

Juridical Socio-Criminology Of The Circulation Of Illegal Cigarettes

Without Excise Tax Bands

(Study At The Customs And Excise Office Of Malang)

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ABSTRACT

The circulation of illegal cigarettes without excise bands is currently still a problem that needs to be considered by all stakeholders. Due to this problem, the community responded positively to minimize its circulation. Looking at the current situation, this research will discuss the juridical socio-criminology of the circulation of illegal cigarettes without excise tax bands by choosing a research location in Malang City. The problem discussed is about the factors of the rampant circulation of illegal cigarettes and efforts to overcome them. Based on the research that has been conducted, the factors causing this are market demand, the price of illegal cigarettes is cheaper than cigarettes subject to excise tax due to the higher excise tax price, and illegal cigarettes and legal cigarettes have a taste that tends to be the same. This happens because of the lack of maximum implementation of the regulation on the prohibition of illegal cigarettes without excise tax. Efforts to minimize the circulation of illegal cigarettes are carried out by the Malang Customs & Excise and the Regional Government of Malang City by providing education and socialization to the public about the prohibition of illegal cigarettes without excise tax to be traded. So, the advice that can be given to prevent and eradicate the criminal act of the circulation of illegal cigarettes without excise is the need for awareness and the active role of the community to participate in providing information in preventing the circulation and consumption of illegal cigarettes without excise.

Keywords: Criminal Liability, Business Actors, Illegal Cigarettes, Excise

INTRODUCTION

In Indonesia, cigarettes are commonly found in various places. Although cigarettes are dangerous and addictive products that can damage a person's health, their existence is highly sought after by most people.¹ Cigarettes are the biggest preventable cause of death in the world. One in 10 adult deaths is caused by cigarette consumption. Every year, cigarettes cause the death of 5.4 million people, or an average of 1 death every 5.8 seconds.²

With the dependence of its users on cigarettes, cigarettes are now synonymous with mandatory needs that will always be sought and purchased.³ This condition attracts the attention of businesspeople to sell cigarettes at low prices. This opportunity is used by business actors to

¹ Haris Budiman, "Penegakan Hukum Terhadap Peredaran Rokok Illegal Di Kabupaten Kuningan," *Logika : Journal of Multidisciplinary Studies* 15, no. 01 (2024): 75–84, <https://doi.org/10.25134/logika.v15i01.9583>.

² Yudi Widagdo Harimurti, *Negara Hukum Dan Demokrasi: Konsep Dan Perkembangan Kontemporer* (Malang, 2021).

³ Hafiz Maulana, "Efektivitas Pengawasan Rokok Ilegal Pada Kanwil Direktorat Jendral Bea Cukai Provinsi Riau," *Jurnal Sosial Humaniora (Sumur)* 1, no. 1 (2023).

produce and manufacture cigarettes independently without being registered or taxed, based on Law No. 39 of 2007 concerning Amendments to Law No. 11 of 1995 on Excise, or what is entirely referred to as illegal cigarettes/cigarettes without excise tax bands. Based on Article 1, paragraph (1) of Law Number 39 of 2007 Jo. Law Number 11 of 1995 concerning Excise it is stated that levies are imposed on certain goods with certain properties or characteristics, as stated in Article 2 paragraph, that (1) Certain goods that have properties or characteristics, namely (a) Their consumption needs to be controlled, (b) Their circulation needs to be monitored, (c) Their use can hurt society or the environment, (d) Their use requires the imposition of state levies for the sake of justice and balance.⁴

Business actor (sales actor) is any individual or business entity, both in the form of a legal entity and not a legal entity, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement, organizing business activities in various economic fields.⁵

Excise duty is defined as an additional charge for goods that have potentially adverse properties or side effects for their users. The collection of excise duty is intended as a guarantee of losses for consumers if one day they are affected by the goods consumed. The enforcement of excise duty as mandated in the excise law is only applicable in the Indonesian jurisdiction. This means that the person who is subject to excise tax on an item is a person domiciled in Indonesia, whether they are domiciled as producers or distributors.⁶ Indonesia regulates tobacco tax through Law No. 39 Year 2007 on excise and Minister of Finance Regulation No. 115 on tobacco tax. In Indonesia, the tobacco tax is divided into two types, namely excise and tax. Tobacco excise is prevailed because tobacco products are included in goods where consumption needs to be controlled, and the tobacco excise rate is 40 percent of the price of tobacco products.⁷

Cases of violations in the field of excise that still occur are a reflection that law enforcement carried out by the police and the customs service is still weak, as law enforcement officials in the field of customs and excise should take action against all persons or companies that commit violations in the field of excise indiscriminately, to have a deterrent effect on the perpetrators of violations in the field of tobacco excise and reduce the circulation of illegal

⁴ Maulana.

⁵ Destiny Wulandari, "Menelisik Modus Tindak Pidana Penjualan Rokok Tanpa Pita Cukai Atau Dilekati Pita Cukai Palsu," *Jurnal Perspektif Bea Dan Cukai* 7, no. 1 (2023): 39–54, <https://doi.org/10.31092/jpbc.v7i1.2081>.

