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Criminal Liability of Illegal Cigarette Distributors in Indonesia: A Criminal Law Review

Arin Vevi Putri Ayu Hermawan

Muhammadiyah University of Surabaya

arinveviputri@gmail.com

Abstrak

Peredaran rokok ilegal oleh distributor yang ada di Indonesia merupakan masalah yang serius dan berdampak negatif terhadap banyak aspek, termasuk ekonomi secara nasional, industri, hingga kesehatan umum. Makin maraknya rokok ilegal yang beredar bisa membuat pendapatan cukai negara menurun. Sejumlah produk yang dikenakan cukai dalam konteks ini di antaranya tembakau, dan produk paling besarnya ialah rokok. Rokok inilah produk olahan tembakau yang populer di tengah publik. Dengan jumlah penggunaanya yang besar diikuti pemberlakuan cukai yang tinggi, hal ini menjadikan munculnya oknum yang memanfaatkan penghindaran membayar cukai tersebut. Penelitian ini ditujukan dalam rangka menganalisis tindak pidana berkaitan peredaran rokok ilegal dan pertanggungjawaban pidananya bagi pelaku peredar rokok ilegal. Adapun metodenya dipergunakan metode yuridis normative melalui pendekatannya pada aturan UU Nomor 39 Tahun 2007 dan analisis hukum untuk memahami proses pertanggung jawaban pidana terhadap peredaran rokok ilegal. Temuan penelitian mengindikasikan, pertanggungjawaban pidana kepada peredaran rokok ilegal di Indonesia sangat jelas diregulasi melalui Undang-Undang Cukai, norma yang terkandung yaitu setiap orang yang memproduksi, mengedarkan, ataupun memperjualbelikan rokok tanpa stiker cukai yang sah akan dikenakan pidana penjara dan denda. Temuan yang dihasilkan ini harapannya bisa menggambarkan secara jelas tentang pertanggungjawaban pidana terhadap peredaran rokok ilegal di Indonesia.

Kata Kunci : *Rokok Ilegal, Tindak Pidana, Pertanggungjawaban Pidana*

Abstract

The circulation of illegal cigarettes by distributors in Indonesia is a serious problem and has a negative impact on many aspects, including the national economy, industry, and general health. The increasing prevalence of illegal cigarettes in circulation can cause state excise

revenue to decrease. A number of products that are taxed in this context include tobacco, and the largest product is cigarettes. Cigarettes are a processed tobacco product that is popular among the public. With a large number of users and high excise implementation, this has led to the emergence of individuals who take advantage of avoiding paying excise. This research aims to analyse criminal acts related to the circulation of illegal cigarettes and the criminal liability of illegal cigarette dealers. The method used is the normative juridical method through its approach to the rules of Law Number 39 of 2007 and legal analysis to understand the process of criminal liability for the circulation of illegal cigarettes. The findings of the study indicate that criminal liability for the circulation of illegal cigarettes in Indonesia is very clearly regulated through the Excise Law, the norm contained is that every person who produces, distributes, or sells cigarettes without a valid excise sticker will be subject to imprisonment and fines. The resulting findings are expected to clearly illustrate criminal liability for the circulation of illegal cigarettes in Indonesia.

Keywords: *Illegal cigarettes, Criminal acts, Criminal liability*



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Corresponding email: arinveviputri@gmail.com

Introduction

The circulation of illegal cigarettes is a problem currently faced by various countries, including Indonesia. Illegal cigarettes not only cause losses to state revenue through taxes and excise duties, but also have a negative impact on public health and create unfair competition. In this context, criminal liability for the circulation of illegal cigarettes is crucial to protect the interests of society and the state. According to records from the Directorate General of Customs and Excise, as of 4 August 2024, there have been 11,171 cases related to this crime. The total value of illegal cigarettes seized during these cases amounts to Rp607.25 billion.¹

¹ CNN Indonesia "Customs Seizes 438.94 Million Illegal Cigarettes as of 4 August" <https://www.cnnindonesia.com/ekonomi/20240906130245-532-1141723/bea-cukai-sita-43894>

Several types of criminal acts in the distribution of cigarettes include smuggling and distributing cigarettes, as well as affixing or including labels, including mandatory ones. This is why business owners must comply with these regulations.² In Indonesia, the circulation of cigarettes in the market is considered legal if they are labelled with excise stamps. Excise is a tax imposed on products with specific characteristics as stipulated by law. However, many illegal cigarettes are currently circulating in the market without excise stamps on their packaging. The actions of these cigarette manufacturers are clearly illegal and constitute a violation of state regulations

million-illegal-cigarettes-as-of-4-August. Accessed on 6 September 2024

² Wiwik Afidah, "Consumer Protection Regarding the Circulation of Imported Products Without Halal Labels in Indonesia," *Anang Dony Irawan*, October 2021.

aimed at avoiding tax obligations to the state. Taxes themselves play an important role in a country. Tax revenue is a key pillar for infrastructure development and other funding sources aimed at improving the welfare of all Indonesian citizens.³

