



Law Enforcement Efforts for Illegal Electronic Cigarette Distribution without Excise Tax

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Abstract: The purpose of this study is to find out how law enforcement efforts are made against the circulation of illegal electric cigarettes without excise. The research method used is empirical normative namely legal research regarding the enactment of normative legal provisions (codifications, laws or contracts) in action in every particular legal event that occurs in society. Especially on the performance of the Gorontalo customs officers in order to minimize the circulation of illegal e-liquid cigarettes without excise. The results of this study are the lack of supervision of the distribution of illegal e-cigarette tobacco excise products and the absence of direct supervision of sellers who are suspected of being the center of illegal liquid circulation, besides that customs need to socialize the circulation of excise-free e-cigarettes to the public in general either through mass media and other information media so that the public knows that this type of liquid is categorized as illegal goods which are prohibited from being distributed freely.

Keywords : Law Enforcement; Illegal E-Cigarettes; Excise.

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1. Introduction

Advances in technology, communication and information in the current era make it very easy for someone to take any action, anytime and anywhere in various fields including the economic sector, in this case the field of goods and services. The development of lifestyles in society influences the criminal acts that occur and one of the criminal acts that is rife in Indonesia is the crime of trafficking in illegal goods. Intense competition among business actors creates a tendency for them to justify any means to win the competition. This is done to gain huge profits by violating applicable procedures to avoid taxes or excise. Even though this crime can be very detrimental to the country. Especially in the area of taxation. Tax is the most important source of state revenue, especially in this case excise tax. According to Law Number 39 of 2007 concerning amendments to Law Number 11 of 1995 concerning Excise, excise as a state levy imposed on certain goods which have properties or characteristics in accordance with the law constitute state revenue in order to realize prosperity, justice, and the balance of the nation. Therefore, the government of each country is obliged to monitor and limit goods whose consumption has an impact on environmental damage, by taking excise or taxes on certain goods as a means to fulfill a sense of togetherness and justice in society. one of which is carrying out obligations as citizens, namely being obedient to paying taxes, because in essence taxes are a means for the welfare of society, as explained in Law Number 39 of 2007 concerning excise.¹

The development of cigarettes in Indonesia is dominated by conventional clove-based cigarettes which are commonly used for treatment, along with the development of the current era, conventional cigarettes have begun to be replaced by electric cigarettes developed by SBT.CO.LDT, a China-based company since 2004, where The electric cigarette uses batteries and steam to burn a liquid called liquid. Characteristics of Excisable Goods, among others, its distribution needs to be monitored and its consumption needs to be controlled. Tobacco products are included in excisable goods and there are many types of these products on the market, such as cigarettes/cigarettes, cigars, sliced tobacco, leaf cigarettes, e-cigarettes and others, called Other Tobacco Processing Products or HPTL.

The Minister of Finance has issued several provisions in Regulation of the Minister of Finance Number 193/PMK.010/2021 concerning Excise Tariffs on Tobacco Products in the Form of E-Cigarettes and Other Tobacco Processing Products; among others. Electric Cigarettes are tobacco products in the form of liquid, solid or other forms, originating from the processing of tobacco leaves which are made by extraction or other methods according to technological developments and consumer tastes, regardless of substitutes or auxiliary materials in their manufacture, which are

¹ Nyoman Dita Ary Putri, I. Nyoman Gede Sugiarta, dan Ni Made Sukaryati Karma, "Penegakan Hukum Terhadap Peredaran Rokok Tanpa Cukai di Indonesia," *Jurnal Preferensi Hukum* 3, no. 1 (2022): 171-76.

provided to consumers. final in retail sales packaging, which is consumed by heating it using an electric heater and then smoking it.²