⁶ Burhanuddin, *Prosedur Hukum Pengurusan Bea Dan Cukai* (Yogyakarta, 2013).

⁷ Jurnal Ilmu Hukum et al., "Jurnal Ilmu Hukum" 1, no. 3 (2024).

cigarettes on the market.⁸

Regarding the circulation of illegal cigarettes, it also takes place in Malang City. In the National Illegal Cigarette Operation, the vertical units of Customs and Excise are again carried out in various regions, starting from May 15 to July 1, 2023. Malang Customs is no exception, which on May 16-17, 2023, started Operation Gempur Illegal cigarettes with land patrol activities, namely conducting checks on expedition services and sweeping illegal cigarette distribution routes. Officers also inspected an expedition service located at Jalan Tenaga Baru, Blimbing subdistrict, Malang City. From the second inspection, officers found a shipment of 800 (eight hundred) packs of cigarettes, totaling 16,000 (sixteen thousand) cigarettes of the SKM brand Havana Bold without an excise tax band.⁹

Furthermore, on August 11, 2023, officers conducted a land patrol by going through the Arjosari, Gadang, and Sukun areas. This was done based on information obtained about the delivery of illegal cigarettes using the AKAS bus. After searching, it was known that the bus in question was passing through Kebunagung, Pakisaji subdistrict, Malang Regency. Immediately, the bus was stopped and inspected on Jalan Raya Pakisaji, and 15 boxes of SKM cigarettes without excise duty were found.” There were a total of 3,070 packs, or around 61,400 sticks.¹⁰ Then, on August 18, 2023, Malang Customs also thwarted the circulation of illegal cigarettes from three surveillance activities carried out in early August 2023. From these actions, Malang Customs officers managed to secure hundreds of thousands of illegal cigarettes with an estimated loss value of hundreds of millions of rupiah.¹¹ Based on the explanation of the Head of Malang Customs Office, Gunawan Tri Wibowo, he explained that the first action was carried out by officers who were previously informed by Malang Customs that there was a building used as a warehouse for storing illegal cigarettes, based on this information the Malang Customs team monitored the building. Based on the results of the inspection, the warehouse was found to store 5,670 packs of machine-made clove cigarettes (SKM) totaling 113,400 cigarettes without excise tax stamps, 1 carton of etiquette, 1 carton of tongue paper, and 1 roll of tipping paper. From the results of the prosecution, the estimated value of the goods is estimated at Rp 142,317,000.00,

⁸ Rendy Maulana. et. al Alif, “Pertanggungjawaban Pidana Terhadap Penjual Rokok Tanpa Cukai Dihubungkan Undang-Undang Nomor 39 Tahun 2007 Tentang Cukai,” in *Prosiding Ilmu Hukum*, vol. 3 (Universitas Islam Bandung, 2017).

⁹ Dera Fitri, “Awali Operasi Gempur Rokok Ilegal Bea Cukai Malang Gagal Upaya Penyelundupan Rokok,” n.d., <https://www.beacukai.go.id/berita/awali-operasi-gempur-rokok-ilegal-bea-cukai-malang-gagalkan-upaya-penyelundupan-rokok.html>.

¹⁰ “Di Indonesia (Estimating the Size of Illicit Cigarette Market in Indonesia),” n.d.

¹¹ Fatimatul Fatmariyah, “Mengulik Fenomena Rokok Ilegal Dalam Perspektif Biaya Produksi Konvensional Dan Islam,” *Journal of Management Studies* 16, no. 2 (2022), https://www.researchgate.net/publication/369173824_MENGULIK_FENOMENA_ROKOK_ILEGAL_DALAM_PERSPEKTIF_BIAYA_PRODUKSI_KONVENSIONAL_DAN_ISLAM.

and the potential state loss reaches Rp 75,864,600.00.¹²

Although many cases of illegal cigarette distribution have been revealed and even court decisions have been made against the perpetrators, the circulation of illegal cigarettes is still high. The circulation of illegal cigarettes still has the potential to continue to increase following the increase in cigarette excise rates every year.¹³ Mitigation measures are needed so that the circulation of these goods can be suppressed, including strategies to expose the perpetrators. The challenge for the government in dismantling the circulation of illegal cigarettes is to dismantle the perpetrators of illegal cigarette distribution, especially the producers or makers.¹⁴ This is because every time they are prosecuted, only the goods are found. While the owner of the goods is unknown.¹⁵ Until now, efforts have been made to minimize the circulation of illegal cigarettes by carrying out various activities, such as socialization, collecting information on the circulation of illegal cigarettes, and the formation of the Agglomeration of Tobacco Product Factories (APHT) as an effort to reduce the circulation of illegal cigarettes through an industrial development approach.¹⁶

Criminal liability for the perpetrators of selling cigarettes without excise is based on Law No. 39 of 2007 amending Law No. 11 of 1995 concerning Excise stated in Article 54, with a maximum imprisonment of four years and or a maximum fine of ten times the value of excise that should be paid as stipulated in Article 58 of Law No. 39 of 2007 concerning excise.¹⁷