The existence of industry as an economic driver in a region can determine the income of its people. To improve and enhance economic aspects, the state imposes taxes and duties on certain products. The circulation of illegal products that should be subject to duties, which significantly contribute to state revenue, must be addressed, including illegal cigarettes circulating without tax stamps. Policy makers have already designed policies related to excise taxes, as stipulated in Article 1 paragraph (1) of Law No. 39 of 2007 amending Law No. 11 of 1995 on Excise Taxes, which states that the state imposes taxes on certain products that are of a certain nature or have certain characteristics, as outlined in Article 2 paragraph (1), including: 1. The consumption of the product must be controlled 2. There must be supervision of the circulation of the product in question 3. The use of the product may have adverse effects on the public or the environment 4. The use of the product requires the imposition of a tax for the sake of justice and balance.⁴

³ Vima Septia and Agus Supriyo, 'Legal Protection of the Confidentiality of Personal Data of Local Taxpayers at the Local Revenue Agency of Surabaya City', *Mendapo: Journal of Administrative Law*, 4.2 (2023), pp. 176–95, doi:10.22437/mendapo.v4i2.25206.

⁴ Vincent Candela, 'The Effectiveness of Law No. 39 of 2007 on Excise in the Enforcement of Law Against Economic Crimes Related to Illegal Cigarettes in Indonesia', 6.2 (2023), doi:10.31933/unesrev.v6i2.

One of the characteristics of products subject to excise tax is tobacco, with cigarettes being a popular product, as explained in Article 4(1) of the Excise Tax Law. The imposition of excise tax on cigarettes is due to the need for oversight in their circulation and use, as they have negative impacts on society and the environment. As mentioned, cigarettes must be labelled with excise stamps during their circulation in the market to be considered legal. However, there is now a significant circulation of illegal cigarettes without excise stamps, which constitutes a violation by the producers against the Excise Tax Law, with the aim of evading tax obligations.⁵

The widespread circulation of illegal cigarettes is due to manufacturers' desire to maximise profits without incurring the costs of affixing excise stamps as required by law. This action constitutes a violation of Article 54 of Law No. 39 of 2007 on Excise Tax and may be classified as an excise tax offence. Since cigarettes are a product that contributes the highest revenue, which is also subject to high excise taxes by the state, this has led many businesses to disregard regulations and decide to produce cigarettes without excise tax stamps. These violations not only cause losses for the state but also for the industry and other private companies. Furthermore, these actions also harm the public by posing a threat to public health, as stipulated in Law No. 36 of 2009 on Health. This law regulates health aspects

⁵ Nyoman Dita Ary Putri, I Nyoman Gede Sugiartha, and Ni Made Sukaryati Karma, 'Law Enforcement Against the Circulation of Untaxed Cigarettes in Indonesia', *Journal of Legal Preferences*, 3.1 (2022), pp. 171–76, doi:10.22225/jph.3.1.4679.171-176.

related to tobacco products and smoking, including efforts to prevent the circulation of tobacco products that do not meet health standards. This is aimed at protecting the public from health hazards caused by tobacco consumption.

The authority responsible for collecting excise taxes is the Ministry of Finance of the Republic of Indonesia, which then establishes a special agency authorised to handle excise taxes, namely the Directorate General of Customs and Excise. In order for the duties and functions of the Directorate General of Customs and Excise to run optimally, regional customs and excise offices are established in each region in accordance with Minister of Finance Regulation No. 206.3/PMK.01/2014 on Amendments to Minister of Finance Regulation No. 168/PMK.01/2012 on the Organisation and Work Procedures of Vertical Agencies under the Directorate General of Customs and Excise.⁶

This is regulated under Law No. 39 of 2007 on Customs, Article 35(1), which states that "customs and excise officials are authorised to conduct inspections", and Law No. 10 of 1995, Article 112 further states that police investigators and civil servant investigators of the Directorate General of Customs and Excise are law enforcement officers with the authority to take action against violations of the law related to customs and excise offences. As an institution of the Indonesian National Police, the National Police acts as an investigator in

relation to criminal offences, as stipulated in Law No. 2 of 2002 on the Indonesian National Police, which grants them the authority to arrest, detain, search and seize items related to a criminal offence. According to Article 6(2) of the Criminal Procedure Code (KUHAP), there is a functional coordination relationship between the National Police investigators and the PPNS within the Directorate General of Customs and Excise. The position and authority of civil servant investigators or PPNS are under the coordination of the National Police investigators, and for the purposes of investigation, the National Police investigators may provide guidance and assistance to PPNS in accordance with the policy set forth in Article 107(1) of the Criminal Procedure Code (KUHAP).

