

**JURIDICAL REVIEW OF THE CRIMINAL ACT OF CIGARETTE
CIRCULATION WITHOUT EXCISE TAPE ACCORDING TO LAW
NUMBER 39 OF 2007 CONCERNING EXCISE**

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Abstract (Indonesia)

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Latar Belakang: Dalam Pasal 1 ayat (3) UUD 1945 disebutkan bahwa Negara Republik Indonesia adalah negara hukum yang hukumnya digunakan sebagai panglima tertinggi untuk mewujudkan kebenaran dan keadilan di Indonesia. Hukum adalah serangkaian aturan yang menguasai perilaku dan perbuatan tertentu dalam kehidupan manusia dalam kehidupan sosial.

Tujuan: Penelitian ini bertujuan untuk mengetahui dan menganalisis peraturan hukum peredaran rokok tanpa cukai di Indonesia. Serta mengetahui dan menganalisis tentang penegakan hukum terhadap peredaran rokok non cukai di Indonesia.

Metode: Penelitian ini termasuk dalam jenis penelitian normatif. Sehingga dapat diketahui bahwa distribusi rokok legal di Indonesia dapat diukur melalui legalitas usaha, legalitas produk, dan legalitas iklan dan promosi sebagai sarana edar.

Hasil: Mengenai pengaturan hukum peredaran rokok bukan cukai di Indonesia, yaitu karena rokok termasuk dalam karakteristik barang kena cukai yang diatur dalam Undang-Undang Nomor 39 Tahun 2007. Selanjutnya, penegakan hukum terhadap peredaran rokok tanpa cukai dapat dikenakan sanksi pidana berupa pidana penjara dan denda yang merupakan pidana kumulatif (gabungan).

Kesimpulan: Berdasarkan penjelasan di atas, dapat disimpulkan bahwa rokok yang didistribusikan secara legal di Indonesia dapat diukur melalui legalitas usaha, legalitas produk, serta legalitas iklan dan promosi sebagai sarana sirkulasi.

Keywords: tindak pidana, peredaran rokok ilegal, bea cukai

Abstract (English)

Background: In Article 1 paragraph (3) of the 1945 Constitution, it is stated that the State of the Republic of Indonesia is a country of law where the law is used as the commander-in-chief to realize truth and justice in Indonesia. Law is a series of rules that master certain behaviors and deeds of human life in social life.

Objective: This study aims to find out and analyze the legal regulation of the circulation of cigarettes without excise in Indonesia. As well as knowing and analyzing law enforcement against the circulation of non-excise cigarettes in Indonesia.

Methods: This research belongs to the normative type of research. So that it can be known that legal cigarette distribution in Indonesia can be measured through business legality, product legality, and the legality of advertising and promotion as a means of circulation.

Result: Regarding the legal regulation on the circulation of non-excise cigarettes in Indonesia, namely because cigarettes are included in the characteristics of excisable goods regulated in Law Number 39 of 2007. Furthermore, law enforcement against the circulation of cigarettes without excise can be subject to criminal penalties in the form of imprisonment and fines which are cumulative (combined) criminal penalties.

Conclusion: Based on the explanation above, it can be concluded that cigarettes that are legally distributed in Indonesia can be measured through business legality, product legality, and the legality of advertising and promotion as a means of circulation.

Keywords: criminal acts, illegal cigarette circulation, customs clearance

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INTRODUCTION

In Article 1 paragraph (3) of the 1945 Constitution, it is stated that the State of the Republic of Indonesia is a country of law where the law is used as the commander-in-chief to realize truth and justice in Indonesia.

Law is a series of rules that master certain behaviors and deeds of human life in social life.

In Law Number 8 of 1981 concerning the Criminal Procedure Law, it is stated that the State of Indonesia is legal based on Pancasila and the 1945 Constitution which upholds law and government without exception.

This means that all citizens without exception are obliged to uphold the law and its government, upholding the law can be interpreted as obeying the law.

Legal compliance is caused by legal awareness and sincerity in obeying the law. Citizens who do not uphold the law are called violating the law (Khamid, 2015).

