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## Analysis of the Illegal Cigarette Trade in Cianjur Regency

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### Abstract

*Illegal cigarettes are increasingly circulating in the community, the cheaper price is certainly a driving factor for the increasingly active smuggling of illegal cigarettes. The public welcomes the existence of illegal cigarettes, because for consumers today is a declining economy. Identification of the problem in the study of how the impact of the widespread circulation of illegal cigarettes in Cianjur Regency, this research method uses Juridical Normative Law, a descriptive approach that can be used to understand the problems raised by researchers related to the Criminal Case of Illegal Cigarette Circulation. The researcher uses a descriptive type of researcher with a juridical normative approach. The results of the research on the impact of the circulation of illegal cigarettes without excise, the state suffered high losses. With the circulation of cigarettes without excise, the state suffered losses of tens of billions and even trillions of rupiah. The Cianjur District Police and Satpol PP conducted raid operations on markets and found hundreds of packs of illegal cigarettes. Some time ago together with Satpol PP held raids on illegal cigarettes, it turned out that they were found in several stalls or kiosks of traders, after socialization with sources directly from Customs and Excise residents.*

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## INTRODUCTION

Indonesia is a country with a population of 273 (two hundred seventy-three) million people as of 2022, and one of its strengths is its abundant natural resources. One of these resources is tobacco, which is utilized as a raw material in industries such as the production of cigarettes (Kusnandar, 2022).

The demand for cigarettes in Indonesia is very high, and a significant portion of the Indonesian population is heavily dependent on them. As of 2020, it was reported that 28.7% (twenty-eight point seven percent) of Indonesians over the age of 15 were dependent on cigarettes, with a variety of different brands being consumed.

Cigarettes are one of the goods that must be registered and have taxes or excise duties in their distribution, as it is one of the largest sources of state revenue. Excise duties play an important role in the State Budget (APBN). One type of excise duty is Tobacco Excise Duty (Cigarettes). The high level of cigarette consumption in society has led to an increase in domestic cigarette production. However, the increase in cigarette production has not been accompanied by a proportional increase in excise duties.

Based on the above description, in order to ensure legal certainty, this is stipulated in Article 28D paragraph (1) of the 1945 Constitution as amended, which states that: Every person has the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law. The legal certainty guarantee mandated in the above Article 28D paragraph (1) is a form of the government protecting every citizen in the face of the law

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as a manifestation of the teaching that every law must provide legal certainty. Therefore, in the context of a rule of law state, the goal of recognizing human rights is to protect the realization of public welfare for society. (Nuraeny, 2016). Furthermore, based on the Pancasila Rule of Law State, the government must conduct governance based on the law and not be carried out based on the arbitrary power of the rulers, as known by the term "Rule by Law not Rule by Man" (Basah, 1985).

Law as a social institution is more than just a system of regulations, but also encompasses how law fulfills social functions within and for its community, such as integrating behavior and interests of its members (Priyatno & Aridhayandi, 2018).

Therefore, humans must respect each other's human rights, rights that must be respected that are not based on written law (Aridhayandi, 2016). In the end, rules made by humans need to be consistently and consecutively implemented, by the rule-makers, rule-implementers, rule-enforcers, and the community itself (Aridhayandi, 2019).

However, many cigarettes are still found in circulation without excise stamps or using fake excise stamps, categorized as illegal cigarettes which violate Law Number 39 of 2007 concerning Excise as written in Article 55 point (a). Perpetrators of illegal cigarette violations can be subject to criminal sanctions according to Articles 55 and 56 for 1-8 (one to eight) years imprisonment and a fine of 20 (twenty) times the amount of excise tax that should have been paid. The government does not prohibit citizens from producing cigarettes, as long as it is in accordance with legal provisions.

The circulation of illegal cigarettes in society is increasing, and their cheaper prices have become a driving factor for the increasing smuggling of illegal cigarettes. The public welcomes the availability of illegal cigarettes, as it provides a cheaper alternative during a time of economic decline. The circulation of illegal cigarettes in various regions, particularly in the Cianjur Regency, has become widespread. The sale of illegal cigarettes is prevalent in small shops, making it easy for consumers to purchase them quickly. It is important to note the difference between the distribution of legal and illegal cigarettes.