Regarding tobacco excise tariffs, there have been increases over time, as stipulated in Minister of Finance Regulation No. 146/PMK.010/2017 on Tobacco Product Excise Tariffs. Based on this regulation, the excise tariff for processed tobacco products is determined based on the amount in rupiah per unit of tobacco product, whether in grams or per stick. The tariff itself is based on several factors: the type of tobacco; the category of business operators and the retail price per stick or gram, which is determined by the Minister.⁷ One of the factors contributing to the proliferation of illegal cigarette circulation is the increase in excise taxes over time. As a result, the public prefers illegal cigarettes due to their

⁶ Ahmad Yunus, 'Criminal Offences in the Distribution of Illegal Cigarettes from a Criminal Liability Perspective', *Aliansi: Journal of Law, Education and Social Humanities*, 1.3 (2024), pp. 385–97, doi:10.62383/aliansi.v1i3.439.

⁷ Budi Ispriyarso, JIProf Soedarto, and SH Tembalang Semarang, 'The Regular Function of Cigarette Taxes in the Field of Public Health and Law Enforcement', *Volume*, 47.3 (2018), pp. 228–40.

lower prices, leading to a significant increase in illegal cigarette circulation in recent times.

Previous studies have examined the circulation of illegal cigarettes. The tobacco industry is a well-established ecosystem, as the entire production process can be carried out domestically. Raw materials are readily available, as many farmers grow tobacco. Additionally, Indonesia is capable of producing its own blended cigarettes, and the consumer base is very large. This, of course, has a significant impact on the industry, which provides a wide range of job opportunities. That is why this industry is considered one of the key drivers of the Indonesian economy.⁸ The widespread circulation of illegal cigarettes ultimately results in losses for the state and its users. Additionally, this situation increases the likelihood of attracting more novice smokers into an already large and dangerous user base, posing significant health risks.⁹ The increasing prevalence of untaxed cigarettes is attributed to the soaring prices of taxed cigarettes, which are unaffordable for many.¹⁰ Illegal cigarettes can be considered environmental pollution. Besides posing

health risks to humans, the production and distribution of illegal cigarettes often fail to comply with existing environmental regulations. The potential environmental issues that could affect the sustainability of nature and individual health have highlighted the need for regulations through a set of laws.¹¹ The establishment of cigarette regulations is akin to a dilemma, as the tobacco industry, as mentioned, is a major contributor to state revenue and employs many workers, but there are other aspects that have negative impacts on health and the environment, which will undoubtedly require additional funding in the future. As we know, smoking poses significant health risks to users, including the potential to cause various chronic conditions such as heart attacks, strokes, bronchitis, respiratory tract cancer, lung cancer, and others.¹²

One of the issues raised is that the Surabaya City Government (Pemkot) collaborated with the Sidoarjo Customs Office to successfully thwart an attempt by individuals to smuggle 1,475,000 illegal cigarettes. The discovery was made during a joint operation called "Gempur Rokok Ilegal" (Crackdown on Illegal Cigarettes), through the stopping of vehicles crossing the Suramadu Bridge heading towards Surabaya City on Tuesday (1/10/2024). The Head of the Surabaya City Satpol PP, M. Fikser, explained that the operation aimed to minimise the circulation of illegal cigarettes around Surabaya. During the operation, the city government also collaborated with the Sidoarjo Customs

⁸ 109/PMK.010/2022 Regarding Amendments to Minister of Finance Regulation No. 192/PMK.010/2021 Regarding Excise Tariffs on Tobacco Products in the Form of Cigarettes, Cigars, Leaf Tobacco, or Klobot, and Sliced Tobacco.

⁹ Nur Ihsania and Ratih Kumala, 'Supervision and Enforcement of Illegal Cigarettes at the Bekasi Customs and Excise Office Type Madya', 2 (2022).

¹⁰ Fatimatul Fatmariyah and others, 'EXPLORING THE PHENOMENON OF ILLEGAL CIGARETTES FROM THE PERSPECTIVE OF CONVENTIONAL PRODUCTION COSTS AND ISLAM', *Competence: Journal of Management Studies*, 16.2 (2022).

¹¹ Hendra Wijaya and others, 'Criminal Liability of Corporations for Environmental Pollution', *NOTARIUS*, 14 (2021).

¹² Ispriyarso, Soedarto, and Tembalang Semarang.

Office, the Tanjung Perak District Prosecutor's Office, the Tanjung Perak Police Department, and the III Military Command.¹³

The cases highlight the importance of criminal liability for distributors of illegal cigarettes, which is crucial to prevent the circulation of illegal cigarettes, as well as to address health risks, control cigarette consumption, enhance monitoring and reporting, and promote national economic development. This study aims to conduct further analysis on criminal acts related to the distribution of illegal cigarettes and the criminal liability of those involved in such crimes.

