

LEGAL POLICY IN OVERCOMING THE CIRCULATION OF CIGARETTES OF NO CIGARETTE EXCISE TAX BAND

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Abstract - Law enforcement against the crime of cigarette distribution without excise tax is a crucial aspect in maintaining the integrity of the tax system and protecting public health. The phenomenon of cigarette distribution without excise tax is not only detrimental to the state in terms of finance, but also has the potential to endanger consumer health due to uncontrolled product quality. This study aims to analyze strategies and obstacles in law enforcement against these criminal acts. This research in terms of its type is observational research or survey legal research. In this study the population and respondents are the customs and the community in the local area represented by traders who circulate cigarettes without excise tax bands with a total of 22 people. Law enforcement against the circulation of cigarettes without excise tax is not just about enforcing the rules, but also a preventive measure to protect future generations. In addition, the application of the law against the circulation of cigarettes without excise tax is not only to protect state finances, but also to ensure that tobacco products are closely monitored for the welfare of society. All parties need to understand that collaboration is the key to success, and with joint efforts, we can create an environment free from the threat of this criminal offense. By doing so, we are not only securing the law, but also protecting our collective well-being and future.

Keywords: law enforcement, illegal cigarettes, excise tax, market operations.

INTRODUCTION

Cigarettes are one of the items that are easily found starting from small stalls to even large supermarkets. Cigarettes, which used to be goods as a fulfillment of people's desires along with the development of the times, are now turning into goods for wider community consumption (Irfan & Hariani, 2022; Sinambela et al., 2022). Previously only enjoyed by certain people, now it can be consumed by many people, cigarettes that can only be consumed by adults are now teenagers to small children can feel consuming cigarettes (Issalillah et al., 2021). Starting from there, as time goes on, many individuals or groups make a factory to produce cigarettes, according to Law Number 39 of 2007 concerning Excise, a factory is a certain place including buildings, yards, and fields that are part of it, which are used to produce excisable goods and / or to package excisable goods in packages for retail sale. Cigarettes have a large market and are the second-ranked commodity in household consumption.

The government took a step to limit cigarette consumption in Indonesia by establishing cigarettes as excisable goods (Putri et al., 2022). Establishing cigarettes as excisable goods, the government made Law of the Republic of Indonesia Number 39 of 2007 concerning excise, in the law it is explained that excise is a state levy imposed on certain goods that have the properties or characteristics stipulated in the excise law. Cigarettes contribute greatly to state revenue from the excise sector by contributing 97% (Muharamani et al., 2019). Many studies say that cigarettes are dangerous and there are regulations that bind them, in fact there are still many people who are not aware of the dangers of smoking for health, both for the consumers themselves and the people around them. From the cases experienced related to cigarettes, this should make the government continue to consider steps taken to reduce cigarette consumption in Indonesia and control its circulation (Aprilliya et al., 2023). This makes the Directorate General of Customs and Excise as a government agency that has direct authority over excise and the government to make efforts where the circulation of cigarettes can be controlled, but does not cause losses to factory entrepreneurs.

Illegal cigarettes are cigarettes circulating in Indonesia which in their manufacture and circulation do not comply with the provisions of existing regulations such as cigarettes without excise stamps, cigarettes with fake excise stamps, cigarettes with excise stamps that are not their designation and not their rights, production without a license, cigarettes using used excise stamps, administrative violations (Aziani et al., 2021). The circulation of cigarettes without excise stamps not only violates tax regulations, but also has a serious impact on public health, the country's economy, and the integrity of the tax system. The government through Customs has taken various preventive measures against the circulation of plain cigarettes by carrying out various law enforcement efforts such as on Saturday, July 11, 2020, Customs succeeded in thwarting the delivery of 3,792,000 illegal cigarettes, the discovery of ready-to-circulate cigarettes that were not equipped with excise stamps or cigarettes equipped with fake excise stamps could certainly harm the State which was estimated at Rp.542 million, West Sumatra Customs on July 14, 2020 also succeeded in thwarting the circulation of illegal cigarettes in its territory as many as 38 cartons so that from the two operations carried out by Customs it can be seen the amount of State losses due to the circulation of illegal cigarettes.