The legal distribution and distribution of cigarettes, for example, is carried out by companies like Sampoerna, which has its headquarters in Surabaya and branch offices in Jakarta. Sampoerna produces cigarettes in six of its own facilities, including two Machine-Made Kretek Cigarette (SKM) facilities in Pasuruan (East Java) and Karawang (West Java) and four Hand-Rolled Kretek Cigarette (SKT) facilities: two in Surabaya and one each in Malang and Probolinggo. In addition to its own production facilities, Sampoerna collaborates with 38 (thirty-eight) Cigarette Production Partners (MPS) to produce Sampoerna SKT products. The company sells and distributes cigarettes through 105 (one hundred five) sales offices and distribution centers located throughout Indonesia (Products, 2022).

Efforts to reduce illegal cigarettes are in line with the directive of Finance Minister Sri Mulyani Indrawati to reduce the level of illegal cigarette circulation to 3% (three percent). The reduction of illegal cigarettes is expected to contribute to increased revenue. The Director-General of Customs and Excise added that tobacco excise revenues have consistently exceeded targets over the past five years. Data shows that tobacco excise revenues were Rp138 (one hundred and thirty-eight) trillion in 2016 and increased to Rp176 (one hundred and seventy-six) trillion in 2020 (CNN, 2020).

As a result, the confiscation or raids conducted by the Cianjur Police Resort team will not have a significant deterrent effect on distributors and dealers because only the evidence is confiscated. There are no penalties in the Cianjur Regency related to illegal cigarettes except those specified in Law Number 39 of 2007 concerning Excise. Meanwhile, the circulation of illegal cigarettes has become widespread, estimated to be more than 10% (ten percent), which results in the state losing trillions of rupiah. At the same time, the government has raised tobacco excise taxes and retail prices significantly during the pandemic, causing consumers with declining purchasing power to switch to cheaper cigarettes, including illegal cigarettes. As a result, the production and performance of legal cigarette factories continue to be undermined (Tempo.co, n.d.).

Based on the background of the research, the researcher proposes the following problem identification: What is the scope of the trade and distribution of illegal cigarettes in Cianjur Regency?. What is the impact of the widespread distribution of illegal cigarettes in Cianjur Regency?. What legal efforts have been made by the local government of Cianjur Regency in addressing the widespread distribution of illegal cigarettes in the area?.

## **METHODOLOGY**

This study employs a normative juridical approach and a descriptive method to understand the issues related to the illegal cigarette trade and circulation in Cianjur Regency. The researcher uses a descriptive type of research with a normative juridical approach to describe and analyze the problem at hand. The research specification used in this legal writing is descriptive analysis, which aims to describe a particular phenomenon in a specific region and time, while also analyzing the relevant legal theories and regulations related to the research topic. The analysis is based on legal regulations and the opinions of experts to provide answers to the issues to be discussed further.

The data collection technique used in this study is literature study or library research, which involves collecting data from books, articles, and legal regulations related to the research topic. The data collected is then processed and analyzed qualitatively to draw conclusions. The data analysis is carried out qualitatively by reducing the data obtained into detailed, logical, and systematic sentences related to the topic, which then leads to a conclusion.

## **RESULTS AND DISCUSSION**

### **1. Scope of Cigarette Trading in Indonesia**

The issue of cigarette price increase became popular in August 2016, when there was a discourse on raising cigarette prices up to Rp 50,000 (fifty thousand) per pack. It started from a study conducted by the Center for Health Economics and Policy Studies, Faculty of Public Health, University of Indonesia, which found that by doubling the price, the amount of cigarettes consumed would decrease but the amount of money spent on cigarettes would still increase. In other countries such as Malaysia, Singapore, UK, and Australia, studies show that if people face a price increase of double the current price, cigarette consumption would decrease by 30%, but the revenue would not decrease due to subsidies from the price increase

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that can go up to 300%, leaving a surplus of around 270% that the government can still collect in excise tax, equivalent to Rp 70,000,000,000 (seventy trillion rupiahs). The government is committed to reducing cigarette consumption among the public, one of which is by increasing cigarette taxes. However, the increase is always done gradually. (Resistensia, 2006).

If the price of cigarettes rises to around IDR 50,000 (fifty thousand), it means that there has been an increase of 300%, (three hundred percent) while historically the increase in cigarette prices has only been in the tens of percent. A drastic increase in prices can cause a decrease in production, and ultimately have an impact on the welfare of workers in the cigarette industry, as well as tobacco and clove farmers who are suppliers to the industry. Another side effect that will occur is the spread of illegal cigarettes. One of the instruments for determining cigarette prices is excise, which is a form of tax. In theory, when taxes are too high, there will be an impact in the form of the proliferation of illegal products (Rahmat, 2011).