This study will discuss the various forms of criminal offences related to illegal cigarettes, including cigarettes without tax stamps or other tax payment marks, which are one of the most common types of criminal offences. Perpetrators who use fake or used tax stamps to exaggerate production quantities or to avoid tax costs may also be subject to criminal sanctions. Cigarettes with tax stamps for a specific purpose (products not in accordance with what is stated on the tax stamp) or incorrect personalisation (tax stamps used do not belong to the relevant factory) are also subject to criminal sanctions. Therefore, this study will present a comprehensive analysis of all forms of criminal offences related to illegal cigarettes. In addition, this study will also discuss the criminal liability of perpetrators of illegal cigarette

distribution as stipulated in Law Number 39 of 2007 concerning Excise.

Discussion

A. Forms of Criminal Acts Related to Illegal Cigarettes

Indonesia, like a house managed on a budget, relies on legitimate tax and excise revenues regulated by the Directorate General of Customs and Excise to fund various needs.¹⁴ That is why most people who are unaware of excise issues do not understand the existence of illegal cigarettes in the market. To determine whether cigarettes are legal or illegal, one can check the excise stamp affixed to the cigarette packaging, namely:

a. Cigarettes without a tax stamp on the packaging (plain) are guaranteed to be illegal cigarettes.

b. Cigarettes with counterfeit tax stamps. In this case, the tax stamps typically feature security features similar to those on banknotes. Authenticity can be verified by examining the following aspects:

- The print quality of the tax stamp is sharper compared to legal products.
- The paper used, where legal products use paper that does not glow under UV light.
- The hologram appears to have dimensions when viewed from different angles.

c. Used tax stamps on cigarettes, which can be identified by the presence of damaged, torn, or re-glued sections.

d. Cigarettes with different excise stamps, cigarette packs appear to have excise stamps that are not intended for them,

¹³ Surabaya City Government "Customs Authorities Foil Smuggling of 1.4 Million Illegal Cigarettes" <https://kominfo.jatimprov.go.id/berita/pemkot-surabaya-bea-cukai-gagalkan-penyelundupan-1-4-juta-batang-rokok-illegal>. Accessed on 1 October 2024

¹⁴ Haryono, Ananda Saputra, and Rendi Kurnia Saputra, 'The Effectiveness of Customs Supervision on Cigarette Circulation', *Journal of Independent Student Research EMBA*, 3 (2024).

because each type and brand of cigarettes has different excise stamps. To check this, you can compare the name of the manufacturer that appears at the bottom or side of the cigarette pack with the excise stamp code for each type.

Smaller cigarette manufacturers are facing challenges due to the annual increase in excise taxes, yet paying these taxes is not profitable given their limited customer base, especially if prices rise after paying the taxes.¹⁵

Additionally, the retail price limits for cigarettes set through PMK No. 191 of 2022 aim to control cigarette prices to prevent them from becoming excessively high, thereby reducing the incentive to use illegal cigarettes. Below are the retail price limits and excise tax rates per stick or gram of domestically produced tobacco products:

RETAIL PRICE LIMITS AND EXCISE TAX RATES PER CIGARETTE OR GRAM OF DOMESTIC TOBACCO PRODUCTS

No	Category Manufacturer		Retail Price Limit Per Stick or Gram	Excise tax rate per per stick or gram
	type	class		
1	SKM	I	Lowest Rp 1,905.00	Rp 985.00
		II	Lowest Rp	Rp

¹⁵ Warit Aziz, *Trunojoyo University of Madura, "The Problem of Illegal Cigarettes Without Tax Stamps from the Perspective of the Law of Demand and the Customs Law," Journal Inicis Legis*, 2023, IV <<https://databoks.katadata.co.id/datapublish/2>>.

			1,140.00	600.00
2	SPM	I	Lowest Rp 2,005.00	Rp. 1,065
		II	Lowest Rp 1,135.00	Rp
3	SKT Or SPT	I	Lowest Rp 1,635.00	Rp 440.00
			Lowest Rp 1,135.00 up to Rp 1,635.00	Rp
		II	Lowest price: Rp 600.00	Rp
		III	Lowest Rp 505.00	Rp
4	SKT F Or SPT F	With out Class	Lowest Rp 1,905.00	Rp 985.00
5	KLM	I	Lowest price: Rp 780.00	£440.00
		II	Lowest Rp 200.00	Rp
6	SIS	None category	Over Rp 275.00	Rp
			More than Rp 180.00 to Rp 275.00	Rp
			Lowest Rp 55.00 to Rp 180.00	Rp
7	KL B	None category	Lowest Rp 290	Rp
8	CRT	None Class	Over Rp 198,000.00	Rp
			Over Rp 55,000.00 to Rp	Rp

			198,000.00	
			Over Rp 22,000.00 to 8. CRT Without Category with 55,000.00	Rp
			Over Rp 5,500.00 to Rp 22,000.00	Rp
			Lowest Rp 495.00 to Rp 5,500.00	Rp