Cigarettes traded without excise tax are often a source of illegal income for certain parties who seek to avoid paying the taxes they are supposed to pay. This phenomenon is detrimental to the state in terms of tax revenue that should be used to finance various development programs, including in the health and education sectors. In addition, the circulation of cigarettes without excise tax can be a major cause of the increase in smoking rates among the public, as the price of these illegal cigarettes tends to be cheaper (Altman et al., 1989). This has the potential to increase the prevalence of smoking-related diseases and burden the health system.

To prevent non-compliance of entrepreneurs, the government, in this case the Directorate General of Customs and Excise, is making efforts to supervise and prevent the circulation of the results of violations from these entrepreneurs, either the circulation of cigarettes without excise tapes or the acquisition of rights not from the obligations of the entrepreneurs themselves or other forms of violations by issuing various policies. The distribution of cigarettes without an excise band is one of the criminal acts and the provisions of criminal acts concerning excise are specifically regulated in Law Number 39 of 2007 concerning the amendment to Law Number 11 of 1995 concerning Excise.

The law states that any person who offers, delivers, sells, or makes available for sale excisable goods that are not packaged for retail sale or are not affixed with excise tapes or other excise payment marks and for any person who hoards, stores, possesses, sells, exchanges, acquires, or giving excisable goods which he knows or reasonably should be suspected of being derived from a criminal offense under this law shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of at least 2 (two) times the excise value and a maximum of 10 (ten) times the excise value that should have been paid (Nugroho & Amiq, 2023).

Within this framework, law enforcement is a must to maintain social, economic and public health justice. Firm measures in cracking down on the crime of cigarette distribution without excise tax are an effort to protect the interests of the state, create a healthy business environment, and improve public welfare. By understanding the urgency of law enforcement against the distribution of cigarettes without excise tax, we can see that this is not just a matter of taxation, but also an effort to protect the public from the negative effects of smoking and support overall national development. Thus, there are two objectives of study in this paper, namely knowing the causes of the rampant circulation of illegal cigarettes and how the challenges in law enforcement against the circulation of illegal cigarettes.

RESEARCH METHODS

This research is legal research. The focus is on analyzing existing legal policies in an effort to overcome the circulation of cigarettes without excise tax bands. This legal research seeks to understand and interpret the relevant regulations, and analyze the implementation and impact of these policies.

Data collection is done by analyzing relevant legal documents, such as Law No. 39/2007 on Excise, excise-related regulations, and government policies related to law enforcement of illegal cigarettes. The purpose of the analysis was to identify patterns, themes, and relevant conclusions related to strategies and constraints in law enforcement against the circulation of cigarettes without excise stamps.

As for obtaining data used in this study by using data collection tools in the form of interviews, literature review. Based on the results of data analysis, this study provides conclusions regarding the effectiveness of existing legal policies and the challenges faced in law enforcement against the circulation of cigarettes without excise tax bands. Recommendations are given to improve policy, improve legal implementation, and strengthen cooperation between agencies in an effort to tackle the phenomenon of illegal cigarette distribution.

RESULTS AND DISCUSSIONS

The Causes of Illegal Cigarette Distribution

The circulation of illegal cigarettes in the community freely proves that there are still many violations of the excise tax imposed on cigarettes, these violations occur because of the desire to get more profit from the producers and cheaper prices from consumers or the people who consume them (Darmawan, 2022). The forms of violations of illegal cigarettes are as follows: (1) misappropriation; (2) use of counterfeit excise tapes; (3) use of used excise tapes; (4) without excise tapes or plain. Based on this, it can be seen that the community knows that these cigarettes are prohibited from circulation but not all people understand the cause of the ban so that the circulation of illegal cigarettes is still rampant in the community, for the community the existence of illegal cigarettes is profitable in terms of sales and more economical for the community as users, as long as the sale and use of these cigarettes is not monitored like drugs, of course this does not cause fear for the community.

