

**THE EFFECTIVENESS OF LAW ENFORCEMENT AGAINST ILLEGAL CIGARETTE
ENTREPRENEUR
(DECISION STUDY NUMBER: 169/Pid.Sus/2015/PN.Kds)**

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ABSTRACT

This paper aims to determine the effectiveness of surveillance and action against illegal cigarette entrepreneurs and make efforts in combating illegal cigarette entrepreneurs. The problems usually conducted by illegal cigarette entrepreneur are using fake cigarettes without excise band, using fake excise band, using bands that are not intended to it, wrong personalization, and the businessman ignores the Provisions of Law Number 39 of 2007 on Excise. The purpose of this paper is to determine the factors that affect the effectiveness of law enforcement against the illegal cigarette entrepreneurs. This research is prescriptive legal research with legal approach, case approach and conceptual approach. Factors that may inhibit Kantor Pengawasan dan Pelayanan Bea dan Cukai (KPPBC) (Customs and Excise Supervision and Service Office) of Kudus in Medium Type and the related Agencies for the effectiveness of supervision and law enforcement on illegal cigarette circulation are due to lack of public awareness about illegal cigarette, the weakness of supervision and prosecution by related authorities, the lack of cigarette producers awareness in producing illegal cigarettes (profits with small trading capital), the weakness of rules or regulations against illegal cigarette circulation, the increase of excise tariffs. The steps which have to be undertaken by KPPBC (Customs and Excise Supervision and Service Office) of Kudus in Medium Type and related agencies in overcoming the effectiveness of supervision and law enforcement on illegal cigarette circulation is through socialization, direct evaluation in the field, and cooperation with other related institutions. In addition, it is necessary to simplify the structure of excise tariffs and do routine enforcement to give monitor toward the producers in order to not conduct fraudulent practices.

Keywords: Justice, Illegal Cigarettes, Law Enforcement.

A. INTRODUCTION

Law as an aspect of human life grows and develops along with society development. The rate of society development supported by modern science and technology will always insist to enforce the efforts of legal reform. It purposes to make applicable provision of law that can be able to fulfill society's necessity and can be consistent and consequent in the case of law enforcement.

Law and legislation are made to be executed. Therefore, if the law and legislation may not be executed or never executed, the law cannot be called as law. Law can be considered as consistent if it considers as something that must be executed. Law, in the conventions or rules of law, contains some actions which have to be executed, it is called law enforcement. The law enforcers are carried out by human being.

The government has big role in running state government and the society life. The function of the government in economic has big role in maintaining the stability of nation's and society's economy. In the case of economic policy, condition, and growth will not be balanced without government involvement. High growth of economy and its sustainable process are major conditions for the continuance of the economic development of any country. By those conditions, the function of government in attempting welfare and prosperity for the society will work well.¹

Excise tax is one component of government revenue which has certain characteristic and differs from other excise taxes. The certain characteristic mentioned before is certain characteristic stick on the excisable goods. It consists of *Selectivity in Coverage* (charged to certain objects), *Discrimination in Intens* (collected to certain purposes), and *Quantitative Measurement* (implying on physical supervision or inauguration by excise authority).²

Excise tax in Indonesia regulated in Act No. 11 of 1995 lastly amended to Act No. 39 of 2007 concerning Excise, next it is called as Excise Act. The Excise Act regulates all of matters related to excise included something which is related to potential of excise acceptance and restriction with administrative and criminal sanctions to avoid excise violations. It is intended to make excise acceptance in Indonesia more maximum.

¹Siti Kurnia Rahayu, 2010, *Perpajakan Indonesia, Konsep & Aspek Formal*, Yogyakarta: Graha Ilmu, p.5.

²Cnossen, Sijbren, 2005, *Theory and Practice of Excise Taxation: Smoking, Drinking, Gambling, Polluting, Driving*, New York: Oxford University Press.