Source: Ministry of Finance Regulation No. 191/PMK.010/2022

The process of collecting excise taxes has different characteristics compared to general tax collection. Excise taxes are levied to prevent public consumption and minimise consumption of products that have a negative impact on the public, such as illegal cigarettes.¹⁶ Although the retail price limits for cigarettes set in PMK No. 191 of 2022 aim to control cigarette prices and reduce the incentive to use illegal cigarettes, there is still a significant circulation of illegal cigarettes due to several factors, one of which is the wide disparity in excise tax rates between categories, which allows companies to continue producing cheap cigarettes to reduce costs and increase profits. It cannot be denied that small and medium-sized cigarette factories have not fully complied with the procedures for applying for excise permits from the

¹⁶ Olly Egilia Trisnawati, 'The Application of Article 54 of Law No. 39 of 2007 on Excise Tax in the Case of Selling Goods Without Excise Tax Stamps (Study of Judgment No. 82/Pid.Sus/2019/PN.Kdr)', *Uniska Law Review*, 2 (2021).

relevant authorities.¹⁷ This has led to the widespread circulation of cheap cigarettes, which are increasingly difficult to control.

Illegal cigarettes have a significant connection to Law No. 32 of 2009 on the Protection and Management of the Environment (UUPPLH), particularly in terms of environmental impact and public health. Environmental management must consider the carrying capacity and absorption capacity of the environment.¹⁸ First, from an environmental impact perspective, illegal cigarette production often disregards environmental standards, producing hazardous waste that contaminates soil and water, contrary to the environmental protection principles outlined in the UUPPLH. Additionally, the use of low-quality raw materials, including pesticides and hazardous chemicals, increases risks to human health and the environment.

In terms of public health, illegal cigarettes are not subject to strict oversight, resulting in unguaranteed quality and increased health risks for consumers. The Environmental Protection and Management Law (UUPPLH) supports efforts to prevent diseases through the control of hazardous

¹⁷ Suryo Septian Nugroho and Bachrul Amiq, 'Comparative Study of Post-Marriage Nationality Of Women in Legal Systems of Different Countries Criminal Law Enforcement Toward Illegal Production and Distribution of Cigarette 375 International Journal of Multicultural and Multireligious Understanding Criminal Law Enforcement Toward Illegal Production and Distribution of Cigarette', 2023, doi:10.18415/ijmmu.v10i2.4444.

¹⁸ Ferina Ardhi Cahyani, 'Efforts to Improve Environmental Carrying Capacity Through the Principles of Sustainable Development Based on Law Number 32 of 2009 Concerning Environmental Management', *Indonesian State Law Review*, 2 (2020).

products, including tobacco; with the increasing circulation of illegal cigarettes, the challenges in maintaining public health are growing. Although the UUPPLH regulates environmental protection, criminal liability for the circulation of illegal cigarettes is primarily addressed under the Excise Tax Law (Law No. 39 of 2007). Violations of environmental aspects of illegal cigarette production can be subject to sanctions under the provisions of the UUPPLH. Effective law enforcement requires collaboration between the Directorate General of Customs and Excise and other relevant agencies to ensure that cigarette production and circulation comply with existing environmental regulations.

A criminal act is a term that refers to a fundamental aspect of the discipline of law, which is a term formed through awareness to give certain characteristics to criminal legal events. A criminal act contains an abstraction from real events in the field of criminal law, which makes it necessary to give it a scientific meaning and define it clearly in order to distinguish it from terms used in everyday life.¹⁹ Therefore, illegal cigarettes in Indonesia can be subject to several forms of criminal offences under Law No. 39 of 2007 on Excise. The following are some forms of criminal offences related to illegal cigarettes:

1. Without Tax Stamps (Plain Cigarettes):

- Article 54 of the Excise Law:

“Any person who offers, delivers, sells, or provides for sale of excise-

taxable goods that are not affixed with excise stamps or do not bear the mark other excise tax payment marks shall be punished with imprisonment for a minimum of 1 year and a maximum of 5 years, as well as a fine of at least twice the value of the excise tax and up to 10 times the excise duty that should have been paid.”

2. Affixed with Counterfeit Excise Stamps:

- Article 55 of the Excise Law:

“Any person who purchases, possesses, uses, sells, offers for sale, delivers, provides for sale, or imports counterfeit or altered excise stamps or other excise payment marks shall be punished with imprisonment for a minimum of 1 year and a maximum of 8 years, as well as a fine of at least 10 times the value of the excise duty and a maximum of 20 times the value of the excise duty that should have been paid”.

3. Affixed with Used Excise Tax Stamps:

- Article 55 of the Excise Tax Law:

“Any person who purchases, possesses, uses, sells, offers for sale, delivers, makes available for sale, or imports used excise stamps shall be punished with imprisonment for a minimum of 1 year and a maximum of 8 years, as well as a fine of at least 10 times the value of the excise duty and up to 20 times the value of the excise duty that should have been paid.”

4. Misuse or Misappropriation of Excise Tax Stamps:

- Article 58 of the Excise Tax Law:

“Sellers of illegal cigarettes affixed with excise stamps that

¹⁹ Fitri Wahyuni and Mohd. Rizki Nur Asri, ‘A Legal Review of the Application of Sanctions Against Perpetrators of Illegal Cigarette Smuggling’, *Judicial Journal*, 14.3 (2022), p. 413, doi:10.29123/jy.v14i3.477.

are misused or improperly personalised may be sentenced to imprisonment for 1 to 5 years and/or a fine of 2 to 10 times the value of the excise duty that should have been paid.”

