Cigarettes According to Law on Excise" and is motivated by the widespread distribution of cigarettes without excise stamps or with counterfeit stamps, which causes state losses and disrupts economic order. The main issues examined are, first, how the legal regulations regarding excise and illegal cigarettes are according to Law Number 39 of 2007, and second, what forms of criminal liability apply to perpetrators of illegal cigarette distribution under this law. This study uses a normative juridical method with a legislative and conceptual approach, relying on primary legal materials in the form of regulations related to excise, as well as secondary legal materials in the form of books, journals, and other scientific documents. The results of this study indicate that Law No. 39 of 2007 has clearly regulated criminal sanctions for violations in the field of excise, particularly through the provisions of Articles 54 and 56, however, its implementation still faces challenges in terms of supervision and law enforcement. This research is expected to serve as a reference for improving policies to combat the circulation of illegal cigarettes and enhancing the effectiveness of excise law enforcement.

Keywords: Criminal Acts, Circulation of Illegal Cigarettes, Excise.

ABSTRAK

Penelitian ini berjudul "Analisis Yuridis Terhadap Tindak Pidana Peredaran Rokok Ilegal Menurut Undang-Undang Tentang Cukai" dan dilatar belakangi dengan maraknya peredaran rokok tanpa pita cukai atau dengan pita cukai palsu yang menimbulkan kerugian negara serta mengganggu ketertiban ekonomi. Permasalahan utama yang dikaji adalah, pertama, bagaimana pengaturan hukum mengenai cukai dan rokok ilegal menurut Undang-Undang Nomor 39 Tahun 2007, dan kedua, bagaimana bentuk pertanggungjawaban pidana terhadap pelaku peredaran rokok ilegal berdasarkan Undang-Undang tersebut. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan konseptual, dengan mengandalkan bahan hukum primer berupa peraturan perundang-undangan terkait cukai, serta bahan hukum sekunder berupa buku, jurnal, dan dokumen ilmiah lain. Hasil penelitian ini menunjukkan bahwa UU No. 39 Tahun 2007 telah mengatur secara tegas sanksi pidana bagi pelanggaran di bidang cukai, khususnya melalui ketentuan Pasal 54 dan Pasal 56, namun implementasinya masih menghadapi kendala pada aspek pengawasan dan penegakan hukum. Penelitian ini diharapkan dapat menjadi bahan pertimbangan dalam perbaikan kebijakan penanggulangan peredaran rokok ilegal dan peningkatan efektivitas penegakan hukum cukai.

Kata Kunci: Tindak Pidana, Peredaran Rokok Ilegal, Cukai.

INTRODUCTION

Cigarettes are processed tobacco products that are wrapped, including cigars or other forms produced from *nicotiana tabacum*, *Nicotiana rustica*, and other species or synthetics that contain nicotine and tar, with or without additives. Meanwhile, Unstamped cigarettes are defined as tobacco products circulating within the territory of the Unitary State of the Republic of Indonesia that have been packaged for retail sale but do not meet the fiscal payment obligations, as evidenced by the absence of an official excise stamp or other valid proof of excise payment from the Directorate General of Customs and Excise (DJBC). (Candela, 2023)

The circulation of illegal cigarettes is one form economic law violation that remains a serious problem in Indonesia. This phenomenon arises due to weak supervision over the production and distribution of tobacco products, as well as high public demand for low priced cigarettes without regard for legality and legal consequences. The circulation of cigarettes without tax stamps or with counterfeit tax stamps not only results in losses for state revenue but also disrupts national economic stability and fair competition in the tobacco industry. (Ahmad Yunus, 2024)

Excise duty is a state levy imposed on certain goods that have characteristics or attributes specified in this law. Goods subject to excise include those whose consumption needs to be controlled, whose circulation needs to be monitored, or whose use may cause negative effects on society or the environment. The purpose of excise duty is to maintain balance and fairness in the imposition of state levies, as well as to prevent smuggling of illegal or dangerous goods.