To realize Malang City as a smoke-free area, the mayor at that time (Sutiaji) also made a firm statement to combat the circulation of illegal cigarettes.¹⁸ In the Socialization of Provisions of Regulations and Legislation in the Excise Sector with the substance of the event Education to the Public about Illegal Cigarettes, which was held by the Economic Bureau of the Regional Secretariat of East Java Province on March 16, 2021, it is stated that¹⁹: “illegal goods are goods that violate state regulations. Thus, public awareness not to buy illegal goods should continue to

¹² Admin Web Bea dan Cukai, “Bea Cukai Kembali Gagalkan Peredaran Rokok Ilegal Di Wilayah Malang Raya,” n.d., <https://www.beacukai.go.id/berita/bea-cukai-kembali-gagalkan-peredaran-rokok-ilegal-di-wilayah-malang-raya.html>.

¹³ Asma Laila Gustia, M Musa, and Nanda Nugraha Ziar, “Penegakan Hukum Pidana Terhadap Peredaran Rokok Ilegal Oleh Penyidik Bea Dan Cukai,” *Jurnal Fakultas Hukum Universitas Islam Riau* 1, no. 1 (2024): 32–44, <https://media.neliti.com/media/publications/117317-ID-penegakan-hukum-peredaran-rokok->.

¹⁴ Abdul Rohman, “Fenomena Rokok Ilegal,” Faculty of Economics and Business, n.d.

¹⁵ M.M. Dr. Bustamar Ayza, S.H., *Hukum Pajak Indonesia* (Kencana Prenada Media Group, 2016).

¹⁶ Fany Satria and Putra Pradifita, “PEREDARAN ROKOK TANPA PITA CUKAI DIHUBUNGKAN DENGAN PASAL 54 UNDANG-UNDANG NOMOR 39 TAHUN 2007 TENTANG CUKAI DI TASIKMALAYA” 02 (2024): 218–34.

¹⁷ Gustia, Musa, and Ziar, “Penegakan Hukum Pidana Terhadap Peredaran Rokok Ilegal Oleh Penyidik Bea Dan Cukai.”

¹⁸ Khalimi dan Prawira Darma, *Hukum Pajak Dan Kepabean Di Indonesia*, n.d.

¹⁹ M. Yasir Abdulloh Aziz Mustaqoh, “PENEGAKAN HUKUM TERHADAP PENJUALAN ROKOK ILEGAL TANPA CUKAI OLEH KANTOR PENGAWASAN DAN PELAYANAN BEA DAN CUKAI KABUPATEN BOJONEGORO (Study Kasus Di Kantor Pengawasan Dan Pelayanan Bea Dan Cukai Tipe Madya Pabean C Bojonegoro)” 6, no. 0 (2023): 1–23, <https://ejurnal.iniyos.ac.id/index.php/ylj-server/article/view/115>.

be increased, including cigarettes, which are one of the contributors to foreign exchange for the country. Malang City is an area that has many cigarette factories, both large and small. We will fight illegal cigarettes for the sake of the continuity of the cigarette industry that runs legally. Sutiaji also said²⁰: “Although the circulation of illegal cigarettes has now decreased, it should continue to be prevented continuously, because even though the leak is small, over time it will become a lot and it will harm the country”.²¹

From the background stated above, to find out the criminal liability of the perpetrators of illegal cigarette businesses that should be on the goods attached to the elements referred to in Article 29 paragraph (1) of Law No. 39 of 2007 concerning Amendments to Law No. 11 of 1995 concerning Excise,²² The authors will focus on 2 two problems: what are the factors that cause the proliferation of illegal cigarettes traded in Malang City? And what efforts are made to prevent the proliferation of illegal cigarettes traded in Malang City?

METHOD

The research method used in this research is empirical research with a sociological juridical approach. Researchers took the location of this research in the Legal Area of Malang City, with a study at the Malang Customs and Excise Office, because there was a similar case to the research that the researcher raised. The types of data used in this research are primary data and secondary data. Primary data is data obtained directly from the first source, which is obtained from the research location, while secondary data is data obtained from literature and documentation sources.²³ Primary data sources are respondents who have been appointed/selected, and secondary data sources are literature, research reports, scientific articles, mass media, laws/regulations, and other library materials and documentation.²⁴

RESULTS AND DISCUSSION

A. Causes of Illegal Cigarettes Being Sold in Malang City

By looking at the regulation of excise taxes, producers choose other ways to increase their income. As is the case at this time, the phenomenon of the rampant circulation of illegal cigarettes in Indonesia is very concerning and is growing quite significantly.²⁵ The rapid

²⁰ Hukum et al., “Jurnal Ilmu Hukum.”

²¹ Andi Hartik, “Wali Kota Malang Bakal Perangi Rokok Ilegal,” n.d., <https://regional.kompas.com/read/2021/03/16/160603878/wali-kota-malang-bakal-perangi-rokok-ilegal>.

²² Hukum et al., “Jurnal Ilmu Hukum.”