Additionally, illegal cigarettes are closely related to Articles 263 and 266 of the Indonesian Criminal Code (KUHP), which regulate criminal offences related to document forgery. The following is an explanation of this relationship:

The presence of illegal cigarettes not only causes losses for the state but also affects various other aspects. This is why it is necessary to eradicate the circulation of these cigarettes, including (1) illegal cigarettes without proper permits indicate that they do not meet health standards as required by regulations, and their contents may pose a risk to human health.²⁰ The relationship between illegal cigarettes and Government Regulation No. 109 of 2012 on the Safety of Materials Containing Addictive Substances in the Form of Tobacco Products for Health. This regulation governs the consumption and production of cigarettes to ensure that tobacco products meet applicable health standards; illegal cigarettes, which often do not comply with these regulations, can endanger public health as they are not subject to strict oversight. Additionally, PP 109/2012 mandates that tobacco product packaging must include graphic health warnings, but illegal cigarettes typically do not comply with this requirement, leaving consumers without

adequate information about the dangers of smoking.

From a law enforcement perspective, this regulation provides a legal basis for enforcing sanctions against violations related to tobacco products. Illegal cigarettes, as unregistered products that do not meet the required standards, can be subject to legal action under these provisions. This regulation also encourages enhanced oversight of tobacco products, including illegal cigarettes; weaknesses in oversight can lead to the widespread circulation of illegal cigarettes, necessitating revisions to strengthen regulations and enforcement.

GR 109/2012 also focuses on protecting children and adolescents from the dangers of tobacco consumption, given that illegal cigarettes are often more easily accessible to children due to insufficient oversight in their sale. Although this regulation addresses advertising and promotion of tobacco products, there are still loopholes that allow cigarette advertising to circulate freely, including for illegal products, which contributes to the increasing prevalence of smoking among adolescents.

B. Criminal Liability for Distributors of Illegal Cigarettes

Illegal cigarettes distributed by distributors, especially those without tax stamps, are a serious problem in Indonesia. This not only causes losses to the state through taxes and excise duties but also has negative impacts on public health and the legitimate tobacco industry. To understand the criminal liability of distributors of illegal cigarettes, it is important to refer to the applicable laws

²⁰ Bagus Imam Syafi'i Assauqi and Muh Ariffudin Islam, 'Socialisation of Excise Taxes and Illegal Cigarettes through the Design of an Explainer in Sidoarjo Regency', 3 (2022).

and regulations and the enforcement of these laws.

The widespread distribution of illegal cigarettes is a legal violation that requires attention, as it often goes unnoticed in our surroundings. The intense competition among manufacturers has led some individuals to resort to various methods to gain an advantage in the market. This victory can be seen through the large profits that can be obtained through illegal activities such as tax evasion or duty avoidance. However, such actions can cause significant losses to the state, particularly in terms of tax revenue.²¹ One of the consequences is the emergence of public health issues. This will inevitably require greater funding in the future, which could lead to increased expenditures and harm the state. This is why the circulation of illegal cigarettes must be controlled by policy makers, namely the Directorate General of Customs and Excise and local governments. Those involved in the circulation of illegal cigarettes can be prosecuted under Law No. 39 of 2007 on Excise. Below are details about the types of illegal cigarette violations and the associated criminal liabilities:

Types of criminal liability for perpetrators of illegal cigarette distribution

Perpetrators of illegal cigarette distribution may be subject to criminal penalties under Law No. 39 of 2007 on Excise Tax. The following are provisions

regulating the imposition of penalties on parties found to be involved in illegal cigarette distribution, including:

1. Article 54

“Any person who offers, delivers, sells, or provides for sale taxable goods that are not packaged for retail sale or are not affixed with excise stamps or other excise payment marks as referred to in Article 29(1) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a fine of at least 2 (two) times the excise tax value and up to 10 (ten) times the excise tax value that should have been paid.”

2. Article 55 C

“Using, selling, offering, handing over, providing for sale, or importing excise stamps or other excise payment marks that have been used shall be punishable by 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 value of the excise duty and a maximum of 20 (twenty) times the value of the excise duty that should have been paid”.

3. Section 56

“Any person who hoards, stores, possesses, sells, exchanges, obtains, or gives excisable goods that he knows or should reasonably suspect to be derived from a criminal offence under this Act 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

²¹M I Ahaddyat, ‘Legal Review on Criminal Liability for the Distribution of Cigarettes Without Tax Stamps’, *University of Islam Kalimantan*, March 2022, <<http://eprints.uniska-bjm.ac.id/10315/>>

(two) times the value of the excise duty and a maximum of 10 (ten) times the value of the excise duty that should have been paid.”