Law Number 39 of 2007 on Excise essentially regulates the procedures for the collection and supervision of excisable goods, including cigarettes as a strategic commodity that contributes to state revenue. In the provisions of Article 54 of the law, it is stated that anyone who engages in offering, selling, or providing excisable goods that are not properly affixed with excise stamps may be subject to imprisonment for a minimum of one year and a maximum of five years, as well as a fine of at least two times and at most ten times the excise value that should be paid. This provision is reinforced by Article 56, which affirms that anyone who hoards, stores, or trades excisable goods known to originate from excise related criminal acts may also be subjected to similar criminal penalties. These two articles emphasize the strategic position of criminal law in supporting the enforcement of economic law fair in the field of taxation.

The widespread circulation of illegal cigarettes indicates that the implementation of these articles has not been carried out optimally. Data from the Directorate General of Customs and Excise shows that every year there are thousands of violations related to the distribution of cigarettes without excise stamps or using fake excise stamps, resulting in losses to the state amounting to billions to trillions of rupiah, the "Crackdown on Illegal Cigarettes" operations carried out in various regions show that these violations are not only committed by small producers, but also by large, organized distribution networks that exploit loopholes in the monitoring system. (Budiman, 2024)

The obstacles in law enforcement against the crime of illegal cigarettes distribution stem from the low legal awareness of the public and weak coordination between law enforcement agencies. Many people do not understand that distributing cigarettes without tax stamps is a fiscal crime punishable by imprisonment. On the other hand, law enforcement officers are still limited in terms of human resources and monitoring equipment, especially in rural and border areas that serve as the main routes for the distribution of illegal cigarettes. (Gustia et al., 2024)

METHODS

The research method used in this study is the normative legal research method, which involves an approach through legislation on excise and the use of information technology related to illegal cigarettes. This research is conducted by examining legal library materials related to the issue and then comparing them with laws and regulations concerning the circulation of illegal cigarettes. The primary legal materials used in this research are the Excise Law, on addition to secondary legal materials in the form of papers and journals related to the circulation of illegal cigarettes, supported by scientific activities and publicly available secondary data.

In this research, the analysis of legal materials was conducted qualitatively, meaning that all collected legal data or sources will be examined in depth through legal reasoning without using numbers or statistical data. Normative juridical analysis is also used by comparing the main regulation being studied with other relevant legislation, particularly regarding the law on the circulation of illegal cigarettes for legal actors. After obtaining the results of this analysis, conclusions are drawn using the inductive method, which involves deriving general conclusions based on the findings and specific arguments found in this research.

RESULTS AND DISCUSSION

Crime of Illegal Cigarette Distribution

The crime of distributing illegal cigarettes can essentially not be separated from the legal construction of cigarettes as excisable goods, which are specifically regulated under Law Number 39 of 2007 concerning Excise as a *lex specialis* in the field of state levies on certain goods, under the excise law regime, cigarettes are classified as tobacco products that fall into the category of excisable goods due to their characteristics, which are considered potentially harmful to health, the environment, and social order, making it necessary for the state to control their consumption and distribution through fiscal levy instruments and an administrative monitoring system. Consequently, every cigarette produced or distributed within the jurisdiction of Indonesia is, in principle, required to comply with excise regulations, primarily the obligation to pay excise taxes, which is evidenced by the attachment of an official excise stamp on the packaging as proof of payment and a control instrument legality. (Harahap, 2024)

In this context, illegal cigarettes can be understood as any type of tobacco product circulating in the market, whether domestically produced or imported, but which does not meet the requirements as an excisable good, particularly in terms of excise payment and the procedures for making such payments. The Directorate

General of Customs and Excise defines illegal cigarettes through several main categories, including plain cigarettes with counterfeit excise stamps, cigarettes with reused excise stamp, and cigarettes using excise stamps that are not appropriate for their purpose, such as stamps intended for different types, classes, or brands with lower rates. Although these cigarettes are often physically packaged to resemble legal products, from an administrative and criminal law perspective in the field of excise, their status is still classified as illegal excisable goods because they do not go through the payment and supervision mechanism stipulated by law. (Pita et al., 2020)