²³ Deassy J.A. et. al Hehanussa, *Metode Penelitian Hukum* (Bandung, 2023).

²⁴ Hilman Hadikusuma, *Metode Pembuatan Kertas Kerja Atau Skripsi Ilmu Hukum* (Bandung, 1995).

²⁵ Attar Pradana, “Hati-Hati, Ini Sanksi Penjual Dan Pembeli Rokok Tanpa Cukai Di Indonesia,” *berita hukum.id*, 2025, <https://beritahukum.id/2631/berita/hati-hati-ini-sanksi-penjual-dan-pembeli-rokok-tanpa-cukai-di-indonesia/>.

development and circulation of illegal cigarettes cannot be separated from the price of legal cigarettes, which are considered increasingly expensive on the market, and the price of cigarettes, which continues to soar from year to year, as excise rates also continue to increase.²⁶ The results of the study also show that the excise policy, both pre- and post-increase, is suspected to be one of the reasons for the development of the circulation of illegal cigarettes.²⁷

Whereas the essence of the rule of law is a state that is subject to law, a state that is governed not by people but by law (a state the not governed by men but by law).²⁸ Law Number 39 Year 2007 on the Amendment of Law Number 11 Year 1995 on Excise, aims to harmonize development by placing the obligation to pay excise as a form of state obligation and is a community participation in financing development so that the obligation to pay excise is a form of state and community obligation to participate as a tool of social reform.²⁹

It should be noted that excise is a state levy imposed on certain goods that have the properties or characteristics stipulated in Law No. 39 of 2007 concerning Excise, with its main function being to regulate, control, or limit the circulation of excisable goods and to contribute to the state.³⁰ Cigarettes are one of those included. So that cigarette manufacturers have an obligation to the State to pay several taxes, namely cigarette excise, as stipulated in article 5, paragraph 1, which reads that excisable goods in the form of tobacco products are subject to excise based on the highest tariff. This is done because the circulation of these products needs to be monitored, their use can hurt society or the environment, and their use requires the imposition of state levies for the sake of justice and balance.³¹

²⁶ Bisa Dipenjara, Ini Sanksi Pidana Produsen Dan Pengedar Rokok Ilegal (Antara, n.d.).

²⁷ Fatmariyah, "Mengulik Fenomena Rokok Ilegal Dalam Perspektif Biaya Produksi Konvensional Dan Islam."

²⁸ Harimurti, *Negara Hukum Dan Demokrasi: Konsep Dan Perkembangan Kontemporer*.

²⁹ Warit Aziz, "Problematika Rokok Ilegal Tanpa Pita Cukai Dalam Perspektif Law Of Demand Dan Undang-Undang Cukai," *Jurnal Inicio Legis* 4, no. 1 (2023), <https://www.bing.com/search?q=Penyebab+Maraknya+peredaran+Rokok+Ilegal+pdf&qsn=n&form=QBRE&sp=-1&lq=0&pq=penyebab+maraknya+peredaran+rokok+ilegal+pdf&sc=8-44&sk=&cvid=F21BB4FF96304AD6A47B16B4D968FA47&ghsh=0&ghacc=0&ghpl=&ntref=1>.

³⁰ R A Yasinta, M Mohammad, and ..., "Analisis Yuridis Akibat Hukum Rokok Ilegal Terhadap Dana Bagi Hasil Cukai Hasil Tembakau Ditinjau Menurut Undang-Undang Nomor 39 Tahun 2007 Tentang ...," *Jurnal Hukum Dan ...* 1, no. 2 (2023): 57-70, <https://ejournal.literaaksara.com/index.php/JHAP/article/view/51%0Ahttps://ejournal.literaaksara.com/index.php/JHAP/article/viewFile/51/46>.

³¹ Wulandari, "Menelisik Modus Tindak Pidana Penjualan Rokok Tanpa Pita Cukai Atau Dilekati Pita Cukai Palsu."

Another reason for the rampant circulation of illegal cigarettes is that it is supported by a very high level of consumption. The level of consumption of illegal cigarettes in Indonesia has not been recorded with certainty, but in terms of consumption levels in general, it shows that it is still quite high, even though there tends to be a decline.³²

The production and circulation of illegal cigarettes can harm the state, even the state's losses due to illegal cigarettes are quite fantastic. The Indonesian Minister of Finance said there was a considerable loss, which reached Rp. 13.48 trillion.³³ One of the reasons for this is that the producers of illegal cigarettes deny the Excise Act for several reasons.³⁴

Seeing the rampant circulation of illegal cigarettes in Malang City, the authors intend to dig up more information from the appointed sources. Based on the results of interviews conducted by the authors with a Jasmine Cigarette Manufacturer (pseudonym), an Illegal Cigarette Trader, and 2 (three) Cigarette Consumer respondents (students, college students, and self-employed workers). From the results of interviews with respondents who were randomly selected, they gave the answers that the reason for the prevalence of illegal cigarettes being traded in Malang City was:³⁵

- 1) For producers, the excise tax is a threat because the excise tax is getting higher, and automatically, the demand will decrease.
- 2) Greater market demand, in terms of demand from distributors, traders, and end users/producers;
- 3) The price of illegal cigarettes is cheaper or more affordable, with a simulation that with Rp 30,000, you can only buy 1 (one) pack of cigarettes that have an excise tax band, while buying cigarettes without an excise tax band (illegal cigarettes) will get 2-3 packs;
- 4) The taste between illegal cigarettes and legal cigarettes is the same, depending on the person who enjoys these cigarettes.
- 5) The lack of maximum implementation of the regulation on the prohibition of illegal cigarettes, because so far, the customs and excise authorities have only focused on distributors and traders without touching the final producers, as the audience for these illegal cigarettes.