Imposition of excise in Indonesia based on the Excise Act is divided into three, they are; tobacco products excise, alcohol beverage excise, and ethyl alcohol excise. Excise Act imposes excise tax on three kinds of Excisable Goods. All kinds of Excisable Goods are imposed excise tax because they have characteristic which can harm public health. Therefore, it needs to be watched and controlled. The purpose of imposing excise on the Excisable Goods, beside to overseeing the goods' circulation, is to increase domestic income coming from excise tax.³

Excise (*accijns*) is dues imposed from kerosene, gasoline, tobacco, liquor, matches, etc. Customs and Excise belong to taxes called indirect taxes. Indirect tax stands under the administration and supervision of Directorate General of Taxes, while Customs and Excise stands under administration and supervision of Directorate General of Customs and Excise. Both of them ensconce under Minister of Finance.⁴

Excise is regulated in Act No. 39 of 2007 concerning Amendment on Act No. 11 of 1995 about Excise which has fiscal, economic and social objectives; it is for the purpose of state revenue, ensure the industrial continuity to provide job field in order to decrease the unemployment rate, and also the limitation and supervision toward the consumption of Excisable Goods can increase the level of public health and reduce excessive crime due to consumption of Excisable Goods (BKC).

Manufacturer, according to Article 4 Act No. 39 of 2007 Concerning the Amendment on Act No. 11 of 1995 about Excise is:

“Manufacturer is a company that makes a product”.

Illegal cigarette which circulates in Indonesia both domestic and import products are cigarettes without excise band, cigarette with excise bands that are not intended to it, cigarette with excise band that is not its right, unlicensed cigarette production, cigarettes production which are not permitted in NPPBKC (Serial Number of Employer Excisable Goods), cigarettes using used excise band, and administrative violations.

Manufacturer or BKC importer (Excisable Goods) who does not appropriately attach the required excise band on the BKC (Excisable Goods) will be subjected administrative sanction or imprisonment.

Generally, law enforcement process involves all legal subjects in every legal relationship. Whoever executes normative rule or carry on something or does not carry on anything based on the norm of applicable law, it means that they execute or enforce the rule of law. Specifically, in term of the subject, law enforcement is defined as the effort of law enforcement agency to guarantee and ensure the rule of law works as it should. In ensuring the enforcement of the law, if it is needed, the law enforcement agency is allowed to use some coercion.

Criminal offense in the excise field is not meant as a crime but it is considered as violation. This case is occurred because the main focus of Customs and Excise is goods. A crime categorized as criminal offense may be because the violation is considered as serious violation. “Serious” means the bad impact or a small action which has negative impact.

Criminal proceeding conducted by Directorate General of Costumes and excise, and related Agencies toward cigarette circulation or cigarette using fake band may affect the increase of legal cigarette production, and it will also give the government benefit from tobacco excise revenue. Excise tariff implementation, in accordance with Act Number 39 of 2007 concerning Amendment of Act Number 11 of 1995 about Excise, fully stands under Directorate General of Costumes and Excise authority. As government agency which serves public in customs and excise field, it has duty to manage State finance.

Illegal cigarette circulation control requires cooperation from all parties, both from supervision agency and its enforcer, as well as cigarette producer and society in general. Good control of illegal cigarette circulation will directly affect the producer to increase legal cigarette production. Increased production is supported by entrepreneurs, who obediently inform the product in accordance with the provision, attach excise payment evidence in accordance with the provision, and change the illegal cigarette entrepreneur into legal cigarette entrepreneur by giving NPPBKC (Serial Number of Employer Excisable Goods).

Good cooperation between Directorate General of Customs and Excise and Civil Service Police Unit against illegal cigarette circulation will has positive impact in controlling and enforcing the law towards illegal cigarette entrepreneur. Production awareness by cigarette producer also plays an important role, such as to ensure that the cigarette product which has been produced has fulfilled circulation standard determined by government. Public awareness concerning the illegal cigarette existence and legal cigarette consumption will also play important role in preventing illegal cigarette circulation.

There is still many violation cases happened in the excise field of Kudus. It is a reflection that law enforcement conducted by KPPBC (Customs and Excise Supervision and Service Office) of Kudus in Medium Type is weak. There are many cases handled by KPPBC (Customs and Excise Supervision and Service Office) of Kudus in Medium Type. There are also many cases which only reach on the investigation in KPPBC (Customs and Excise Supervision and Service Office) of Kudus in Medium Type, yet there are also some cases which have been handed over to the Attorney and preceded in the Court. As the Decision Number: 169/Pid.Sus/2015/PN.Kds which becomes writer's interest.