As a country of law, we have the desire of the government that wants the realization of a good National legal system that serves the National interests based on Pancasila and the 1945 Constitution.

So according to the development of national law, Law No. 39 of 2007 concerning amendments to Law No. 11 of 1995 concerning Excise was formed.

The purpose of the establishment of Law No. 39 of 2007 concerning amendments to Law No. 11 of 1995 concerning Excise, is expected to be able to better ensure legal certainty, fairness, transparency, and accountability of public services.

A growing and developing country can be likened to a large household that needs funds for spending to meet the needs of the country.

These needs include that a country needs state apparatus or equipment and its employees to work every day to ensure the running of the wheels of government, equipped with the needs of educational facilities/ facilities, housing, health, security, and other needs needed by a country.

These needs must be met to ensure the continuity of the Unitary State of the Republic of Indonesia.

Thus, for its fulfillment, it is necessary to strive to obtain sources of state financial revenue.

One of these revenues is state revenue through Customs and Excise levies and other legal tax levies, where the responsibility will be charged to the officials of the Directorate General of Customs and Excise (Baskara, 2018).

The Directorate General of Customs and Excise (DJBC) established the Office of Supervision and Main Service of Customs and Excise which aims to realize good governance, improve performance, and improve public services to maintain public trust.

One of the important roles carried out, in this case, is related to the handling of illegal cigarette circulation as an effort to implement Law Number 39 of 2007 concerning Amendments to Law No. 11 of 1995 concerning excise.

The characteristics established include, among others:

1. Its consumption needs to be controlled;
2. Its circulation needs to be monitored;
3. Its use can hurt society or the environment; or
4. Its use needs to impose state levies for the sake of fairness and balance (Fitriyani, 2018)

The current excise system produces a very wide range of cigarette prices so the purpose of excise duty to control cigarette consumption has been hampered. Proper control and enforcement can prevent and counter the circulation of illegal cigarettes and counterfeit excise tapes.

The occurrence of illegal cigarette circulation can reduce the number of excise receipts for tobacco products by the government. Control and law enforcement carried out by the directorate general of customs and excise, accompanied by good cooperation with other relevant agencies can prevent the circulation of illegal cigarettes.

In addition, public awareness about the consumption of legal cigarettes can also prevent the circulation of illegal cigarettes and fake excise tapes. An excise is a state levy imposed on certain goods that have certain properties or characteristics as stipulated in the excise law.

Excise has a role to ensure that the circulation of certain goods subject to excise has met the distribution standards that have been determined by the government. The legal circulation of excisable goods is important so that people who consume an item, such as tobacco products (cigarettes) have met the distribution standards, in addition to providing lessons to the public to participate in efforts to increase government revenue in terms of excise rates.

The enforcement carried out by the directorate general of customs and excise and relevant agencies against the circulation of illegal cigarettes or those using counterfeit tapes can affect increasing the production of legal cigarette products, and will also provide benefits to the government in terms of excise receipts of tobacco products.

The implementation of excise rates by Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise is fully under the control of the Directorate General of Customs and Excise, a government agency that serves the public in the field of customs and excise has a duty as state financial management.

Awareness in terms of production by cigarette manufacturers also plays an important role, to ensure that the cigarette products produced meet the distribution standards determined by the government.

Public awareness of the existence of illegal cigarettes and the consumption of legal cigarettes will also play an important role in efforts to prevent the circulation of illegal cigarettes.

Cigarettes or tobacco products are still a *prima donna* for State revenues from the taxation sector, especially excise taxes.

The imposition of excise duty on tobacco products, especially cigarettes, has made a very significant contribution to the country, and every year the receipts always exceed the set targets and on the one hand, the targets set always go up.

The success of the Directorate General of Customs and Excise (DJBC) in collecting revenue for state coffers from the excise sector in reality is not always followed by the obligations of taxpayers and excise workers.

This is evidenced by the fact that there are still many cigarette factories or companies that do not have a license to own the principal number of excisable goods entrepreneurs (nppbk) and do not use excise tape on their products or abuse the use of excise tape just to avoid their obligations to the state so that the state has a great potential to lose its revenue.