The rise of e-liquid in Indonesia was also under the spotlight of the Indonesian government, because at that time e-liquid circulated freely in Indonesia, starting from use, and buying and selling, and there were no binding laws, e-liquid at that time could be said to be goods. illegal. Therefore the Government of Indonesia takes an important role here by imposing excise on E-Liquid just like conventional cigarettes. The government realizes that electric cigarettes are detrimental to public health, so they must be limited. This is in line with the principle of imposing excise duty, which is to control consumption and monitor circulation. In addition to the health aspect, the government also needs to pay attention to other aspects of smoking, namely labor, illegal cigarette distribution, tobacco farmers and state revenues. All of these aspects need to be considered in a comprehensive and balanced manner in making policies related to cigarette prices and excise. They distribute or sell it without excise stamps. This is so that they get a big profit. The actions carried out by these persons clearly violated the laws and regulations in Indonesia, namely Law no. 39 of 2007 Article 54, and is included in the excise crime.³

The case of circulation of goods, especially electric cigarettes without excise in Gorontalo, must be of serious concern, because there have been several arrests by taking action if the findings show that some do not have distribution permits by Customs and Excise Civil Servant Officers (PPNS) in Gorontalo. In the period from 2019 to 2020 by carrying out preventive law enforcement (prevention) both through market operations, land patrols, and prevention of postal items, officers found and confiscated 60 bottles of other tobacco processing products (in the form of liquid vape). the value of the goods is estimated at IDR 5,990,000 million, and the potential loss to the state for just 60 bottles is estimated at IDR 3,271,450 million. It can be seen from the data above that the amount of loss caused by the circulation of illegal, tax-free electric cigarettes is so large and possibly detrimental to the state. This matter must receive the attention of law enforcement officials in the Gorontalo region. Therefore law enforcement can be started by paying attention to, among others, through the role of law enforcement. How inevitable it is that the role of law enforcers is very important as a guard that prevents and eradicates all forms of fraud or deviant behavior, both within the government and in the life of society, nation and state. Law enforcement in eradicating the circulation of illegal electronic cigarettes without excise is in the form of preventive law enforcement (prevention), which can be in the form of holding legal counseling, carrying out observations and conducting patrols, while

² Gilang Wahyu Ardiansyah, "TINJAUAN YURIDIS EMPIRIS TERKAIT PENGAWASAN DAN PENEGAKAN HUKUM PEREDARAN CAIRAN ROKOK ELEKTRIK (LIQUID) ILEGAL DAN PITA CUKAI TIRUAN DI MALANG RAYA (STUDI KANTOR PENGAWASAN DAN PELAYANAN BEA DAN CUKAI MALANG)" (Universitas Muhammadiyah Malang, 2022).

³ Kamaludin Kamaludin dan Mhd Yadi Harahap, "Penegakan Hukum terhadap Peredaran Rokok Ilegal Melalui Kantor Bea Cukai Medan," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 2 (2023): 637-48.

repressive (enforcement) which is one of the conceptual efforts, where this effort committed after a crime has occurred.⁴

It is hoped that the Directorate General of Customs and Excise will further improve supervision and maximize research on these violations so that law enforcement on excise on e-liquids is carried out properly and the state does not suffer losses. In fact, the circulation of E-Liquid is quite worrying because it is widely circulated and traded in a number of shops, supermarkets and online by avoiding paying excise duty and still distributing things that are not in accordance with the excise law, such as packaging with fake excise stamps attached, different excise tapes, used excise duty and as for without excise bands.

2. Research Method

The approach used by researchers is an empirical normative approach. Legal research regarding the enactment of normative legal provisions (codification, law or contract) in action in every particular legal event that occurs in society. Especially on the performance of the Gorontalo customs officers in order to minimize the circulation of illegal e-liquid cigarettes without excise.

3. Law Enforcement Efforts Against Excise-Free Electric Cigarette Circulation at KPPBC TMP C Gorontalo

Law enforcement is the process of making efforts to uphold or actually function legal norms as a guideline for behavior in traffic or legal relations in the life of society and the state. Viewed from the point of view of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as an effort to enforce the law by the subject in a limited or narrow sense. In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable legal rules means he is carrying out or enforcing the rule of law. In a narrow sense, in terms of the subject, law enforcement is only interpreted as an effort by certain law enforcement officials to guarantee and ensure that a rule of law operates as it should. In ensuring the upholding of the law, if necessary, law enforcement officials are permitted to use force.⁵

Based on the results of an interview with Mr. Fuad Muhammad Rays, A.Md.BC, as Executing Examiner of the Customs Enforcement and Investigation Section, stated that law enforcement carried out by Gorontalo customs includes 2 law enforcement, namely:

⁴ Hoemijati Hoemijati, Mita Dwi Jayanti, dan Moch Rizal Fani, "ASPEK HUKUM PENJUALAN DAN PEREDARAN ROKOK TANPA CUKAI MENURUT UNDANG-UNDANG NOMOR 39 TAHUN 2007 TENTANG CUKAI," 2019.