³Masgirang, Mochammad, Sri, 2016, *Evaluasi Pemungutan Cukai Hasil Tembakau di Kantor Pelayanan dan Pengawasan Bea dan Cukai Tipe Madya Cukai Malang*, Journal of Taxation (JEJAK), Volume 8 No.1, Faculty of Administration Brawijaya University, p.2.

⁴Rochmat Soemitro, 1977, *Dasar-Dasar Hukum Pajak dan Pajak Pendapatan 1944*, Jakarta: Eresco Bandung, p.22.

Based on the explanation above, the writer aims to discuss the Factors influencing the effectiveness of law enforcement against illegal cigarette entrepreneur in paying excise duty.

The objectives of this Paper are focused on the main issues which will be raised in this paper; they are General Objective and Specific Objective. General Objective aims to find out the factors influencing the effectiveness of law enforcement against illegal cigarette entrepreneur in paying excises duty. Then, Specific Objective aims to broaden and deepen writer's knowledge in the legal science field, particularly in the business law relating to the obedience of illegal cigarette entrepreneur in paying excise duty.

As Literature Review, Anthony Allot, in Law Effectiveness Theory, stated that *law will be effective if its purpose and application can prevent undesirable actions and dispel the turmoil. Generally, effective law can realize everything which has been designed. If there is a failure, there may be an easy revision to execute or apply the law in different condition, and the law will solve it.*

This Anthony Allot's concept is focused on the realization. Effective law, in general, is able to realize everything which has been designed to be realized in social life. Law Effectiveness Theory is: "a theory that study and analyze successes, failures, and factors which influence the law implementation and application".

B. RESEARCH METHOD

Methodology is scientific research logic, research procedure and technique study, and research procedure and technique system. The research activity is started when a scientist makes an effort to move from theory to method selection. Based on the definition, it can be concluded that methodology essentially provides guidance about how the scientist studies, analyzes, and understands the environment he/she faced.⁵

This research is legal research, as stated by Peter Mahmud Marzuki that there is no need to use the term of normative law, because *legal research* or *rechtsonderzoek* (Dutch) is always normative. It is similar to juridical normative term which is actually unknown in legal research. Therefore, it is clear that the research is normative. However, the approach and material law used should be explained.⁶

The characteristic of the research is prescriptive; hence the legal research does not require hypotheses. Furthermore, legal research also does not recognize any data.⁷ In addition, the approach used by the researcher in writing this legal paper is *statute approach, case approach, and conceptual approach*.

This paper uses *statute approach, and case approach*. Those approaches are conducted by reviewing legislation and regulation relating to legal issues which is being discussed. Next, this paper also uses *conceptual approach*. This approach comes from point of views and doctrines which develop in legal science.

C. RESULT AND DISCUSSION

1. The factors influencing the effectiveness of law enforcement against illegal cigarette entrepreneur in paying excise duty.

Recently, excise tax is imposed to three kinds of goods called as excisable goods, they are ethyl alcohol, alcohol beverage, and tobacco products. Tobacco products, known as cigarette are categorized as excisable goods because it is not a basic need. Besides, it is widely consumed by people, and the demand of the product is relatively inelastic. Therefore, it can be easily regulated as source of state revenue.

In Act No. 39 of 2007 concerning Amendment of Act No. 11 of 1995 about Excise mentioned that consumption of excisable goods needs to be supervised and limited in order to prevent negative impact, although its role is still needed by both society and government. For the society, cigarette is needed as consumption goods especially in finished goods form, while for the government, they will be benefited due to yearly revenue of cigarette excise which tends to continually increase. Cigarette excise can give dominant revenue among other excises.

The problems which are found in the field are:

- a. Plain cigarette without excise
- b. Fake band usage
- c. Not its designation. For example; tarif 530,00, but it is used 80,00.
- d. Wrong personalization (not its right). For example; excise band belongs to A factory is used by B factory.

⁵ Soerjono Soekanto, 2010, *Pengantar Penelitian Hukum*, Jakarta: University of Indonesia Press, p.5-6.

⁶ Peter Mahmud Marzuki, 2011, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, p.55-56.

⁷ *Ibid*, p.59-60.

