

Juridical Review Of The Enforcement Of Criminal Laws For Illegal Tobacco Traffickers Without Excise Reviewed From Legislation concerning Excise

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Abstract

The case of the circulation of illegal goods, especially cigarettes without duty in Tanjung Balai City, is a case that is attracting serious attention, because there were a lot of catches by Teluk Nibung Customs and Excise officers during the 2021 to 2022 period, in the form of 2,313,172 cigarettes. With a total value of goods of Rp. 9,840,000,000.00 (nine billion eight hundred and forty million rupiah) with a total potential state loss of Rp. 3,913,000,000.00 (three billion nine hundred and thirteen million rupiah). This research aims to determine the factors causing the circulation of illegal cigarettes without duty in Tanjung Balai, law enforcement against the circulation of illegal cigarettes without duty in Tanjung Balai, as well as obstacles and efforts to enforce the law on the distribution of illegal cigarettes without duty. The nature of research in writing a thesis uses descriptive analysis, the type of research uses Normative law while the data collection method uses Library Research, and the type of data in this research uses Secondary Data. Criminal acts regarding fake excise stamps and the use of used BKC excise stamps are regulated in Article 55 of Law no. 39 of 2007 and factors that can hinder the Directorate General of Customs and Excise and related agencies from effectively monitoring and enforcing the law on the distribution of illegal tobacco in the city of Medan are the lack of public awareness of illegal tobacco, weak supervision and enforcement carried out by the relevant authorities. , there is still a lack of awareness of Tobacco producers in producing illegal Tobacco. The government is expected to increase State revenues from the excise sector along with efforts to safeguard State revenues and issue several strategic policies, namely by neutralizing the market for Illegal Tobacco products.

Keywords: *Excise, Illegal Tobacco, Circulatory Persons, Application of Sanction*

INTRODUCTION

Indonesia is one of the countries with the largest number of smokers. The number of smokers in this country is quite high. The figure reached 33.8% or around 65.7 million people. With population growth increasing every year, the selling price of cigarettes in Indonesia is also quite low compared to several poor countries. Customs and excise is a property expertise from the private sector to the government sector, which is required by law and can be enforced, without receiving reciprocal services (*tegenprestatie*) which can be directly appointed to finance state expenses. Distributors or sellers of illegal cigarettes commit violations that could potentially constitute criminal offences. Sanctions for this violation refer to Law Number 39 of 2007 concerning Excise, which states that offering or selling plain cigarettes or cigarettes without excise is threatened with imprisonment of 1 to 5 years, and/or a fine of 2 to 10 times the value of the excise duty that must be paid.

Until now, it is known that one of the Indonesian people's income comes from the tax sector, especially revenue from the tobacco excise sector. 90 percent of excise revenues from 2004 until now, excise revenues continue to increase. Cigarette excise revenue has reached 104.42 trillion as of July 2021. If you look at this number, tobacco excise tax remains the main contributor to excise revenue. The Directorate General of Customs and Excise is an institution

that plays a very important role in protecting Indonesia from counterfeit goods which are not good for the sustainability of the system and the life of the country. The Customs and Excise institution is the gateway for importing and exporting goods, making the Customs and Excise institution also known as a Trade Facilitator. Therefore, this institution has to take care of many things. This institution must provide services that can be characterized as time-saving, cost-effective, safe and simple. With these characteristics, it is hoped that this institution can provide the best service for the community, traders, industry players and the state.

This crime is committed in order to obtain large profits by violating applicable procedures to avoid taxes or excise. This crime is also very detrimental to the country, especially in the field of Taxation. Taxes are the most important source of state revenue, especially in this case Excise Tax. Furthermore, in accordance with Article 1 paragraph (1) Article 39 of the 2007 Excise Law, it is stated as follows. "Excise is a government tax levied on certain goods with certain characteristics and characteristics as stipulated in this Law." This levy is carried out on certain goods which have been determined and are contained in Law Number 39 of 2007. More details are in Article 4 paragraph 1 concerning Excise which states that Excise is levied on goods consisting of :

- a. Ethyl alcohol or ethanol, regardless of the ingredients used or manufacturing process
- b. Beverages containing ethyl alcohol in any quantity, including concentrates containing ethyl alcohol, regardless of the ingredients used or the manufacturing process
- c. Tobacco products include cigarettes, cigars, leaf cigarettes, cut tobacco and other tobacco products, regardless of whether alternatives or additives are used in their manufacture.