⁵ HANIF AMANDIRA PRIANATA, Budi Santoso, dan Hendro Saptono, "TINJAUAN YURIDIS TERHADAP PENERAPAN CUKAI UNTUK CAIRAN ROKOK ELEKTRIK (E-LIQUID) DI INDONESIA.(024 DG 2021)" (Universitas Diponegoro, 2021).

1) Preventive law enforcement

Preventive law enforcement is a series of action efforts intended as prevention so that there are no violations or deviations from existing provisions. This preventive law enforcement can be carried out by providing provision of understanding and awareness for the community, as well as related parties.

Preventive law enforcement (prevention) is carried out by conducting outreach to the community about the prohibition of illegal liquids through several activities, namely;⁶

1. Routine patrols (direct socialization)

Market patrols conducted 2 weeks or once a month in 5 districts 1 city; Gorontalo Regency, North Gorontalo Regency, Bone Bolango Regency, Pohuwato Regency, Boalemo Regency and Gorontalo City. Because of this large area, it is also difficult for the Gorontalo Customs Office to supervise illegal e-cigarettes that do not have excise duty entering the Gorontalo area. with Market Operations that customs officers routinely carry out, can provide education to the public and can reduce the circulation of illegal, duty-free e-cigarettes in the supervision area of the Gorontalo Customs Office

2. Social media

In addition to direct outreach, Gorontalo Customs and Excise also educates the public about illegal e-cigarettes through posts or websites about the importance of knowing the types of illegal goods without excise. Each type of media has a different target segmentation and Gorontalo customs and excise officials are committed to reaching a wider and wider range of people, because it is important to understand excise and it is important to know that illegal BKC (excise goods) has an impact on reducing people's welfare.⁷

2) Repressive Law Enforcement

Repressive law enforcement is carried out in terms of acts that violate regulations and aims to directly end prohibited acts. To avoid repeated criminal prosecution, namely by destroying illegal cigarettes, the destruction is carried out in 1 year 2 times the destruction. The next repressive effort is to carry out market operations which are usually carried out by the enforcement and investigation division of the Customs and Excise Supervision and Service Office (KPPBC) together with a team

⁶ Nur Ihsania dan Ratih Kumala, "Pengawasan dan Penindakan Rokok Ilegal pada Kantor Pengawasan dan Pelayanan Bea cukia Tipe Madya Pabean A Bekasi," *Jurnal Ilmu Administrasi Publik* 2, no. 4 (2021): 418-27.

⁷ Abdullatif Fikry, "PENEGAKAN HUKUM PEREDARAN ROKOK ILEGAL TANPA CUKAI DI WILAYAH HUKUM KANTOR PENGAWASAN DAN PELAYANAN BEA DAN CUKAI (KPPBC) TIPE MADYA PABEAN C KOTA TEGAL" (Universitas Pancasakti Tegal, 2020).

monitoring the Retail Selling Price of e-cigarettes (REL) from the Directorate General of Customs and Excise through a joint market operation. Then carry out prevention or confiscation with the status of confiscated goods, namely state property, auctioned, destroyed. As well as repressive efforts to destroy liquid without excise which absolutely cannot be circulated.⁸

Based on the researcher's interview with one of the liquid traders at Fikar Vape Store, he admitted that he supports excise duty on e-cigarette liquid with excise tape. He explained that the vapes he sells are not illegal and feel safe to sell, even though now every year the excise rate always goes up, but it's calmer to sell. Not afraid that at any time there is surgery, The researcher concludes that every retail trader should complete the legality of a trading business whether it is just starting its trade. If vape is found to be traded without excise, and does not have a business permit, it will immediately be withdrawn from circulation. We will continue to take action on illegal ones, because according to Law (UU) No. imprisonment for a maximum of five years and a maximum fine of five times the value of the excise duty that should have been paid.