Any person who will run the following activities is required to possess a license that has a form of Serial Number of Employer Excisable Goods issued by a Minister. The activities are as follow:

- a. Manufacturer
- b. Storage businessman
- c. Importer of excisable goods
- d. Distributor, or
- e. Retailer. According to Article 14 paragraph (1) Act No. 39 of 2007 concerning Amendment of Act No. 11 of 1995 about Excise.

Table 1. Excise Revenue in Period Year of 2015 to 2017 KPPBC Excises of Kudus in Medium Type.

Excise Revenue			
Year	Target (Rp)	Realization (Rp)	%
2015	35.189.050.474.505,-	34.425.027.804.535,-	97,83
2016	33.944.905.945.736,-	32.527.287.298.460,-	95,82
2017	34.729.000.000.000,-	34.734.000.000.000,-	100,01

Source: Customs and Excise of Kudus

Tabel 2. Customs and Excise Violations in Period Year of 2015 to 2017 KPPBC Excises of Kudus in Medium Type.

Year	Number of Cases	Settlement		
		Determination of BHP as a BDN	Investigation	Imposition of Administrative Sanctions
2015	49	41	7	1
2016	44	39	0	5
2017	92	72	2	16

Source: Customs and Excise of Kudus

Explanations:

1. Determination of BHP (Enforcement Items) as BDN (Goods Controlled by Government) due to unknown/uncover offender (Article 66 paragraph (1) Excise Act) (only proceed in customs and excise)
2. Investigation is a case which has been handed over to the Attorney and proceeded in the court.
3. Imposition of administrative sanctions (only proceeds in customs and excise).

The decision of the Kudus District Court Number: 169/Pid.Sus/2015/PN.Kds decides that Muhammad Bayhakim bin Munjib, male, Jepara, Indonesia, 37 years old/ January 22, 1978, Islam, Entrepreneur, Robayan village RT.8/RW.2 Kalinyamatan, Jepara had legally proven as guilty defendant by committing criminal offense of excise in September 9, 2015 at 15.57 WIB. The crime took place in front of Gripta Hotel Kudus on AKBP R. Agil Kusumadya Street. Customs Enforcement Team of Kudus succeeded in taking action against the pickup truck carrying the excisable goods (BKC). It was Sigaret Kretek Mesin (SKM) which has been packaged for retail sales and attached by excise band expected as a fake excise band, with details: SAKURA brand for 6 packs, S3 Mild brand for 29 packs, BERUANG EXECUTIVE brand for 6 packs, FRED SUPER brand for 1 packs, ELANK EXECUTIVE brand for 2 packs, and FEL SUPER brand for 3 packs.

Nation's Rate of Losses caused by illegal cigarette circulation have same amount with Excise Rate must be paid off plus Rate of Value-Added Tax (VAT) must be paid off. The amount of Cigarette Tax must be paid is IDR 62.871.712,- (sixty two million and eight hundred seventy one thousand and seven hundred twelve rupiahs). Because of his action, Muhammad Bayhakim bin Munjib as defendant was sentenced for 2 (two) years imprisonment minus temporary detention (when the defendant detained in a temporary detention) and sentenced to fine for IDR 126.000.000,- (one hundred and twenty six million rupiahs) under the condition; if the defendant could not settle the fine, he will be sentenced imprisonment for 6 (six) months.

Economically the tobaccos and cigarettes have positive and beneficial impact on the economy. On the other hand, the consumption of cigarettes as processed tobacco products must be limited or inhibited because it has bad impact for health. One of ways to limit and inhibit the cigarette consumption is issuing Act No. 39 of 2007 about Excise conducted by the government. Cigarette excise has important role in limiting the tobacco product consumption, cigarette in particular. The higher excise makes the higher price for tobacco products then the regulation is expected to be able to restrain and decrease the society consumption for tobacco and cigarette.⁸

Factors which cause many violations in excise field are society's lack of awareness towards illegal cigarette, weakness of supervision and action conducted by related agencies, lack of cigarette producers awareness in producing illegal cigarette (gain the profits with small trade capital), weakness of rules or regulations against illegal cigarette circulation, and the increase of excise tariffs.