³² Fatmariyah, "Mengulik Fenomena Rokok Ilegal Dalam Perspektif Biaya Produksi Konvensional Dan Islam."

³³ Tim Suarantb.com, "Kemenkeu Sebut Kerugian Negara Akibat Cukai Ilegal Capai Rp13,48 Triliun," n.d., www.suarantb.com.

³⁴ Tri Novita Sari Manihuruk, Riantika Pratiwi, and Nia Jayanti, "Penegakan Hukum Terhadap Penjual Rokok Ilegal Di Kecamatan Payung Sekaki Pekanbaru," *Jotika Research in Business Law* 1, no. 2 (2022): 60–67, <https://doi.org/10.56445/jrbl.v1i2.45>.

³⁵ Diah Gustiniati Maulani, Fristia Berdian Tamza, and Universitas Lampung, "Kajian Hukum Terhadap Tindak Pidana Peredaran Rokok Ilegal Di Provinsi Lampung" 2 (2025).

B. Factors Causing the Rise of Illegal Cigarettes in Malang City

According to the Regulation of the Minister of Finance of the Republic of Indonesia Number 156 / PMK.010 / 2018 concerning Amendments to the Regulation of the Minister of Finance Number 146 / PMK.010 / 2017 concerning Tobacco Excise Tariffs, tobacco excise is state revenue managed through the mechanism of the state revenue and expenditure budget has a fairly important and strategic role in financing government programs and performance and development throughout the territory of the unitary state of the Republic of Indonesia in a planned, orderly, safe, fair and sustainable manner, to realize the prosperity and welfare of the people.³⁶

Excise tape is a sign of excise payment in the form of paper that has properties with certain specifications and designs that are used as evidence of excise payment and at the same time as a supervisory tool in the context of securing state revenue, where from the production of tobacco products that are widely circulated in the community are cigarettes packaged for retail sale but not attached with excise tape or what is often referred to as plain cigarettes.³⁷ These plain cigarettes are categorized as illegal cigarettes. Illegal cigarettes are cigarettes circulating in the territory of Indonesia that, in their manufacture and circulation, do not comply with the provisions of the legislation, Illegal cigarettes are cigarettes that violate the provisions of Law No. 39 of 2007 concerning Excise.³⁸, namely not attached to excise stamps, attached to fake/used excise stamps, or attached to excise stamps that are not by their designation.³⁹

There needs to be extra strict supervision in the tobacco control sector, considering that there is no misuse and circulation of illegal cigarettes in the community, so that the revenue that has been targeted by the government can be achieved as expected.⁴⁰ Cigarette tax is one of the biggest contributors to the government's health subsidy funds, especially BPJS. So, the operations that are often made by the Customs and Excise Service Office are carried out to boost state revenue from the excise and cigarette tax sectors. The cigarette tax directly contributes to the increase in the health budget for provincial and regional governments,

³⁶ F. Wulandari, "Efektivitas pemanfaatan dana bagi hasil cukai hasil tembakau dalam bidang kesehatan di Kota Surakarta tahun 2018.," 2019, p. 22

³⁷ V Candela and R Rasji, "Efektivitas Undang-Undang Nomor 39 Tahun 2007 Tentang Cukai Dalam Penegakan Hukum Terhadap Tindak Pidana Ekonomi Rokok Ilegal Di Indonesia," *UNES Law Review* 6, no. 2 (2023): 5215–21, <https://review-unes.com/index.php/law/article/view/1348%0Ahttps://review-unes.com/index.php/law/article/download/1348/1068>.

³⁸ Admin Web Bea dan Cukai, "Bea Cukai Kembali Gagal Peredaran Rokok Ilegal Di Wilayah Malang Raya."

³⁹ Ahmad Yunus, "Tindak Pidana Peredaran Rokok Ilegal Perspektif Pertanggung Jawaban Pidana," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 3 (2024): 385–97, <https://doi.org/10.62383/aliansi.v1i3.439>.