Amidst the issue of a significant increase in cigarette prices, which can cause a decrease in production, the price hike is being exploited by irresponsible parties who sell illegal cigarettes (without excise). After conducting an investigation and delving into it for the past two weeks, the Cianjur Police investigation team found a very surprising discovery of the rampant circulation of untaxed cigarettes in the cities of Sukabumi and Cianjur.

The circulation of untaxed cigarettes is rampant, spreading throughout Cianjur, including in the Mande area and its surroundings. In that area, not only one brand of cigarettes is being circulated, but the police found various brands of cigarettes being sold freely by small shops to large distributors. One of the cigarette brands being circulated is a filter cigarette called Style. The Cianjur Police are looking for the source of where these illegal goods came from, as well as their distribution. A salesperson named AS admitted that the cigarettes were circulating in the outskirts of the city (Peraturan Pemerintah RI, 2007).

One of the reasons why Cianjur has not developed is considered to be due to the circulation of illegal or untaxed cigarettes. This claim was made by the Regent of Cianjur, Herman Suherman, in response to the regional development budget in West Java, including Cianjur. The presence of illegal cigarettes will be very detrimental and hinder development in Cianjur. Revenue from tobacco excise such as cigarettes will be used as the Tobacco Excise Revenue Sharing Fund (DBHCHT) in each region given by the central government. The budget from DBHCHT plays a crucial role in financing various sectors, such as the health sector, law enforcement, and the welfare of farmers and workers in the industrial sector. The budget is quite large, so it can become one of the sources of funds issued by the central government. To curb the existence of illegal cigarettes, the role of society must be involved. Society must have a share and be involved in curbing the circulation of illegal cigarettes in the Cianjur Regency. The Cianjur Regency Government through the Legal Division of the Regional Secretariat (Setda) in collaboration with Bogor Customs, socializes the rules and regulations of excise to reduce the number of illegal cigarette circulations to a number of stakeholders at the Cianjur Hotel, Cipanas (Djamali, 2005).

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Tens of thousands of illegal cigarettes without tax were seized by the Bogor Customs and the West Java Police and Public Order Agency (Satpol PP) in the Cianjur district. The seizure of thousands of illegal cigarettes was the result of an operation conducted by the Bogor Customs and the Satpol PP in the northern part of Cianjur and Cianjur city, which is known for its illegal cigarette trade called "corona cigarettes". During the joint operation, the Bogor Customs, police, and Satpol PP in West Java were able to seize 88,000 (eighty-eight thousand) illegal cigarettes or corona cigarettes. The head of the Satpol PP in Cianjur, Hendri Prasethyadi, reported that 52,000 (fifty-two thousand) illegal cigarettes were seized during the operation conducted by the Bogor Customs, police, and Satpol PP in the Cipanas and Cianjur city areas.

## **2. Scope of Illegal Cigarette Circulation in Cianjur Regency**

The circulation of untaxed cigarettes has a significant impact on the state's finances, causing losses of tens of billions or even trillions of rupiah. The Cianjur Police conducted a raid in markets and found hundreds of packs of illegal cigarettes. They, together with the Satpol PP, have been cracking down on illegal cigarette sales, and after educating locals and sellers about the difference between legal and illegal cigarettes, there has been a growing understanding of the issue.

Cigarettes are a significant contributor to the country's revenue, with a share of around 10-11% of excise and tax on the Gross Domestic Product (GDP). However, tobacco has negative externalities, especially related to health issues. Therefore, there are many regulations in place to achieve an optimal balance between health and the workforce, as well as to support those whose livelihoods depend on the tobacco industry.

The government of Cianjur, along with the police, has been committed to controlling tobacco use. The Ministry of Health has been urging provincial and municipal governments to establish smoke-free areas (KTR). Currently, 127 districts or cities in 32 provinces have regulations regarding KTR.

The government also seeks to increase awareness about the dangers of smoking and to encourage the public to report illegal cigarette sales. Developing a strategy to combat illegal cigarette circulation requires valid research that can be easily communicated to the public.

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The high prevalence of illegal cigarette sales in Cianjur can be attributed to the increasing price of cigarettes on the market. The excise tax on cigarettes has risen by 12.5% in 2021, and the simplified classification of the tax has caused producers of lower-grade cigarettes to struggle to compete, leading to a decrease in production for the middle and lower classes. Illegal cigarette sales are deeply rooted in Indonesia and require massive and systematic intervention to resolve the problem.