Anthony Allot explained concerning the effectiveness of law. He stated that law will be effective if its purpose and application can prevent undesirable actions and dispel the turmoil. Generally, effective law can realize everything which has been designed. If there is a failure, there may be an easy revision to execute or apply the law in different condition. Then, the law will solve it. This Anthony Allot's concept is focused on the realization. Generally, effective law can be realized in social life.⁹

Effective and ineffective of Act No. 39 of 2007 is depended on the Government and society which are directly related to the Act provision. According to Article 55 of Act No. 39 of 2007 about Excise, the Act has explained about criminal provision and its fine, the contents of the provision are:

Any persons who:

- a. Counters the law, imitates or fakes the excise band or other excise payment evidence;
- b. Buys, keeps, uses, sells, offers, gives, serves for sale, or imports excise band or other excise payment evidence which is fake or forged; or
- c. Uses, sells, offers, gives, serves for sale, or imports excise band or other excise payment evidence which has been used. Those people will be sentenced to imprisonment for at least 10 (ten) times of excise rate and at most 20 (twenty) times of excise rate which must be paid.

By enacting the provisions which is explained above, the society or the illegal cigarette entrepreneurs should be more obedient to pay excise duty to avoid the lost profit toward the Nation, KPPBC (Customs and Excise Supervision and Service Office) of Kudus in Medium Type, and also the society as consumers of the cigarette products.

D. Conclusion

1. Factors which can inhibit KPPBC (Customs and Excise Supervision and Service Office) of Kudus in Medium Type and related agencies in the context of the effectiveness of supervision and law enforcement on illegal cigarette circulation is lack of awareness towards illegal cigarette, weakness of supervision and action conducted by related agencies, lack of cigarette producers awareness in producing illegal cigarette (gain the profits with small trade capital), weakness of rules or regulations against illegal cigarette circulation, and the increase of excise tariffs.
2. The steps which have to be undertaken by KPPBC (Customs and Excise Supervision and Service Office) of Kudus in Medium Type and related agencies in overcoming the effectiveness of supervision and law enforcement on illegal cigarette circulation is through socialization, direct evaluation in the field, and cooperation with other related institutions. In addition, it is necessary to simplify the structure of excise tariffs and do routine enforcement to give monitor toward the producers in order to not conduct fraudulent practices.
3. Law Effectiveness Theory by Anthony Allot said that "law will be effective if its purpose and application can prevent undesirable actions and dispel the turmoil. Generally, effective law can realize everything which has been designed. If there is a failure, there may be an easy revision to execute or apply the law in different condition, and the law will solve it."

E. Suggestion

1. KPPBC (Customs and Excise Supervision and Service Office) of Kudus in Medium Type should give counseling to Persatuan Perusahaan Rokok Kudus (PPRK) (Cigarette Company Association of Kudus), related agencies, entrepreneurs who are not the PPRK (Cigarette Company Association) community, the society who is directly/indirectly related to cigarette circulation, the importance of paying excise tax, criminal provision, and the fine if the cigarette entrepreneur conducts violations (illegal cigarette entrepreneur).

⁸Fatoni, Firmansyah, 2015, *Peningkatan Tarif Cukai Rokok dan Dampaknya Terhadap Perekonomian dan Pendapatan Sektoral Jawa Tengah*, Journal of Performance, Volume 19 No.2, Diponegoro University, p.98.

⁹Anthony Allot, 1980, *The Limit of Law*, Butterworths, London, p.9.

2. The society as the consumer of cigarette product should be more concerned regarding the issues. If the society wants to consume the cigarette, they should look at the packages, license, and excise band. They also should not buy unlicensed cigarette product or cigarette without excise band (fake cigarette).
3. KPPBC (Customs and Excise Supervision and Service Office) of Kudus in Medium Type should give the society, particularly the people who live in the mountains and the lower middle regions which is far from urban areas, about the acknowledgement and information concerning the differences between the cigarettes which have genuine excise band and do not have genuine excise band (fake excise band). It should be done because the illegal cigarette entrepreneurs sell and distribute the fake cigarette in the residence areas which are far from the urban areas.

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Sumber Hukum

Act Number 39 of 2007 about Excise
Decision Case Number: 169/Pid.Sus/2015/PN.Kds.

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