⁴⁰ Dwi Ratna Kartikawati, *Hukum Pajak*, 2021.

including BPJS financing.⁴¹

The rampant circulation of illegal cigarettes in Indonesia cannot be separated from the price of cigarettes, which is considered increasingly expensive in the market. The increasingly simplified classification of excise tariffs has also caused cigarette producers in groups II and III to be unable to compete, thereby reducing cigarette production for the middle and lower classes, especially in the Malang City area. This is the main factor causing the rampant circulation of illegal cigarettes in Malang City.⁴²

The next factor in the widespread circulation of illegal cigarettes is the higher market demand. This is due to the higher price of legal cigarettes caused by the increasing excise tax rates.⁴³ Then another factor is due to the lack of systematic supervision from the Malang Customs and Excise on the source of distribution of these illegal cigarettes. The authors express this because the Malang Customs & Excise only dares to show off to retailers and distributors, who are not the root of the problem of the proliferation of illegal cigarettes. Meanwhile, the producers or sources of these illegal cigarette products cannot be reached by the Malang Customs and Excise. This is a factor in the slow success in minimizing the spread of illegal cigarettes.⁴⁴

From the side of the local government, especially the Government of Malang City, there does not appear to be a definite policy regulation to minimize the circulation of illegal cigarettes. It can be seen that there are policy products from the local government of Malang City that do not specify the rules for the circulation of Malang City. The policy products that the author refers to are Malang City Regional Regulation Number 2 of 2018 concerning Smokefree Areas and Malang Mayor Regulation Number 12 of 2023 concerning Regulations for the Implementation of Regional Regulation Number 2 of 2018 concerning Smokefree Areas.⁴⁵

When looking at the factors causing the prevalence of illegal cigarettes in Malang City, it reminds the authors of the sanctions that should be feared by producers, dealers/distributors, or sellers of illegal cigarettes at retail. Dealers or sellers of illegal cigarettes commit offenses that can potentially be criminal. Sanctions for such offenses refer

⁴¹ Wulandari, "Menelisik Modus Tindak Pidana Penjualan Rokok Tanpa Pita Cukai Atau Dilekati Pita Cukai Palsu."

⁴² Fitri, "Awali Operasi Gempur Rokok Iegal Bea Cukai Malang Gagalkan Upaya Penyelundupan Rokok."

⁴³ S P Meira, "Penegakan Hukum Oleh Bea Cukai Dalam Tindak Pidana Penyeludupan Rokok Illegal Di Kota Pekanbaru," 2022,

<http://repository.uir.ac.id/id/eprint/18111%0Ahttps://repository.uir.ac.id/18111/1/171010172.pdf>.

⁴⁴ Satria and Pradifta, "PEREDARAN ROKOK TANPA PITA CUKAI DIHUBUNGKAN DENGAN PASAL 54 UNDANG-UNDANG NOMOR 39 TAHUN 2007 TENTANG CUKAI DI TASIKMALAYA."

⁴⁵ F. Wulandari, *Efektivitas Pemanfaatan Dana Bagi Hasil Cukai Hasil Tembakau Dalam Bidang Kesehatan Di Kota* (Surakarta, 2019).

to Law No. 39/2007 on Excise, which reads as follows: Article 54 reads: "Any person who offers, delivers, sells, or makes available for sale excisable goods that are not packaged for retail sale or are not attached with excise stamps or are not affixed with other excise repayment marks as referred to in Article 29 paragraph (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 value of the excise tax and a maximum of 10 (ten) times the value of the excise tax that should have been paid. Article 56 reads: "Any person who hoards, stores, possesses, sells, exchanges, acquires, or delivers excisable goods which he knows or reasonably should suspect are derived from criminal offenses 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."⁴⁶

The circulation of illegal cigarettes in Indonesia, especially in the research location that the author conducted, namely in Malang City, has been very rooted, so it needs massive and systematic handling to solve this problem. Moreover, the impact of illegal cigarettes is detrimental to many parties. Some people are threatened by the bad effects of illegal cigarettes.⁴⁷

Regarding sanctions in the case of rampant business actors selling illegal cigarettes, it has been regulated in Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise, which is as follows:⁴⁸

1) Actors Who Produce Illegal Cigarettes

- a. Counterfeit Excise Tax Tape, imprisonment for a minimum of 1 year and a maximum of 8 years, as well as a fine of at least 10x the value of excise, a maximum of 20x the value of excise that should have been paid. Where this is contained in Article 55 letter (b) of Law Number 39 of 2007 Amendment to Law Number 11 of 1995 concerning Excise states: "buying, storing, using, selling, offering, delivering, providing for sale, or importing excise tapes or other excise payment marks that are fake or falsified".⁴⁹
- b. Used Excise Tape, imprisonment for a minimum of 1 year and a maximum of 8 years, as well as a fine of at least 10x the value of excise, a maximum of 20x the

⁴⁶ Maulani, Tamza, and Lampung, "Kajian Hukum Terhadap Tindak Pidana Peredaran Rokok Ilegal Di Provinsi Lampung."

⁴⁷ Suarantb.com, "Kemenkeu Sebut Kerugian Negara Akibat Cukai Ilegal Capai Rp13,48 Triliun."

⁴⁸ Aziz, "Problematisa Rokok Ilegal Tanpa Pita Cukai Dalam Perspektif Law Of Demand Dan Undang-Undang Cukai."