Factors that influence or encourage the increase in the circulation of illegal cigarettes are the high demand of the community because illegal cigarettes without excise tax are cheaper than cigarettes with excise tax and in terms of profit, the community or the shop gets a very large profit in the sale of these cigarettes when compared to selling legal cigarettes that have been charged with State levies and attached to excise tax bands. The high market demand and profits obtained in distributing illegal cigarettes certainly influence the rampant circulation of illegal cigarettes in the community.

Law enforcement is needed to provide legal certainty for parties who violate the law against illegal cigarette distribution and in carrying out law enforcement it is also necessary to have legal protection, especially to protect people who are harmed by the circulation of illegal cigarettes, legal protection is to provide protection for human rights (HAM) that are harmed and that protection is given to the community in order to enjoy all the rights granted by law. Law enforcement that can be done in minimizing the rampant circulation of illegal cigarettes is an effort to prosecute people who distribute illegal cigarettes, but this can be done if there is a sting operation or information provided by the community to the relevant agencies so that cooperation between several parties is needed in combating the circulation of illegal cigarettes.

Law enforcement is aimed at improving order and legal certainty in society, this is done, among others, by putting in order the functions, duties and authorities of the institutions in charge of enforcing the law according to the proportions of their respective scopes and based on a system of good cooperation and support the objectives to be achieved. The level of development of the society where the law is enacted affects the pattern of law enforcement because in a modern society that is rational and has a high level of specialization and differentiation the organization of law enforcement is also increasingly complex and very bureaucratic.

The implementation of law in society in addition to depending on public legal awareness is also very much determined by law enforcement officials, because it often happens that some legal regulations cannot be implemented properly because there are some law enforcement officers who do not implement a legal provision as it should, this is due to the implementation by law enforcement itself which is not appropriate and is a bad example and can degrade the image in addition to good examples, integrity and morality of law enforcement officials absolutely must be good because law enforcement is very vulnerable and open opportunities for the practice of bribery and abuse of authority.

The judiciary as one of the law enforcement institutions therefore its activities are inseparable from the laws that have been made and provided by the law-making body so that in this case there is a difference between the judiciary and the court where the judiciary refers to the process of adjudicating while the court is one of the institutions in the process, other institutions involved in the adjudication process are the police, prosecutors and advocates. The running of the judicial process is closely related to the substance being tried, namely in the form of civil or criminal cases and the full involvement of institutions in the judicial process only occurs when trying criminal cases.

Challenges in Law Enforcement against Illegal Cigarette Distribution

Control of the circulation of illegal cigarettes must be carried out strictly by the relevant agencies where authorized officers must control the circulation of illegal cigarettes, both in production and in circulation. The general form of control over the circulation of illegal cigarettes can be carried out in the following ways: (1) control of production in the area of suppliers of illegal tobacco products excise tax; (2) control of circulation in the area of distribution of illegal tobacco products excise tax. To overcome the circulation of illegal cigarettes in various municipalities, the Customs and Excise of the local municipalities together with related parties routinely conduct market operations to provide an appeal to the public not to trade in unauthorized goods and legal sanctions for traders who do not comply with applicable regulations, The author through an interview with a representative of the local City Customs and Excise stated that market operations aim to suppress the circulation of illegal cigarettes in the midst of society and to socialize to shop owners about the types of illegal cigarettes, what is the difference between illegal cigarettes and legal cigarettes and the importance of excise for the revenue of the State Budget (APBN), besides that market operations are also carried out for prosecution both against shops that still sell illegal cigarettes and against distributors who are caught distributing illegal cigarettes to shops.