Methods Of Distributing Illegal Cigarettes

The modus operandi of illegal cigarette circulation essentially shows how perpetrators systematically understand the excise monitoring system to avoid excise payment obligations as regulated in Law Number 39 of 2007 concerning excise. Within the framework of excise law, every cigarette produced and circulated in the territory of Indonesia is a taxable goods whose excise must be paid and evidenced by official excise stamps issued by the Directorate General of Customs and Excise. Cigarettes circulating without fulfilling this obligation, whether because they are not affixed with excise stamps, use counterfeit stamps, used stamps, or stamps intended for other purposes, are qualified as illegal taxable goods, and when traded, such acts fall under criminal acts in the field of excise. (Larissa, 2022)

From the perspective of the goods themselves, the customs and excise Directorate identifies several main patterns. First, plain cigarettes, which are cigarettes that have been packaged and are ready to be sold, but have no excise stamp at all. Legally, once these cigarettes leave the factory or enter circulation without a valid excise stamp, a violation of excise obligations has occurred, so when they are later offered or sold to consumers, the act fulfills the elements of distributing illegal taxable cigarette goods as stipulated in Article 54 of Law Number 39 of 2007. Second, the use of counterfeit excise stamp, where perpetrators print or obtain imitation stamps that appear to resemble the original stamps, but lack official security features such as materials, holograms, or authentication codes. Then attaching it to cigarette packs to give the impression of false legality. Third, the use of used excise stamps that have been removed from other packaging and reattached to new packs, which from a legal standpoint is still invalid because the stamps no longer reflect the payment of excise on currently circulating products. Fourth, the modus of misuse and mispersonalization, which occurs when stamps intended for certain types of cigarettes or specific factories are used for other products, resulting in deviations from tariff regulations and the determination of taxable goods both administratively and fiscally. (Ahmad Yunus, 2024)

The modus operandi of illegal cigarette circulation has also evolved by exploiting gaps in oversight, distributing illegal cigarettes via land, sea, and air using public vehicles, cargo trucks, and even expedition services. Shipments are

often disguised in boxes or sacks labeled as other goods (food, textiles), and the loads are split into small volumes to avoid suspicion when passing checkpoints. In some coastal areas, small ports 'rat ports' become entry points for illegal cigarettes from outside the region or abroad before being transferred to land vehicles to be distributed to markets in inland areas. These illegal cigarettes are marketed through small shops, traditional market kiosks, street vendors, and even social media and online marketplace, thus expanding the distribution reach and making enforcement difficult when relying solely on physical raids. This pattern indicates the presence of a network of actors connected to each other, from producers to transporters, to retailers who take advantage of the weak layered supervision in the distribution system. (Budiman, 2024)

From the perspective of packaging and branding, illegal cigarette distributors also use various visual strategies to deceive consumers and authorities. Customs and the government, in various enforcement reports, often find illegal cigarettes that use 'parody' brands or mimic the names and packaging designs of others brands, making them appear legal at first glance. Additionally, there are products that do not list any producer identify, factory address, or clear composition information, and health warnings often do not comply with official formats or are printed carelessly. As a result, consumers are at a significant disadvantage because they do not receive accurate, clear, and honest information about the products they intend to consume. (Daeng & Adri, 2023)

All of these schemes constitute violations of the obligation to pay excise and the prohibition of distributing excisable goods that are not affixed with excise stamps as regulated in Law Number 39 of 2007. Article 54 threatens imprisonment and fines for anyone who offers, sells, or makes excisable goods available for sale without being affixed with an excise stamp or other valid proof of excise payment, while Article 56 regulates sanctions for parties who stockpile, store, or trade excisable goods that they know originate from an excise crime.

Construction of Accountability for Perpetrators of Illegal Cigarette Distribution

From the perspective of legal subjects, the formulation "everyone" used in the criminal provisions of the Customs Law, particularly Article 54 and 56, indicates that the law does not limit liability only to producers, but extend to all actors involved in the illegal cigarette distribution chain, from factory entrepreneurs, distributors, warehouse owners, to retail sellers. In criminal law doctrine. "everyone" is understood as a legal subject who can be held criminally responsible, whether an individual or a corporation, as long as they meet the requirements for accountability and are proven to have committed or participated in acts prohibited by criminal norms. (Situmorang, 2024)

Manufacturers and cigarette factory entrepreneurs can be held criminally responsible when producing tobacco product without a excise permit, releasing excise goods from the factory without paying the excise duty, or intentionally using counterfeit excise stamps, used stamps, or stamps that are not intended for the proper use, making the cigarettes leaving the factory classified as illegal excise goods. (Ahmad Yunus, 2024)