4. Section 57

“Any person who, without authorisation, opens, removes, or damages locks, seals, or security marks as provided for in this Act shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 2 (two) years and 8 (eight) months and/or a fine of at least Rp75,000,000.00 (seventy-five million rupiah) and a maximum fine of Rp750,000,000.00 (seven hundred fifty million rupiah).”

5. Section 58

“Any person who offers, sells, or transfers excise stamps or other excise payment marks to an unauthorised person, or purchases, receives, or using excise stamps or other excise payment marks that are not their right shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or 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.”

The lack of clarity and specificity in its policies could make Indonesia a significant market segment for the tobacco industry, both domestically and internationally. Criminal liability, or criminal responsibility, refers to the criminal punishment imposed on the perpetrator, which determines whether the defendant or suspect is liable for the

criminal act committed. The perpetrator may be subject to punishment under certain conditions if their actions align with the aspects stipulated by the law.²² Regulations related to excise taxes are specifically governed by Law No. 39 of 2007 Amending Law No. 11 of 1995 on Excise Taxes, which states: “Any person who offers, delivers, sells, or provides for sale taxable goods that are not packaged for retail sale or not affixed with a tax stamp or not marked with other tax payment indications, and any person who hoards, stores, possesses, sells, exchanges, obtains, or provides excisable goods that they know or reasonably suspect to have been obtained through criminal acts 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 tax value and up to 10 (ten) times the excise tax value that should have been paid.

Furthermore, the penalties for violations related to excise duties referred to herein are governed by Law No. 39 of 2007 on Excise, which states: Article 54 states: "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 stamps or other excise payment marks as referred to in Article 29(1) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years

²² Caraka Justitia Law Journal; Ahmad Zainal Abidin and Lukmanul Hakim & Okta Ainita, *CRIMINAL LIABILITY OF PERPETRATORS OF CRIMINAL ACTS OF SELLING TAXABLE GOODS WITHOUT TAX STAMPS FOR DISTRIBUTION (STUDY OF JUDGMENT NO. 492/PID.SUS/2021/PN.TJK)*, May 2022, II.

and/or a fine of at least 2 (two) times the excise duty value and a maximum of 10 (ten) times the excise duty value that should have been paid."

Article 56 states: "Any person who hoards, stores, possesses, sells, exchanges, obtains, or giving excisable goods that they know or reasonably suspect to be derived from criminal acts 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 duty and a maximum of 10 (ten) times the excise duty that should have been paid."

Illegal cigarette violations are explicitly regulated by law, with the aim of controlling their circulation and preventing harmful effects on the public and the environment. Customs and Excise actively enforce the law in cases involving cigarettes without excise stamps, which often involve new methods and widespread distribution of illegal cigarettes. The legal implications for those involved in the distribution of illegal cigarettes are very strict. They may face imprisonment and significant fines if found guilty of any of the above characteristics of illegal cigarettes. Additionally, the government's efforts to enhance public legal awareness and intensify surveillance and enforcement are also crucial in preventing the circulation of illegal cigarettes. Thus, criminal liability for illegal cigarette distributors is clearly regulated under Law No. 39 of 2007 on Excise, with the aim of ensuring effective control over their circulation and protecting public interests.

- Document Forgery in the Context of Illegal Cigarettes

In addition to being regulated under Law No. 39 of 2007, distributors may also engage in document forgery to facilitate the circulation of illegal cigarettes. Document forgery is one of the methods used by distributors to deceive authorities, enabling illegal cigarettes to enter the market undetected and evade applicable taxes and regulations. The relevant provisions of the Criminal Code (KUHP) for document forgery related to illegal cigarettes are:

1. Article 263 of the Criminal Code:

- This article pertains to the act of creating or using forged documents. In the context of illegal cigarettes, perpetrators may create forged documents such as distribution permits, labels, or tax documents to disguise cigarettes that do not meet legal standards. This can cause harm to both consumers and the state, resulting in lost tax revenue.

2. Article 266 of the KUHP:

- This article addresses the forgery of authentic documents. In the case of illegal cigarettes, perpetrators may forge documents related to production or distribution permits. Such forgery aims to create the impression that the products being sold are legal and comply with all legal requirements, despite being counterfeit.

Legal Consequences

- Criminal Penalties: Violations of Articles 263 and 266 may result in criminal penalties, including imprisonment. This demonstrates that document forgery in the context of illegal cigarettes not only violates tobacco-related laws but also broader criminal laws.

- Consumer and State Protection: These provisions aim to protect consumers from harmful products and ensure that the state

does not lose revenue from taxes that should be collected from the sale of legal cigarettes.

Here are some reasons why illegal cigarette distributors often engage in document forgery:

Avoiding Taxes and Duties

- **Fake Excise Stamps:** One of the most commonly forged documents is the excise stamp. Illegal cigarettes that are unregistered and do not pay excise taxes often use fake or counterfeit excise stamps that resemble the originals. Through this counterfeiting, distributors can sell illegal cigarettes at more affordable prices, as they avoid the obligation to pay taxes and duties that should be paid for legal cigarettes.