Enforcement efforts carried out by Customs and Excise basically provide losses to traders because illegal cigarettes found will be confiscated and this can certainly have a deterrent effect on traders not to provide these illegal cigarettes, but the high market demand and the benefits obtained are the driving factors for there are still people who are not afraid to take such actions even though they are carried out secretly, especially since the supervision carried out by Customs and Excise is not routinely carried out in an area so this provides an opportunity for business actors to continue selling illegal cigarettes.

Law enforcement carried out by Customs and Excise is basically controlling in order to reduce the circulation of illegal cigarettes, but until now there have been no perpetrators of the excise crime who have been prosecuted until the examination process in court, even though the criminal acts of illegal cigarette distribution without excise for the perpetrators and even the cigarette traders have fulfilled the elements of the offense contained in Articles 54 and 56 of Law Number 39 of 2007 concerning Excise which reads "that every person who offers, delivers, sells, Every person who offers, delivers, sells, or makes available for sale excisable goods that are not packaged for retail sale or are not affixed with excise tapes or other excise payment marks and for every person who hoards, stores, possesses, sells, exchanges, acquires, or gives away excisable goods which he knows or reasonably should be suspected of originating from a criminal offense under this law shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and a fine of at least 2 (two) times the excise value and a maximum of 10 (ten) times the excise value that should have been paid".

In law enforcement carried out in relation to the circulation of illegal cigarettes, there are several factors that cause or inhibit why supervision and enforcement of the law against the circulation of illegal cigarettes carried out by the authorities experience obstacles. The obstacles that hinder the effectiveness of supervision and enforcement of the law against the circulation of illegal cigarettes include the lack of public awareness of the harm caused by the circulation of illegal cigarettes, the weak supervision and enforcement carried out by the relevant authorities, with the circulation of illegal cigarettes proving that there are still many violations of the provisions of the applicable law, one of these violations is due to the desire to get more profit from the producers and cheaper prices from the consumers or the people who consume them.

Law enforcement is inseparable from the role of society because in the end a result obtained from this is to achieve peace in society itself, therefore viewed from a certain angle, the community influences law enforcement. The community factor consists of the lack of role of small traders and the lack of role of the community as well as the minimal knowledge of the community itself, besides that it is quite difficult to find illegal cigarette distributors are factors that are continuous with the role of the community in enforcing cases of illegal cigarette distribution. The dealers who are starting to be observant in finding opportunities in circulating illegal cigarettes are quite hampering officers in the process of enforcing the law on the circulation of illegal cigarettes.

Further efforts undertaken by the agency or agencies related to law enforcement efforts on the circulation of illegal cigarettes are through direct evaluation in the field. The direct evaluation activities in the field include monitoring and evaluating the compliance of traders not to sell illegal cigarettes which can harm the State, law enforcement against the circulation of illegal cigarettes carried out by the Directorate General of Customs and Excise and related agencies is through controlling the circulation of illegal cigarettes by conducting market operations which aim to provide supervision, socialization and enforcement against the circulation of illegal cigarettes, law enforcement can have implications for the credibility of the rule formers, rule implementers and the people affected by the rules themselves, law enforcement is the process of upholding or functioning of legal norms that apply and have been regulated as guidelines for behavior in traffic or legal relations in human life in society and the state.

The provisions that have regulated it will not stop in the sense of rules that do not move or die, but will still stand upright and walk forward as determined by official institutions and recognized by the state to regulate it, broadly speaking, the process in law enforcement involves all legal subjects in every legal relationship while narrowly from the aspect of the subject, law enforcement can be interpreted as an effort by certain law enforcement officials to be able to guarantee and ensure that the rule of law runs as regulated. In law enforcement, it also includes the values of justice contained in the sound of formal rules or the values of justice that live in society, so law enforcement is not only limited to the enforcement of formal and written regulations and issued by an authorized institution to issue these rules, but in the field of law enforcement it is not as beautiful as described by legal theories and regulations that have regulated it.

Qualified human resources as law enforcers who have the ability to be able to serve and protect the community in accordance with their respective duties and fields are needed in optimizing law enforcement, law enforcers tend to be less than the number of people who continue to grow so that law enforcement officials cannot carry out their duties optimally as a means of law enforcement.