According to Articles 54 and 56 of Law Number 39 of 2007, it is explained "that every person who offers, delivers, sells or makes available for sale excisable goods which are not packaged or not attached with an excise stamp or not affixed with other signs of payment of excise and for every person who hoards, owns, sells, exchanges, obtains or gives away excisable goods which he knows or reasonably suspects originate from a criminal offense under this law shall be punished with imprisonment for a minimum of 1 year and a maximum of 5 years and a fine of at least twice the value of excise duty and a maximum of ten times the value of excise duty that should be paid." One of the products subject to excise duty in Indonesia is tobacco products in the form of cigarettes. In everyday language, in other terms, cigarettes are called cigarettes. Tobacco is a product that is in great demand by Indonesian people. Due to the high market demand for cigarette production by the public and the high cigarette excise tax imposed by the Government of the Republic of Indonesia, this has created a number of individuals who try to avoid paying cigarette excise tax. They distribute or sell this tax-free tobacco because they make bigger profits. The actions carried out by these individuals clearly violate Indonesian law, namely the regulations contained in Law Number 39 of 2007 concerning Excise. Then it is included in excise violations.

One example of a case of an individual selling cigarettes or illegal cigarettes without an excise stamp is in the decision of the Tanjung Balai Karimun District Court with case number 88/Pid.Sus/2020/PN Tbk. Where the defendants named Tober Sihombing Bin Alm Tohom and Dayat bin Amril were legally proven as those who carried out or participated in carrying out, removing imported goods in the form of cigarettes totaling ±100 (one hundred) cartons for which customs obligations had not been completed from the Customs area or from a bonded storage place or from other places under customs supervision without the approval of customs and excise officials which results in non-fulfillment of state levies based on law. as regulated and subject to criminal penalties in Article 54 of the Republic of Indonesia Law Number 39 of 2007 concerning Amendments to the Republic of Indonesia Law Number 11 of 1995 concerning Excise in conjunction with Article 55 Paragraph (1) 1st of the Criminal Code.

Therefore, the Customs and Excise Service as a law enforcement officer in the field of customs and excise should take action against all people or companies who commit violations in the field of excise without any discrimination, so that it can have a deterrent effect on perpetrators of violations in the field of excise on tobacco products and suppress distribution of illegal cigarettes on the market. Excise rates that continue to rise aim to control the circulation of cigarettes on the market, but this can also increase crime or criminal violations in the excise sector, especially for cigarette producers in the lower middle class. The Unitary State of the Republic of Indonesia often experiences very significant losses due to fraud by irresponsible individuals who have committed violations related to Excise. Therefore, if you look at the existing regulations, namely Law Number 39 of 2007 concerning Excise, this is not in accordance with what should be aspired to because law enforcement does not implement law enforcement in accordance with criminal sanctions against illegal cigarette sellers. just looking at it from an economic perspective.

RESEARCH METHODS

This research is normative legal research, research carried out or directed solely on written regulations or other legal material. The collection and collection of data in this study was carried out through a library study by seeking concepts, theories or opinions regarding the enforcement of the law against the shooting of the Laskar Front of Islamic Defenders (FPI) by the police in Tol Jakarta-Cikampek Kilometre 50. In order to be able to give an assessment of the research, it is possible to use the data collected. The data is analyzed using methods of qualitative analysis. The data analysed qualitatively will be presented in the form of a systematic description by explaining the relationship between various types of data as appropriate. All data is selected and processed, then analysed descriptively so that some conclusions can be drawn from this discussion.

RESULT AND DISCUSSION

Excise is a State Tax which is imposed on usage and is selective and extends its imposition based on the nature or characteristics of the excise object. Excise is an indirect tax. It is said to be an indirect tax because the tax burden can be shifted either in whole or in part to other parties. The collection and determination of excise objects refers to existing laws and implies that the actual function of excise is more focused on the function of regulating, supervising and limiting the circulation of certain types of goods due to the characteristics of these goods which are harmful to health or can cause social impacts. which is negative for society.