In the distribution chain, parties such as distributors, warehouse owners, transport drivers, and distribution agents are also subjects who can potentially be held criminally responsible as regulated in Article 54 of Law Number 39 of 2007. This formulation also broadens the scope of liability, so that someone who does not produce illegal cigarettes but plays a role in storing or circulating them to the market can still be prosecuted, as long as it is known that the goods originate from a violation of excise regulations. (Ayu et al., 2023)

Retailers, such as kiosk owners and traders, are also included within the scope of "anyone" and in practice are not uncommonly prosecuted in cases involving illegal cigarettes. Article 54 also stipulates that offering, selling, or providing for sale excise goods that are not affixed with excise stamps or are not marked with a valid excise payment label constitutes a criminal act with the threat of imprisonment and fines. This indicates that retailers can be charged under Article 54, as the elements of illegal activity have been met. (Ayu et al., 2023)

Implementation of Sanctions According to the Excise Law

Regarding criminal sanctions, Law Number 39 of 2007 outlines threats of imprisonment and substantial fines as an effort to provide a deterrent effect at all levels of offenders. Article 54 stipulates a prison sentence of at least one year and at most five years, and/or a fine of at least twice and at most ten times the excise duty that should have been paid for offenders who offer, sell, or make excise goods available for sale without a valid excise stamp. Article 55 imposes higher penalties, namely imprisonment of up to eight years and fines of up to twenty times the excise duty value, for offenders who counterfeit excise stamps or use user or fake stamps, because in addition to harming state finances, such acts also undermine the supervision mechanism and the credibility of the excise administration system. Meanwhile, Article 56 emphasizes that parties who hoard, store, or trade excisable goods known to originate from excise related criminal acts are also threatened with similar criminal penalties, indicating that every link in the illegal circulation of excisable goods has the potential to become a subject of prosecution.

From a criminal law perspective, this tiered sanction reflects the principle of retributive proportionality, where the offense of forgery (Article 55) is more severe than selling without a tax stamp (Article 54). Deterrent effects are achieved through both specific and general deterrence, with fines based on actual losses. Journal analyses indicate alignment with Article 55 of the Criminal Code regarding intentional wrongdoing, although proving "knowledge" under Article 56 is often challenging. Illegal cigarette cases frequently test these articles, resulting in state losses of trillions of rupiah. (Gustia et al., 2024)

CONCLUSION

The conclusion of this study is that the circulation of illegal cigarettes is regulated under Law Number 39 of 2007 concerning Excise, which establishes a strong legal framework for regulating the mechanisms of collection, supervision, and legal sanctions for violations in the excise sector, particularly regarding the circulation of illegal cigarettes. The law states that excise is a government levy on

certain goods that have specific characteristics, for example, goods whose distribution and consumption need to be controlled because they have the potential to negatively impact society and the environment. Based on these criteria, tobacco products or cigarettes are categorized as taxable goods that must be strictly monitored by the government. (Candela, 2023)

The form of criminal liability for perpetrators of illegal cigarette distribution is regulated through the provisions of Articles 54 to 56, which hold a *lex specialis* position in the field of excise. The phrase “any person” in these articles has a broad meaning and encompasses various legal subjects. (Wasiska, 2023). This indicates that the lawmakers deliberately intended to broaden the scope of legal subjects so that all parties involved in the circulation of illegal cigarettes can be held criminally responsible. The circulation of illegal cigarettes is generally carried out with an element of intent (*dolus*). This can be seen from the conscious and planned actions, where the perpetrators know that the cigarettes being produced or sold do not have official excise stamps but still choose to circulate them for economic motives. This wrongdoing reflects the presence of will (*willens*) and knowledge (*weten*) of the perpetrators regarding acts prohibited by law. Although perpetrators may claim they did not know that the goods being traded were illegal cigarettes, according to the doctrine of no crime without fault (*geen straf zonder schuld*), ignorance of the law cannot be used as a justification. In this context, the excuse of negligence (*culpa*) is difficult to accept. (Ilmiah & Pendidikan, 2025)

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