3.1 Excise Criminal Legal Process

The legal process which includes the stages of investigation, investigation, prosecution, trial and legal action has been regulated in detail in Law Number 8 of 1981 or better known as the Criminal Procedure Code. As stated above, in cases of decriminalization, there is a consequence that the legal process must be stopped in handling the case. In the following, we will discuss stopping the handling of decriminalization cases, when a decision on determining a decriminalization case occurs during the stages of the ongoing legal process. Criminal acts in the field of excise are not interpreted as crimes but violations because the focus of Customs and Excise is goods. A crime can be categorized as a criminal act because the act of violation is a serious violation where the impact it causes has a negative effect on the community environment.⁹

a) Investigators and investigations

According to the provisions of Article 1 point 1 of the Criminal Procedure Code, what is meant by investigators are officials of the Indonesian National Police or certain civil servant officials who are given special authority by law to conduct investigations.

According to the provisions of Article 1 point 2 of the Criminal Procedure Code, what is meant by an investigator is a series of investigative actions in matters and according to the methods regulated in this Law to seek and to collect

⁸ Faisal Rivaldi dan Rismawati Rismawati, "Tanggung Jawab Pelaku Usaha Rokok Elektrik (e-cigarette) Yang Tidak Tercantum Label Informasi Dan Peringatan Kesehatan Pada," *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan* 2, no. 4 (2018): 732-42.

⁹ UPAYA PENINGKATAN PENERIMAAN CUKAI NEGARA dan LAKSMITA PUTRI, "PELAKSANAAN PENGAWASAN PEREDARAN ROKOK TANPA CUKAI SEBAGAI," t.t.

evidence with that evidence to make a case about the crime that occurred and to find the suspect. . Civil Servant Investigating Officials In article 6 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP), it is stated that investigators are police officials of the Republic of Indonesia and certain civil servant officials who are given special authority by law. .Like customs officials also have the authority to conduct investigations when criminal acts in the excise sector occur

b) Prosecution

The next stage after the investigation is prosecution by the Prosecutor. The main activity in the prosecution stage is the preparation of the Indictment. The preparation of an indictment must meet the requirements set out in Article 143 paragraph (2) of the Criminal Procedure Code, namely: "The public prosecutor makes an indictment which is dated and signed and contains:¹⁰

1. full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation of the suspect;
2. an accurate, clear and complete description of the crime charged with mentioning the time and place the crime was committed.

c. The judge

The trial of a criminal case is divided into several successive stages, namely:

1. Reading of the Indictment
2. Reading of Objections/Exceptions
3. Interval Verdict
4. Inspection
5. Claims Reading
6. Defense Reading
7. Decision

In this stage of the trial, the author divides it into two parts, namely the decriminalization provisions appear before the interlocutory decision and the decriminalization provisions appear after the interlocutory decision.¹¹

1) before the interlocutory decision

Efforts that can be made when the decriminalization provisions appear before an interlocutory decision is made, namely the defendant submits an

¹⁰ Tatty Aryani Ramli, "Peraturan tentang Izin Peredaran Rokok Elektrik dan Cairan Likuid Rokok Elektrik dalam Perlindungan Konsumen Ditinjau dari Peraturan Menteri Perdagangan Nomor 86 Tahun 2017 tentang Ketentuan Impor Rokok Elektrik dan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen," *Prosiding Ilmu Hukum* 6, no. 1 (2020): 185-88.