Excisable goods are certain goods whose consumption properties or characteristics need to be controlled, their circulation needs to be monitored, their use can have a negative impact on society or the environment, and their use requires the imposition of state levies for the sake of justice and balance. Several characteristics of these excisable goods are regulated in Article 2 of Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise. An explanation of the types of excisable goods contained in article 4 of the Excise Law is as follows :

1. Ethyl Alcohol or Ethanol regardless of the ingredients used and the manufacturing process.
Ethanol is a liquid, clear and colorless product, an organic compound with the chemical

formula C_2H_5OH , which is obtained either by fermentation and/or distillation or by chemical synthesis.

2. Beverages Containing Ethyl Alcohol (MMEA) are all liquid goods commonly called drinks containing drinks containing ethyl alcohol produced by distillation, fermentation and other methods, including beer, shandy, wine, gin, whiskey, wine, brandy, cider, soju and the like.
3. Tobacco Products (HT) which include cigarettes, cigars, leaf cigarettes, sliced tobacco and other tobacco processing products, regardless of use.

One of the excisable goods that is the main source of state income is tobacco products. Tobacco products in the form of cigarettes are tobacco products made from chopped tobacco wrapped in paper by rolling, for use, regardless of the substitute or auxiliary materials used in its manufacture. Cigarettes consist of kretek cigarettes, white cigarettes, rhubarb kemenyan cigarettes. Excise stamps are a tool used to pay off excise duty owed on excisable goods. Excise stamps are in the form of pieces of paper with certain predetermined sizes and designs. Excise stamps are used by excise duty, namely factory entrepreneurs who already have an NPPBKC (Excisable Goods Entrepreneur Identification Number) as a sign of payment of excise duty owed, excise stamps are obtained by excise duty at the Customs Service office. Excise stamps are issued by the Directorate General of Customs and Excise and then the printing is entrusted to Peruri. Excise stamps have security elements that are quite reliable in order to minimize counterfeiting. One way is to provide a hologram on the printed excise stamp. Excise stamps are printed according to orders and the Directorate General of Customs and Excise is based on the tax value charged for taxable products.

In the field of excise, the criteria for criminal acts are regulated in the Law on Excise, namely Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise Articles 50 – Article 62. Excise crimes in these articles include criminal acts of not having a permit for the company, importer, storage place for BKC (Excisable Goods), not recording BKC according to regulations which causes state losses, falsifying books and all required excise documents, offering, selling unpackaged BKC, all acts of making, imitating and counterfeiting excise stamps, buying, storing, using, selling, offering, handing over, providing for sale, or importing fake and/or used (already used) excise stamps and making them against the law. Storing, hoarding, possessing, selling, exchanging BKC resulting from criminal acts, breaking seals, receiving and/or offering excise stamps from or to those who are not entitled as well as in Article 62 of the Law on Excise relating to investigations.

Criminal acts regarding Excise are special crimes because they are regulated outside the Criminal Code, namely specifically regulated in Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise. This law regulates several criminal acts in the field of excise and its criminal provisions. The Excise Law regulates several acts including the criminal act of not having a permit for a company, importer, storage place for BKC (Excisable Goods), not recording BKC according to the regulations which causes state losses, falsifying books and all required excise documents, offering, selling unpackaged BKC, all acts of making, imitating and counterfeiting excise stamps, buying, storing, using, selling, offering, handing over, providing for sale, or importing fake and/or used (already used) excise stamps and making them against law. Storing, hoarding, possessing, selling, exchanging BKC proceeds from criminal acts, breaking seals, receiving and/or offering excise stamps from or to those who are not entitled.

The Excise Ribbon referred to in the above elements is issued by the Directorate General of Customs and Excise and then the printing is entrusted to Peruri. Excise stamps have security elements that are quite reliable in order to minimize counterfeiting. One of them is by providing a hologram on the printed excise stamp. Excise stamps are printed according to orders and the Directorate General of Customs and Excise is based on the tax value charged for taxable