The industrial world is fierce with the competition. When an individual as an industry player feels that competition in the industrial field is so fierce, there will be a reaction, either a positive reaction, which is motivated to increasingly try healthily to increase the business, or a negative reaction in the form of committing illegal actions in running his business and even involving the surrounding community in carrying out negative actions.

The occurrence of actions in the industrial field then continues to illegal transactions that have indirectly eliminated the culture of healthy competition in the business.

RESEARCH METHODS

This research is included in normative legal research, which is research that examines legal norms sourced from legal rules, namely laws related to the problem under study. The data in this study is secondary data consisting of primary legal materials and other statutory regulations.

Secondary legal materials are in the form of books, journals, and research results related to the research focus, and tertiary legal materials are in the form of legal dictionaries.

The analysis in this study uses descriptive analysis, which is to describe or describe clearly and in detail the problem of criminal acts of illegal cigarette smuggling.

RESULTS AND DISCUSSION

Legal Regulation on the Circulation of Non-Excise Cigarettes in Indonesia

A product can be said to be legal distribution in Indonesia, one of which is through business legality as a reflection of the identity of the product. In a business, this legality is in the form of a business license as a condition of organizing a business activity, such as a product business.

Business legality is also a symbol of the quality of a product that will be widely circulated, because a good business is a business that does not harm others, can be useful, and guarantees consumers from harmful things. Business legality in Indonesia is classified in the form of a Trade Business License (SIUP), and a Business Place Permit (SITU).

Trade Business Licenses are issued by officials given to entrepreneurs as a basis for carrying out trading business activities legally against the small business sector to the large business sector except for the individual small business sector.

Requirements to obtain a Trade Business License (SIUP), companies are required to submit a Permit Application Letter and are subject to administrative fees (Fitriani, 2017).

Furthermore, a Business Place Permit is a permit regarding a location that will be used as a business place that is suitable for use as a production place and does not cause negative impacts to several parties on a legal basis, namely regulations from each region at the district or city level.

In addition to business legality, the production of cigarettes that are legally distributed in Indonesia must be comparable to the rules in legal laws such as Law Number 19 of 2003 concerning Cigarette Safety for Health which regulates the content of cigarettes, namely that cigarettes produced are required to carry out examinations and tests in laboratories that have been accredited for the content of nicotine and tar in each variant of cigarettes produced.

Furthermore, after being examined and tested, the nicotine and tar content must be listed on the cigarette product packaging label with a visible and easy-to-read placement, provided that the nicotine and tar content is placed on one of the small sides of the cigarette pack, written in a square shape with a line edge of 1 (one) mm, the opposite color between the packaging foundation and the writing, with a minimum writing standard of 3 (three) mm.

Other provisions regarding labels on cigarette packaging to be suitable for circulation in Indonesia are also stated in the Government Regulation of the Republic of Indonesia Number 19 of 2003 which is written that in addition to nicotine and tar levels listed on cigarette pack labels, production codes and writings regarding warnings against health must also be included. Writing about health warnings should be easy to see and clear to read in the form of "smoking can cause cancer, heart attack, impotence and pregnancy disorders.

In addition to the legality of business and the legality of production, cigarettes that are suitable for circulation in Indonesia must also be legal in their advertising and promotion by the rules that participate in the Government Regulation of the Republic of Indonesia Number 19 of 2003.

Namely that the advertising and promotion of cigarettes can be carried out in electronic, print, or outdoor media with a ban on content materials such as advertisements that trigger or recommend everyone to smoke.

Ads that depict or state that cigarettes are beneficial to health, depict advertisements in the form of writings or images that lead to someone who is smoking, and advertisements directed at or depicting children, adolescents, or pregnant women.

Creatives also warn of the dangers of smoking for health that are listed and easy to read in a proportional measure.

Advertisements for cigarettes that are legally distributed in Indonesia are also regulated in the Government Regulation of the Republic of Indonesia Number 109 of 2012 concerning The Safety of Materials Containing Addictive Substances in the Form of Tobacco Products

For Health, tobacco product advertisements must include warnings about health that are implemented in the form of writings and images with a size of at least 10% (ten percent) of the total duration of the advertisement or 15% (fifteen percent) of the total advertising area.