Violations of excise tax laws are punishable by imprisonment and a fine according to Law No. 39 of 2007 on Excise. Those without permission to operate a factory or import taxable goods face a minimum of one year and a maximum of two years in prison and a fine of at least twice but no more than ten times the estimated tax value. Individuals who offer, sell, or provide untaxed taxable goods without excise tax labels or proof of payment can face a prison sentence of between one and five years and a fine of at least twice but no more than ten times the estimated tax value. Law enforcement against untaxed cigarettes can be conducted based on the above regulations (Peraturan Pemerintah RI, 2007).

The increase in the circulation of illegal cigarettes was triggered by the increase in cigarette taxes in 2020. According to the Minister of Finance, Sri Mulyani, the increase in the circulation of illegal cigarettes was 4.9% (four point nine percent) throughout 2020. However, the government actually targeted the circulation of illegal cigarettes below 3% (three percent). The increase in illegal cigarettes prompted the Customs officers to seize 9,014 illegal taxable items. From these seizures, 448.18 million cigarette sticks worth Rp270.79 billion were successfully confiscated.

According to Article 56 of Law Number 39 of 2007 Concerning Excise, anyone who hoards, stores, possesses, sells, exchanges, acquires, or gives away taxable items that they know or should reasonably suspect to originate from criminal acts under this law shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of at least 2 (two) times the excise value and a maximum of 10 (ten) times the excise value that should have been paid (Baskoro, 2019).

### **3. Impact and Legal Efforts by the Local Government of Cianjur Regency in the Proliferation of Illegal Cigarette Circulation in Cianjur Regency**

The Cianjur Regency Government continues to make efforts to suppress the circulation of illegal cigarettes, one of which is through the 'Crush Illegal Cigarettes' Movement in collaboration with the Middle Customs and Excise Monitoring and Service Office A Bogor. The Head of the Legal Department of the Cianjur Regency Secretariat stated that this movement is a real effort to optimize excise as a fiscal instrument in controlling excisable goods in accordance with regulations to prevent potential leakage of state revenue. The proliferation of illegal cigarette circulation in the community has resulted in a decrease in state revenue in the excise sector and has had an impact on the welfare of the people.

Cianjur Regency is an area that produces both excise and tobacco, as there is tobacco farming in several sub-districts. The revenue from tobacco excise such as cigarettes will be used as the Tobacco Excise Revenue Sharing Fund (DBHCHT) in every region given by the central government. DBHCH in Cianjur Regency plays a crucial role in financing various

sectors such as health, law enforcement, and the welfare of farmers and workers in the tobacco industry.

The Cianjur Police conducted raids on illegal cigarette circulation and successfully carried out the 'Crush Illegal Cigarettes' operation through various supervision and service efforts, as well as education to the community regarding illegal cigarettes. One of the efforts is through socialization of regulations, including face-to-face meetings in several sub-districts and various media such as radio talk shows, billboards, leaflets, posters, banners, electronic media such as videotron, and print media such as newspapers. The socialization involves the Cianjur Police and the Middle Customs and Excise Monitoring and Service Office A Bogor as speakers to educate and prevent the proliferation of illegal cigarettes by increasing community understanding regarding illegal cigarettes and how to identify illegal excise labels.

On this occasion, in line with the "Gempur Rokok Ilegal" program being carried out massively and systematically by the Cianjur Police and Customs Office, the Cianjur Police and Bogor Customs Office are requesting support from the Cianjur community to participate in disseminating information on "Stop Rokok Ilegal". For any information or reports related to the alleged sale of illegal cigarettes, please contact the Bogor Customs Office directly via WhatsApp, email, or Instagram.

The law enforcement efforts undertaken by the Cianjur Police must be continued, and therefore efforts need to be made to prevent and address cases of illegal cigarette trafficking without excise by the Cianjur Police and Civil Servant Officers of the Customs Office. These efforts include:

a. Preventive Law Enforcement (Prevention):

- 1) Conducting Legal Counseling. Legal counseling activities that have been held include: Free Zone Regulation Socialization, Hoarding Permit Socialization, and Customs and Excise Regulations Socialization.
- 2) Conducting surveillance, which is carried out by the intelligence team to find out information about the crime of illegal circulation of untaxed cigarettes and prevent them from spreading widely in society by directly going to the field or suspicious places as a route for illegal cigarette circulation.
- 3) Conducting direct Customs and Excise patrols on the streets. By conducting patrols like this, Customs and Excise can know and handle directly in accordance with the mandate given to them. Not only preventive measures, but also law enforcement and enforcement efforts are carried out by Civil Servant Officers (PPNS) of Customs and Excise to reduce the occurrence of illegal circulation of untaxed cigarettes in the Cianjur Regency area.

b. Repressive Law Enforcement (Enforcement).