products. Provisions regarding how to place special excise stamps for tobacco products are regulated in the Decree of the Minister of Finance of the Republic of Indonesia Number 105/KMK.05/1997 concerning Refinement of the Decree of the Minister of Finance of the Republic of Indonesia Number 240/KMK.05/1996 dated 1 April 1996 concerning Excise Payments. Criminal sanctions are sanctions in the form of criminal penalties imposed by a judge in a court hearing for violations of criminal provisions regulated in Law Number 11 of 1995 concerning Excise as amended by Law Number 39 of 2007. Criminal sanctions can be in the form of imprisonment and/or criminal penalties. fine. The purpose of imposing criminal sanctions is to provide a deterrent effect for cigarette factory entrepreneurs and anyone who violates the criminal provisions regulated in the Excise Law. One of the breakthroughs in Law Number 39 of 2007 which is an amendment to Law Number 11 of 1995 concerning Excise is the limitation of minimum sanctions including criminal sanctions. The existence of minimum sanctions limits in the criminal provisions of the Excise Law reduces the possibility of criminal disparities arising in the imposition of decisions by judges :

1. Article 50 (without permission to do business)Any person who without a permit as intended in article 14 carries out factory activities, storage places or imports BKC with the intention of evading excise payments shall be punished by imprisonment for a minimum of 1 year and a maximum of 5 years and a fine of at least 2 times the excise value and a maximum of 10 times the value of the excise duty that should be paid.
2. Article 52 (BKC's expenditure from TP/TBK results in state losses)Factory entrepreneurs or storage place entrepreneurs who remove BKC from factories or storage places without observing the provisions as intended in article 25 paragraph (1) with the intention of evading excise payments will be punished by imprisonment for a minimum of 1 year and a maximum of 5 years and a fine of at least 2 times. excise value and a maximum of 10 times the excise value that should be paid.
3. Article 53 (falsifying documents/forged)Any person who deliberately shows or hands over books, notes and/or documents, as intended in article 36 paragraph (1) or financial reports, books, notes and documents which serve as evidence of the basis of bookkeeping and other documents relating to business activities, including electronic data as well as letters relating to activities in the excise sector as intended in article 39 paragraph (1b) which are fake or falsified, shall be subject to imprisonment for a minimum of 1 year and a maximum of 6 years and a fine of at least Rp. 75,000,000.00 and a maximum of Rp. 750,000,000.00
4. Article 54 (selling BKC that is not packaged/tax paid)Any person who offers, delivers, sells or makes available for sale BKC which is not packaged for retail sale or is not affixed with an excise stamp or is not affixed with other excise payment marks as intended in article 29 paragraph (1) shall be punished by imprisonment for a minimum of 1 year and a maximum 5 years and a fine of at least 2 times the excise value and a maximum of 10 times the excise value that should be paid
5. Article 56 (possessing criminal proceeds of BKC)Every person who hoards, prepares, owns, sells, exchanges, obtains or gives BKC which is known or reasonably suspected to result from a criminal offense under this law shall be punished by imprisonment for a minimum of 1 year and a maximum of 5 years and a fine of up to at least 2 times the excise value and a maximum of 10 times the excise value that should be paid.
6. Article 57 (damaging security seals/marks)Any person who without permission opens, removes or damages a lock, seal or security sign as regulated in this law shall be punished by imprisonment for a minimum of 1 year and a maximum of 2 years and a fine of at least Rp. 75,000,000.00 and a maximum of Rp. 750,000,000.00
7. Article 58 (buying/using excise stamps is not his right)Any person who offers, sells or hands over excise stamps or other excise payment tokens to those who are not entitled to them or

buys, receives or uses excise stamps or other excise payment tokens to which they are not entitled shall be punished by imprisonment for a minimum of 1 year and a maximum of 5 years and criminal penalties. a fine of at least 2 times the excise value and a maximum of 10 times the excise value that should be paid.

This case started on Monday, February 24 2020 at around 02.30 WIB Klm. Citra Makita, which was headed by Defendant I Tober Sihombing Bin (late) Tohom Sihombing, Defendant Ii Dayat Bin Amril as Cincu/Manager of Klm. Citra Makita and 7 (seven) crew members arrived at Tanjung Unggat, Tanjungpinang City with a load of Indofood products after several days of loading and unloading of Indofood products and cargo according to the manifest. Then on Thursday, March 5 2020, at around 04.30 WIT, Brother Fernandes arrived. (Dpo) and Brother Yopi (Dpo) along with 2 (Two) Public Transport Units (Zebra Type Public Transport) Each Carrying About 50 Brown Cartons Covered in Clear Plastic.