¹¹ Inqikaryan Alif SYAHPUTRA, "Komparasi Legalitas Peredaran Cairan Rokok Elektronik Dengan Rokok Konvensional Tembakau Di Indonesia," t.t.

objection/exception which contains that the defendant must be released from all lawsuits or onslag van rechtsvervolging or contains that the authority to sue is null and void. So in an interlocutory decision which is final, according to Article 156 paragraph (2), the panel of judges must decide that the defendant's objection is accepted and the charges are null and void so that the case is not examined further. Article 156 paragraph (1) and (2) reads: a. In the event that the defendant or legal adviser raises an objection that the court does not have the authority to try his case or the charges cannot be accepted or the indictment must be cancelled, then after being given the opportunity for the public prosecutor to express his opinion, the judge considers the objection and then makes a decision.¹²

- 2) If the judge declares that the objection is accepted, then the case is not examined further, conversely if it is not accepted or the judge is of the opinion that it can only be decided after the examination is complete, the trial will continue. b. after the interlocutory decision The provisions for decriminalization appear after an interlocutory decision has been made, there are two efforts that can be made, namely first the public prosecutor submits a charge containing a request for the panel of judges to decide that the accused must be acquitted of lawsuits or onslag van rechtsvervolging. The two defendants must submit a defense which contains that the act being charged is not a crime, so the panel of judges must decide that the defendant must be free from prosecution or onslag van rechtsvervolging. So that in his decision the judge decided that the defendant was acquitted of prosecution, this is in accordance with Article 191 paragraph (2) of the Criminal Procedure Code: If the court is of the opinion that the act charged against the defendant is proven, but the act does not constitute a crime, then the defendant is acquitted of all lawsuits. A decision free from lawsuits will be handed down by a judge if the judge is of the opinion that from the results of the examination, the defendant's actions are proven but not a crime (Waluyadi, 199:110). Court Decision According to the description above, in the settlement of this decriminalization case, the possible decisions that will occur during the trial are:

- a. The decision declaring the charges null and void
- b. The decision is released from all lawsuits

4. Obstacles in Efforts to Enforce the Excise Criminal Law

In carrying out law enforcement efforts, of course, this does not go straight with what has been tried, because it is hampered by several factors such as the lack of awareness of liquid producers and the public regarding duty-free electric cigarettes, weak rules or regulations against illegal e-cigarettes, lack of strong supervision and enforcement

¹² Feren Kafitri Fardi dan Daryanto Hesti Wibowo, "Pengaruh Eefktivitas Sistem Pemungutan PPN Dan Pengawasan Sistem Pemungutan PPN Terhadap Kepatuhan Wajib Pajak Pengusaha Vape (Studi Kasus Rokok Elektrik Pada Pengusaha Vape Yang Bergabung Dengan APVI di Indonesia Tahun 2019," *Jurnal Ilmu Administrasi Publik* 1, no. 6 (2021): 606-16.

by related officials, as well as an increase in excise rates. Based on these obstacles, another effort that can be taken to suppress the circulation of excise-free cigarettes is the need for simplification of excise rates so that cigarette manufacturers do not produce cigarettes with low capital and many profits.¹³

Based on the results of an interview with Mr. Fuad Muhammad Rays, A.Md.BC, the Executing Examiner of the Customs Enforcement and Investigation Section, stated that the increase in electric cigarettes without excise stamps on the market, and sold online, apart from being influenced by rogue liquid manufacturers who produce liquid illegally, there are factors Another thing that is no less important, which plays a role in increasing the circulation of excise-free e-cigarettes, namely shop owners or retailers who sell bottles of liquid without excise to final consumers (vapor). The shop owner or retail seller actually knows that the liquid he sells online usually has an excise stamp that cannot be recognized in its original form, but because it is sold online at an online store where the criteria are not clear and when taking action there has never been strict action from the government, the shop owner and retail sellers continue to sell cigarettes, but there are also some online store owners or retail sellers who do not know that the liquid they are selling is wrong or illegal, therefore socialization is needed to the public about electric cigarettes.¹⁴

1. According to Mr. Fuad Muhammad Rays, A.Md.BC, as the Executing Examiner of the Customs Enforcement and Investigation Section, problems in general are handled outside Gorontalo because in Gorontalo there are no electric cigarette manufacturing factories in this region, the most visible thing is actually the existence or awareness of the community, because the people get the pleasure from the liquid factory manufacturers themselves, for example:
 - a. The people were given jobs to be laborers or transporters which made them want to fight against the prosecution and operations carried out by the customs authorities themselves.
 - b. The public is free to access online and distribute these illegal e-cigarettes
 - c. Society Protects dealers and sellers of illegal e-cigarettes
2. Customs and excise personnel The second obstacle is personnel, there are still many staff shortages, these officers have problems in law enforcement in the field of excise from illegal e-cigarette products. And customs are still