The purpose of the government to conduct supervision according to Law Number 17 of 2006 Amendments to Law Number 10 of 1995 concerning Customs is to increase the income or foreign exchange of the State and as a tool to protect domestic products, as a supervisor so that not all goods can enter and exit freely in the Indonesian market or Customs area. The main tasks and functions of the Directorate General of Customs and Excise abbreviated as DGCE or customs and excise are the name of a government agency that serves the public in the field of customs and excise, the duties and functions of Customs and Excise are closely related to the management or implementation of state finances, among others, collecting import duties and taxes in the context of imports which include Import VAT, Income Tax, STLG and excise.

Based on Customs Law Number 17 of 2006, customs and excise have the authority to arrest smugglers, confiscate contraband as evidence to be submitted to the authorities such as the police to be followed up as a criminal offense. Indonesia as an area that is often used as a target for the circulation of illegal goods makes it the duty of customs and excise in eradicating all criminal acts related to Customs by optimizing the performance of Customs and Excise employees in conducting supervision and law enforcement against any violations committed by the community. Cultural factors are similar to community factors, except that cultural factors emphasize the problem of the system of values that exist in the midst of society. In the community factor it is said that the level of community compliance with the rules of society is still low, this is due to the existence of a compromising culture that often occurs in Indonesian society, in fact there will be a tendency for the culture of the community to escape from the rules that apply to become so, the lack of socialization of State losses due to the circulation of illegal cigarettes by Customs and Excise to the public makes it difficult for customs and excise officers to reduce the number of illegal cigarette circulation to be smaller.

Socialization of the circulation of illegal cigarettes has not been carried out to remote areas such as villages or plantation areas so that it can result in the proliferation of illegal cigarette distribution carried out by irresponsible people to sell cigarettes without passing excise to retail sellers in the surrounding area found and make law enforcement efforts

such as confiscation of illegal cigarettes which will then be destroyed every year and it will also invite journalists or mass media to cover the process of destroying these illegal goods. As for further efforts made by the relevant agencies or agencies to overcome problems related to the effectiveness of supervision and law enforcement of the circulation of illegal cigarettes is through direct evaluation in the field, direct evaluation activities in the field include monitoring and evaluation of the compliance of factory entrepreneurs, monitoring market transaction prices and monitoring the production reporting of excisable goods that have been made. Efforts to improve the quality of work are not only carried out through the scope of internal employees but need cooperation involving other agencies, this is important in order to ensure that the policies formulated in an effort to overcome problems related to the effectiveness of supervision and law enforcement of illegal cigarette distribution get support from all parties.

CONCLUSIONS

Law enforcement against the circulation of cigarettes without excise tax is not just about enforcing regulations, but also a preventive measure to protect future generations. In addition, enforcing the law against the distribution of cigarettes without excise tax is not only to protect the state's finances, but also to ensure that tobacco products are closely monitored for the welfare of society. All parties need to understand that collaboration is the key to success, and with joint efforts, we can create an environment free from the threat of this criminal offense. By doing so, we are not only securing the law, but also protecting our collective well-being and future.

Based on these results, there are suggestions that are submitted as input such as: (1) to the public as sellers and consumers of illegal cigarettes, the author recommends that they have awareness in obeying the applicable regulations and not making cigarettes without excise as an alternative because of the high price of legal cigarettes, the rampant circulation of illegal cigarettes is not only harmful to health but also detrimental to the State; (2) to the local City Customs and Excise it is recommended to further increase supervision of the circulation of illegal cigarettes and prioritize direct supervision of distributors who are suspected of being the center of circulation of illegal cigarettes, besides that Customs and Excise need to socialize the prohibition of the circulation of cigarettes without excise to the general public through mass media, banners and other information media so that the public knows that these types of cigarettes are categorized as illegal goods which are prohibited from circulating freely.

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