⁴⁹ Moh Helmi Setyawan, "Law Enforcement against the Distribution of Illegal Cigarettes in Indonesia" (n.d.).

value of excise that should have been paid. Where this is contained in Article 55 letter (c) of Law Number 39 of 2007 Amendment to Law Number 11 of 1995 concerning Excise states: “using, selling, offering, delivering, providing for sale, or importing excise tapes or other excise payment marks that have been used”.⁵⁰

- c. Different Excise Bands, subject to administrative sanctions in the form of a fine of at least 2x the value of excise and a maximum of 10x the value of excise that should have been paid. Where this is contained in Article 29 Paragraph 2a of Law Number 39 of 2007 Amendment to Law Number 11 of 1995 concerning Excise states: “Manufacturers or importers of excisable goods who attach excise stamps or affix other excise payment marks to excisable goods that are not by the required excise stamps or other excise payment marks, which cause a shortage of excise payments, are required to pay off the excise and are subject to administrative sanctions in the form of a fine of at least 2 (two) times the excise value and a maximum of 10 (ten) times the excise value of the excise value that should have been paid”.⁵¹
- d. Without Excise Tax Tape (Plain), imprisonment for a minimum of 1 year and a maximum of 5 years and/or a fine of at least 2x the value of excise tax and a maximum of 10x the value of excise tax that should have been paid. Where this is contained in Article 54 of Law Number 39 of 2007 Amendment to Law Number 11 of 1995 concerning Excise states: “Any person who offers, delivers, sells, or makes available for sale excisable goods that are not packaged for retail sale or not attached with excise stamps or not affixed with other excise payment marks as referred to in Article 29 paragraph (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 value and a maximum of 10 (ten) times the excise value that should have been paid”.⁵²

2) Actors Who Channel or Distribute or Circulate, or Sell Illegal Cigarettes

Dealers or sellers of illegal cigarettes are committing an offense that could potentially be a criminal offense. Sanctions for these offenses refer to Indonesian Law Number 39 of 2007 concerning Excise, which reads as follows:⁵³

⁵⁰ Alif, “Pertanggungjawaban Pidana Terhadap Penjual Rokok Tanpa Cukai Dihubungkan Undang-Undang Nomor 39 Tahun 2007 Tentang Cukai.”

⁵¹ Burhanuddin, *Prosedur Hukum Pengurusan Bea Dan Cukai*.

⁵² Hartik, “Wali Kota Malang Bakal Perangi Rokok Ilegal.”

⁵³ Nora Galuh Candra Asmarani, “Artikel Ini Telah Tayang Di DDTCNews Dengan Judul ‘Edarkan Rokok Ilegal? Awas, Ini Sanksi Penjara Dan Denda Yang Menanti’. Baca Selengkapnya:

- a. Article 54 reads: "Any person who offers, delivers, sells, or makes available for sale excisable goods that are not packaged for retail sale or not affixed with excise stamps or other excise payment marks as referred to in Article 29 paragraph (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 value of excise and a maximum of 10 (ten) times the value of excise that should have been paid.
- b. Article 56 reads: "Any person who hoards, stores, possesses, sells, exchanges, acquires, or delivers excisable goods which he knows or reasonably should suspect to be derived from a criminal offense under this law shall be punished with imprisonment of not less than 1 (one) year and not more than 5 (five) years and a fine of not less than 2 (two) times the value of excise tax and not more than 10 (ten) times the value of excise tax that should have been paid".

3) Actors Who Buy Illegal Cigarettes

For perpetrators who buy illegal cigarettes, they can be charged with Article 55 letter b of Law Number 39 of 2007 Amendment to Law Number 11 of 1995 concerning Excise, which states: buying, storing, using, selling, offering, delivering, providing for sale, or importing excise tapes or other excise repayment marks that are fake or falsified. From this article, the sanction is punishable with imprisonment of at least 1 (one) year and a maximum of 8 (eight) years and a fine of at least 10 (ten) times the value of excise and a maximum of 20 (twenty) times the value of excise that should have been paid.⁵⁴

For buyers of illegal cigarettes, the law stipulates serious criminal sanctions. They can be sentenced to imprisonment for 1 to 8 years. These penalties are not only intended as a deterrent, but also as a form of strict law enforcement against violations of cigarette excise laws.⁵⁵

In addition to prison sentences, buyers of illegal cigarettes are also subject to significant fines. The law stipulates that the fines to be paid by offenders are equivalent to 10 to 20 times the value of the excise tax that should have been paid.

<https://News.Ddtc.Co.Id/Berita/Nasional/1801028/Edarkan-Rokok-Ilegal-Awas-Ini-Sanksi-Penjara-Dan-Denda-Yang-Menan>," DDTC, n.d.

⁵⁴ Khairul Wafi, "Tinjauan Sosilogi Hukum Terhadap Produksi Rokok Ilegal Di Pamekasan Madura" (Universitas Islam Negeri Sunan Kalijaga, 2025), https://digilib.uin-suka.ac.id/id/eprint/70007/1/20103080082_BAB-I_IV-atau-V_DAFTAR-PUSTAKA.pdf.

⁵⁵ Harimurti, *Negara Hukum Dan Demokrasi: Konsep Dan Perkembangan Kontemporer*.