¹³ Sarah Emeraldina Balkista, "Implementasi Perlindungan Konsumen Terhadap Rokok Ilegal Tanpa Pita Cukai Ditinjau Menurut Undang-undang No. 39 Tahun 2007 Tentang Cukai Studi Kasus Di Wilayah Kantor Pengawasan Dan Pelayanan Bea Dan Cukai Tipe Madya Pabean B Tanjungpinang" (Universitas Islam Riau, 2022).

¹⁴ Istiqomatul Hayati, Reza Helmi, dan Eka Wenats Wuryanta, "Rokok Elektronik dan Silang Sengkarut Komunikasi," *WACANA: Jurnal Ilmiah Ilmu Komunikasi* 19, no. 1 (2020): 121-36.

assisted by POLRI and TNI during the process of taking action against illegal e-cigarettes.

3. Facilities There is a lack of transportation during the process of prosecuting illegal cigarettes, and limited evidence
4. Vulnerable and wide area¹⁵

Known as Bumi Serambi Madinah, Gorontalo officially became a province in 2001 with a religious community and the majority are Muslims. Gorontalo, formerly part of the province of North Sulawesi. To the west, Gorontalo is directly bordered by Central Sulawesi Province and to the east by North Sulawesi Province, as well as two sea waters, namely the Sulawesi Sea to the north directly adjacent to Philippine waters and Tomini Bay to the south.

It is in this city that there is a Gorontalo Middle Type C Customs Service and Supervision Office with a supervisory area covering 1 municipality and 5 regencies, namely Gorontalo City, Gorontalo Regency, North Gorontalo Regency, Bone Bolango Regency, Pohuwato Regency, and Boalemo Regency. There are also 6 Customs and Excise control posts, consisting of 5 seaports and 1 airport, covering the entire area of Gorontalo Province which covers approximately 12,435 km². The farthest point of surveillance is in Popayato Barat District, Pohuwato Regency, at a distance of approximately 280 km from Gorontalo Customs and Excise.¹⁶

Due to the large area, it is also difficult for the Gorontalo Customs Office to monitor and prevent illegal e-cigarettes from entering the Gorontalo area.

According to Mr. Fuad Muhammad Rays, who is the Directorate General of Customs and Excise, said that the constraints or obstacles that often occur in each region are low public awareness of law so that criminal violations in the field of excise on tobacco products from e-cigarettes, especially regarding the manufacture of illegal liquids, keep popping up and because it's too easy to get, illegal e-cigarettes are still being sold

5. Conclusion

Law enforcement efforts against the circulation of excise-free electric cigarettes in Gorontalo include;

Preventive law enforcement efforts (prevention), namely by increasing the internal synergy of Customs (Head Office, Regional Offices, and Gorontalo Middle Type Customs and Excise Supervision and Service Offices), Supervision of the distribution and use of electronic excise stamps, Electronic supervision of BKC production .

¹⁵ Dede Ilham, "Penegakan Hukum Terhadap Tindak Pidana Peredaran Rokok Tanpa Pita Cukai Di Kota Pekanbaru" (Universitas Islam Riau, 2022).

¹⁶ Anggi Ariyadi Prayitno dan Jojo Junawan, "TINJUAN TEORITIS PERIZINAN JUAL BELI CAIRAN ROKOK ELEKTRIK DI HUBUNGAN DENGAN UNDANG-UNDANG NOMOR 7 TAHUN 2014 TENTANG PERDAGANGAN," *Hukum Responsif* 10, no. 1 (2019).

Repressive enforcement efforts (enforcement), namely field supervision in production, transportation and marketing areas, exchange of Customs and Excise data with the Directorate General of Taxes, market operations, confiscation and destruction. As well as law enforcement against the distribution of excise-free cigarettes can be subject to criminal penalties in the form of imprisonment and fines which are cumulative (combined) criminal penalties, prioritizing the application of imprisonment and then doubling the cumulative fines.

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