As well as listing and implementing age verification to limit access in the form of markings or the words "18+" in the advertisement of the tobacco product.

Then, for advertisements promoted in outdoor media, it is not allowed to place advertisements in areas without cigarettes, not placed on the main road or protocol, not cutting the shoulder of the road, and the size does not exceed 72 (seventy-two) square meters.

Non-excise cigarettes or cigarettes spiked with hammer excise tape can also be said to be illegal cigarettes with the characteristics of the original excise tape including the original excise tape can be detected with the naked eye, hologram paper is usually green with the Indonesian emblem but the color can change every year, and the original excise tape paper has fibers such as worms and watermarks.

Cigarettes that are mandatory for circulation in Indonesia can be achieved with business legality, production legality, and promotion legality as a bureaucracy of cigarette circulation in Indonesia.

And as described above, that smoking is the result of processed tobacco, by Law Number 39 of 2007 concerning Excise, cigarette packaging must be affixed and attached to excise tape as proof of payment of excise duty so that the cigarette can be said to be legal to be offered, handed over, provided for sale.

Law Number 39 of 2007 concerning Excise also regulates cigarettes that circulate without excise tape and do not meet the rules of the applicable law said to be illegal cigarettes, everyone who circulates them can be said to be against the law and can be subject to imprisonment and fines.

Law Enforcement Against The Circulation of Non-Excise Cigarettes in Indonesia

Conceptionally, the essence of law enforcement lies in the harmony of the relationship of values in the rules with the attitude of action which is the final stage to create, maintain and maintain peace of life associations.

Society forms laws in the hope that the law will create security, guarantee people's right to life, and maintain public order.

To achieve these expectations, a process involving many things is needed in it which is referred to as law enforcement.

The effectiveness or not of law enforcement can be determined by the legal factors themselves such as legal products, law enforcement factors, infrastructure factors that support the law enforcement process, community factors as the implementation of the law, and cultural factors.

The stages passed in the law enforcement process consist of the formulation stage, namely the stage where the regulations are formulated, the application stage, namely the implementation and enforcement stage of the rule of law, and the execution stage, namely the criminal implementing officer enforcing the regulations that have been stipulated in the court decision.

In enforcing the law, some elements must be met, namely legal certainty which is the result of cooperation between law enforcement agencies and the community, between law enforcement agencies, and between communities.

Furthermore, fulfilling the element of benefit in the sense that the law must benefit humans by having a positive impact. The last element is the element of justice, in the sense that the law is placed right in place and according to its portion.

Efforts to monitor cigarettes circulating without repayment of excise taxes include *preventive* law enforcement efforts (prevention) which are preventive efforts carried out to prevent the emergence of a crime within the community and *repressive* law enforcement efforts (enforcement) which is one of the conceptional efforts, where this effort is carried out after the occurrence of a crime (Singgi et al., 2020).

Preventive law enforcement efforts can be taken by organizing legal counseling such as socialization of customs and excise regulations,

Carry out observations to explore information about the circulation of non-excise cigarettes to prevent the rampant circulation of non-excise cigarettes in the community, as well as conducting Customs and Excise patrols with direct execution to the field.

Law enforcement efforts against the repressive circulation of non-excise cigarettes can be pursued by making arrests with the aim that anyone who circulates the non-excise products is processed by the courts.

The next repressive effort is to carry out market operations which are usually carried out by the enforcement and investigation section of the Office of Customs and Excise Supervision and Services (KPPBC) together with the Tobacco Products Retail Selling Price (HJE HT) monitoring team from the Directorate General of Customs and Excise through joint market operations.

Then carry out prevention or confiscation with the status of confiscated goods, namely state-owned goods, auctioned, destroyed.

As well as repressive efforts to exterminate non-excise cigarettes that absolutely should not be circulated.

In carrying out law enforcement efforts, of course, it does not go straight with what has been sought, because it is hampered by several factors.