These fines are not only a financial burden for offenders, but also have a deterrent effect on potential buyers of illegal cigarettes.⁵⁶

On the other hand, other criminal regulations can be applied to illegal cigarette business actors in the Criminal Code, namely:⁵⁷

1) Article 53 of the Criminal Code⁵⁸

(1) Attempt to commit a crime shall be punished if the intention thereto has been manifested and there is a beginning of the execution, and the fact that the execution is not completed is not due to his own will.

(2) The maximum of the basic punishments imposed on the crime in case of attempt shall be mitigated by one-third.

The criminal offense of attempting to commit a crime that has been started, but not or has not been completed, is a criminal offense regulated in Article 53 of the Criminal Code. The meaning of Article 53 of the Criminal Code explains that doing something, but not reaching the intended thing, or about to do something, has been started, but not completed. According to Article 53 of the Criminal Code, for an attempt at a crime (no offense) to be punishable, it must meet the following conditions:⁵⁹

- a) The intention is already there to commit the crime;
- b) The person has begun to commit the crime; and
- c) The commission of the crime is prevented from being completed by causes arising subsequently and not of the criminal's own volition.

If a person intends to commit a crime and commences to commit it, but regrets it and then refrains from committing it, so that the crime is not completed, then he cannot be punished for the attempt to commit the crime, because the crime was not committed voluntarily.⁶⁰

2) Article 55 of the Criminal Code⁶¹

- a. Those who commit, cause to commit, and participate in the act;

The purpose of paragraph (1) is to cover those who, by giving or promising something by abuse of power or dignity, by force, threat, deception, or by

⁵⁶ Maulana, "Efektivitas Pengawasan Rokok Ilegal Pada Kanwil Direktorat Jendral Bea Cukai Provinsi Riau."

⁵⁷ Budiman, "Penegakan Hukum Terhadap Peredaran Rokok Ilegal Di Kabupaten Kuningan."

⁵⁸ Ahmad Yunus, "Tindak Pidana Peredaran Rokok Ilegal Perspektif Pertanggung Jawaban Pidana."

⁵⁹ Wulandari, "Menelisik Modus Tindak Pidana Penjualan Rokok Tanpa Pita Cukai Atau Dilekati Pita Cukai Palsu."

⁶⁰ Gustia, Musa, and Ziar, "Penegakan Hukum Pidana Terhadap Peredaran Rokok Ilegal Oleh Penyidik Bea Dan Cukai."

⁶¹ Satria and Pradifta, "PEREDARAN ROKOK TANPA PITA CUKAI DIHUBUNGKAN DENGAN PASAL 54 UNDANG-UNDANG NOMOR 39 TAHUN 2007 TENTANG CUKAI DI TASIKMALAYA."

providing opportunities, means, information, or intentionally encouraging others to commit acts.

- b. Concerning the promoter, only the intentionally promoted act is taken into account along with its consequences.

The provision in paragraph (2) is the application of sanctions to perpetrators who commit participation in criminal acts if, in a case there is an offense committed by several perpetrators.

The threat of punishment under Article 55 of the Criminal Code is the same for perpetrators who commit joint criminal acts. For example, the perpetrators of an illegal cigarette business where there are producers, distributors, and traders (retail). They agree to sell goods that are legally prohibited to make a profit. In this case, the position is that the producer produces illegal cigarettes, the distributor distributes and circulates illegal cigarettes to traders, while the trader (retail) sells to consumers/consumers of illegal cigarettes.⁶²

In addition to the sanctions above, there are other sanctions imposed by the Malang Customs and Excise. Based on what the author found in the field, namely sanctions in the form of paying several fines, or referred to as the ultimum remedium (UR). However, such methods have not been widely implemented by the Malang Intermediate Type Customs. Even so, this does not mean that the Malang Madya Type Customs is not firm, but it prioritizes reimbursement of state losses from the proceeds of the fine. There have even been cases in the form of illegal cigarette distribution that have been tried in the Malang District Court.⁶³

CONCLUSION

The causes of the prevalence of illegal cigarettes being traded in Malang City are due to market demand, the price of illegal cigarettes is cheaper than cigarettes subject to excise tax due to the higher excise tax price, and illegal cigarettes and legal cigarettes have a taste that tends to be the same. Of these causes, this is due to the lack of maximum implementation of the regulation on the prohibition of illegal cigarettes without excise tax.

The factor in the rampant circulation of illegal cigarettes is inseparable from the price of cigarettes, which is considered increasingly expensive in the market, as well as higher market demand. The rampant circulation of illegal cigarettes is influenced by the lack of systematic supervision from the Malang Customs & Excise towards the source of distribution of these illegal cigarettes.

⁶² “Di Indonesia (Estimating the Size of Illicit Cigarette Market in Indonesia).”

⁶³ Candela and Rasji, “Efektivitas Undang-Undang Nomor 39 Tahun 2007 Tentang Cukai Dalam Penegakan Hukum Terhadap Tindak Pidana Ekonomi Rokok Ilegal Di Indonesia.”

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