That at around 01.00 WIB the BC 30002 Patrol Team was carrying out a sea patrol around the waters of Mendol (Kuala Kampar) Pelalawan Regency which was carrying out a sea patrol and detected the presence of the KLM ship. Citra Makita Then at around 01.40 WIB the BC 30002 Patrol Team gave chase and succeeded in locating it. It was found that the results of the initial inspection showed that KLM. Citra Makita, which was led by Defendant I Tober Sihombing Bin (late) Tohom Sihombing, Defendant II DAYAT Bin AMRIL as Cincu/KLM Management. Citra Makita with 7 (seven) crew members who departed from Tanjungpinang with the destination Pekanbaru with a load of moving goods and Telkom goods listed in the Manifest dated March 6 2020 and a load of cigarettes. For 100 (One Hundred) Cartons of Luffman and Luffman Light Brand Cigarettes Without Excise Ribbons, After Document Inspection, It Was Found That There Were No Documents At All, Neither PPFTZ-01 Manifests nor Excise Documents (CK-5), After the KLM Inspection was Completed. Citra Makita, Defendant I Tober Sihombing Bin (late) TOHOM SIHOMBING, Defendant II DAYAT Bin AMRIL and their cargo were all taken to the Riau Islands Special DJBC Regional Office for further examination.

That Defendant I Tober Sihombing Bin (late) Tohom Sihombing, Defendant II Dayat Bin Amril jointly loaded and transported cigarettes (tobacco products/HT) from the Bintan free area without the approval of Customs and Excise officials, and did not comply with state levies based on law. Customs. According to Customs Expert AWALUDDIN, this was due to KLM cargo. Citra Makita 96 (ninety-six) cartons of cigarettes without excise stamps attached cause potential state losses of IDR 776,714,000 (Seven hundred seventy-six million seven hundred and fourteen thousand rupiah). Sentence the Defendants to imprisonment for 2 (two) years and 6 (six) Months respectively and a fine of Rp. 50,000,000.00 (fifty million rupiah) each if the Defendants do not pay fine no later than 1 (one) month after the court decision has permanent legal force, the property and/or income of the Defendants can be confiscated by the Prosecutor to replace the amount of the fine that must be paid and if this is insufficient, it will be replaced by imprisonment for 1 (one) month.

Law enforcement against the distribution of illegal cigarettes without excise is one of the important efforts in maintaining order and justice in the fields of taxation and health. Illegal cigarettes without excise tax not only harm the country in terms of excise revenue, but also have the potential to endanger public health due to uncontrolled product quality. Therefore, it is important to understand the juridical aspects related to criminal law enforcement for perpetrators of illegal cigarette distribution. Criminal law enforcement against the distribution of illegal cigarettes without excise is based on several laws. Enforcement of criminal law against the distribution of illegal, excise-free cigarettes is an important step to maintain compliance with excise laws and protect public health. With a strong legal basis and cooperation between agencies, it is hoped that law enforcement can run more effectively and efficiently. Existing

challenges must be overcome with the right strategy so that law enforcement objectives can be achieved optimally.

CONCLUSION

Juridical Analysis Regarding Excise Legislation on Tobacco Products in Indonesia is regulated in Republic of Indonesia Law Number 39 of 2007 concerning Excise. Which groups the types of goods subject to excise/excise on tobacco products and types of excise bands on tobacco products and excise bands and excise bands on tobacco products. Excise is a state levy imposed on certain goods that have the properties or characteristics specified in the Excise Law and an Excise Ribbon is a security document as a sign of payment of excise in the form of paper that has security properties/elements with certain specifications and designs. As is generally known, excise stamps are a tool used to pay off excise duty owed on goods subject to vinega.

Criminal acts regarding fake excise stamps and the use of used BKC excise stamps as regulated in Article 55 of Law no. 39 of 2007, namely every person who: unlawfully makes, imitates or fakes excise stamps or other excise payment marks, buys, keeps, uses, sells, offers, delivers, provides for sale, or imports excise stamps or excise payment marks others that are fake or falsified, and using, selling, offering, delivering, providing for sale, or importing excise stamps or other excise payment receipts that have been used, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 8 (eight) years and a fine of at least 10 (ten) times the excise value and a maximum of 20 (twenty) times the excise value that should be paid.

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