Such as the lack of awareness of cigarette manufacturers and the public towards cigarettes without excise, weak rules or regulations against illegal cigarettes, lack of strong supervision and enforcement carried out by relevant officials and an increase in excise rates.

Based on these obstacles, another effort that can be taken to reduce the circulation of non-excise cigarettes is the need to simplify excise rates so that cigarette manufacturers do not produce cigarettes with low capital with a lot of profit.

Law enforcement in the process is certainly fundamental to the existing legal product.

As outlined above, cigarette circulation can be achieved through advertisements and promotions, regarding criminal penalties for the circulation of cigarettes that are not suitable for circulation in Indonesia

Regulated in the Government Regulation of the Republic of Indonesia Number 109 of 2012, namely anyone who advertises or promotes cigarettes that are not by the provisions referred to in the Law.

Administrative penalties may be imposed in the form of withdrawal or correction of advertising, written warnings, temporary prohibition of advertising tobacco products, verbal and written reprimands, and product recalls.

Law enforcement in the form of administrative penalties can also be imposed on cigarette factory entrepreneurs without a permit as stated in the Excise Law, namely, everyone who carries out activities as a factory entrepreneur without having a permit can be subject to administrative penalties in the form of fines of at least Rp.20,000,000.00 (twenty million rupiahs) and a maximum of Rp.200,000,000.00 (two hundred million rupiahs).

Then regarding cigarettes without excise that are widespread in Indonesia, law enforcement is also regulated in Law Number 39 of 2007 concerning Excise, namely, everyone who does not have a permit to run a factory or import excisable goods can be

sentenced to a minimum of 1 (one) year imprisonment and a maximum of 2 (two) years and be sentenced to a minimum fine of 2 (two) times and a maximum of 10 (ten) times the estimated excise tax that should be paid.

As well as regulating also against a person who offers, delivers, sells, or provides for later sale of excisable goods without attachment of excise tape or without any other excise repayment mark can be punished with imprisonment as short as 1 (one) year and a maximum of 5 (five) years and/or a minimum fine of 2 (two) times and a maximum of 10 (ten) times the estimated excise tax that should be repaid.

By the above provisions, law enforcement against cigarettes circulating without excise tape or repayment of excise can be carried out with the application of criminal penalties, the application of punishments like this shows that the perpetrators of these crimes are subject to a fairly severe double criminal penalty, namely on the one hand the application of imprisonment and fines.

CONCLUSION

Based on the explanation above, it can be concluded that cigarettes that are legal for circulation in Indonesia can be measured through business legality, product legality, and the legality of advertising and promotion as a means of circulation.

Regarding the legal regulation on the circulation of non-excise cigarettes in Indonesia, namely because cigarettes are included in the characteristics of excisable goods regulated in Law Number 39 of 2007.

Namely that the characteristics of excisable goods, one of which is imposed on tobacco products, then on the cigarette packaging must be attached to the excise tape so that the cigarette can be said to be legal to be offered, handed over, sold, or provided for sale by the provisions in the Excise Law.

Furthermore, law enforcement efforts against the circulation of non-excise cigarettes in Indonesia include preventive law enforcement efforts (prevention), namely by increasing internal synergy.

Customs (Head Office, Regional Office, and Customs and Excise Supervision and Service Office),

Supervision of the distribution and use of excise tapes electronically, supervision of BKC production, as well as with repressive efforts (enforcement), namely field supervision in the production, transportation, and marketing areas, exchange of Customs data with the Directorate General of Taxes, market operations, confiscation, and destruction.

As well as law enforcement against the circulation of cigarettes without excise can be subject to criminal penalties in the form of imprisonment and fines which are cumulative (combined) criminal penalties, prioritizing the application of imprisonment sentences and further doubled with cumulative fines

Suggestion

It is appropriate for Law Enforcement Officers to execute even more strictly so that criminal penalties can be imposed by the provisions.

Products of the Law that have been in force so as not to harm the state of the economic sector to those who offer, deliver, sell, or provide for sale excisable goods that are not packaged for retail sale or without being attached to the excise tape or without being affixed with a mark of repayment of excise duty.

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