Hiding the Source and Legality of Products

- **Fake Shipping Documents:** Distributors can also create fake waybills or shipping documents to claim that the cigarettes being shipped are legal products. This is done so that the illegal goods can pass inspections and reach the market safely.
- **Fake Production Licences:** Some distributors may forge documents stating that the cigarettes were produced legally, even though they come from illegal or unregistered factories. These fake licences can be used to convince authorities that the goods they are distributing are legal.

Deceiving Law Enforcement and Regulatory Authorities

- Document falsification helps distributors avoid scrutiny from

law enforcement or government agencies that monitor the distribution of goods. With false documents, distributors can manipulate data or information about the products being marketed to make it appear as if the cigarettes are legal and comply with regulations.

Facilitating Distribution to Retailers and the Black Market

- Illegal cigarette distributors often forge invoices or sales receipts to sell illegal cigarettes to retailers in a way that appears legitimate. Retailers who receive these fake documents may not realise that the products they are selling are illegal, thereby increasing the circulation of illegal cigarettes.

Reducing the Risk of Seizure of Illegal Goods

- With fake documents, distributors can reduce the risk of arrest or seizure of illegal goods, as the goods appear to be legal and meet government standards.

Consequences of Document Forgery by Illegal Cigarette Distributors:

- **Loss of State Revenue:** Illegal cigarettes that do not pay excise taxes and other taxes cause the state to lose significant revenue. Cigarette excise taxes are a major source of state income, particularly in the health sector.
- **Difficulties in Law Enforcement:** Document forgery makes it difficult for law enforcement officials to identify and stop the circulation of illegal cigarettes. This increases the challenges in monitoring and taking firm action

against the circulation of illegal cigarettes.

- Spread of Products of Uncertain Quality: Illegal cigarettes produced without strict supervision or using hazardous materials pose a risk to public health. Document forgery allows these products to reach consumers without hindrance.
- Damage to the Competitiveness of the Legal Industry: Legitimate cigarette manufacturers must compete with cheaper illegal products. This harms manufacturers who pay taxes and meet safety standards.

In addition to being subject to criminal penalties under Law No. 39 of 2007 on Excise Taxes, distributors may also engage in document forgery, as explained above. Not all distributors engage in document forgery, but most do so to evade law enforcement, as demonstrated in the case in Banyuwangi, where a distributor was sentenced to one year in prison and fined for selling illegal cigarettes.²³ This case underscores that storing and selling cigarettes without excise stamps will result in serious legal consequences. Therefore, distributors involved in the sale of illegal cigarettes and document forgery face the potential for severe criminal penalties and significant fines.

Conclusion

²³ Ministry of Finance, Directorate General of Customs and Excise "Illegal cigarette sellers sentenced to imprisonment and fines". <https://www.beacukai.go.id/berita/pelaku-rokok-illegal-dijatuhi-hukuman-penjara-dan-denda.html>
Accessed on 8 July 2020.

The circulation of illegal cigarettes in Indonesia is a serious issue with significant impacts on the national economy, public health, and fair competition in business. Illegal cigarettes, which are not stamped with tax stamps, deprive the state of tax revenue and create losses for companies that operate in accordance with regulations. Additionally, the health impacts of illegal cigarettes are detrimental to society, as these products do not meet established health standards. The Indonesian government has implemented various regulations and policies to address this issue, including the mandatory use of tax stamps on cigarettes and strict enforcement against those involved in the distribution of illegal cigarettes. Law enforcement through relevant agencies, such as the Directorate General of Customs and Excise and the police, is crucial in combating the distribution of illegal cigarettes and safeguarding the well-being of the public and the national economy.

The circulation of illegal cigarettes in Indonesia involves various forms of criminal acts that harm the state, the legitimate cigarette industry, and the public. Illegal cigarettes are products that do not pay their excise duties, such as those without excise stamps, using fake, used, or misused excise stamps. Violations of tax regulations are governed by Law No. 39 of 2007, which imposes criminal penalties, including imprisonment and fines, on those involved in illegal cigarette-related crimes. Additionally, illegal cigarettes pose health risks to the public as they fail to meet quality standards and lack proper oversight, and can also harm the environment through environmentally unfriendly production processes.

Distributors involved in the circulation of illegal cigarettes may face criminal charges under various provisions of the Excise Law, and they may also be subject to penalties under Articles 263 and 266 of the Criminal Code regarding document forgery. Document forgery, such as counterfeit tax stamps or production permits, is often carried out to evade tax obligations and regulations, leading to the distribution of illegal cigarettes into unregulated markets. Overall, the circulation of illegal cigarettes in Indonesia not only harms the country's economy but also has adverse effects on public health and the environment. This is why strict law enforcement and a more stringent monitoring system are urgently needed to eradicate this practice and protect public interests.

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