Repressive law enforcement (Enforcement) includes the following:

- 1) Arrests. From the arrests that have been made from 2016 to June 2021, none of those involved in illegal cigarette circulation, either as sellers or couriers, have been processed to court. Based on the data obtained, the reason why the perpetrators of illegal cigarette circulation have not been processed to court is because:

- a) Customs and Excise recognizes a risk management system in which they do not condone the illegal circulation of untaxed cigarettes. The perpetrators who are arrested are still in small groups because, in terms of priority scale, Customs and Excise are more focused on finding the sources or suppliers of large-scale illegal cigarette procurement.
  - b) Small-scale perpetrators are still being controlled by confiscating their illegal cigarettes and informing them that the goods are prohibited, because legal cigarette manufacturers have not yet been affected by the circulation of illegal cigarettes.
- 2) Market operations. The Enforcement and Investigation section of the Cianjur Regency Customs and Excise Office has conducted several independent joint operations with the Retail Price Monitoring Team of Tobacco Products (HJE HT) from the Directorate General of Customs and Excise during the period from 2016 to April 2021.
  - 3) Prevention or seizure. Based on an interview with the Head of the General Sub-Division of Customs and Excise, Customs and Excise recognizes Prevention as a Seizure with the status of seized goods: (1) State Seizure (State-Owned Goods) (2) Auctioned (3) Destroyed. In the case of illegal untaxed cigarettes, such as cigarettes from free zones and plain cigarettes, since these cigarettes cannot be circulated in the Cianjur Regency area, according to customs laws and regulations, they must be destroyed (Muladi, 1995).

The Cianjur Police and Customs officials are working to control and reduce the circulation of illegal cigarettes, but so far, no perpetrators of customs crimes have been brought to trial. Despite the illegal circulation of cigarettes without customs duty by perpetrators and even cigarette traders meeting the elements of the offense contained in Article 54 and 56 of Law Number 39 of 2007 concerning Customs, which states that anyone who offers, delivers, sells, or provides for sale taxable goods that are not packaged for retailers or not affixed with excise labels or other tax payment stamps and for anyone who hoards, stores, possesses, sells, exchanges, acquires, or provides taxable goods that he knows or should reasonably suspect to come from a criminal offense under this law is punishable by a minimum of 1 (one) year and a maximum of 5 (five) years in prison and a fine of at least 2 (two) times the amount of the duty and up to 10 (ten) times the amount of the duty that should be paid. (Rahmat, 2011)

Based on these actions, they constitute one of the elements of the offense that must be fulfilled regarding the illegal circulation of cigarettes without customs duty. Thus, the actions of the perpetrators and even small cigarette traders can be prosecuted under this Article. The element of "taxable goods that are not packaged for retailers or not affixed with excise labels or other tax payment stamps and originate from a criminal offense." In the law enforcement process of criminal cases, especially the illegal circulation of cigarettes without customs duty.

The Cianjur Regency Government, Cianjur Police, and Bogor Customs Office conducted a socialization of the provisions or regulations of cigarette excise laws. This was done to reduce the circulation of illegal cigarettes among the public. Cianjur Regent Herman Suherman said that the meeting was held not only to prevent the circulation of illegal



cigarettes but also to prevent Cianjur tobacco from being used by certain individuals. One of the best tobacco producers in West Java, together with the police, is working to stop the circulation of illegal cigarettes in Cianjur Regency. Meanwhile, the Head of Legal Affairs of Cianjur Regency, Moch. Irfan Sofyan, seemed to support Regent Herman's statement regarding the role of law enforcement officials.

## CONCLUSION

The issue of cigarette price increase became popular in August 2016. The discourse of raising cigarette prices up to IDR 50,000 per pack originated from a study by the Center for Health Policy and Economics Studies, Faculty of Public Health, University of Indonesia. The study found that by doubling the price, the number of cigarettes consumed would decrease, but the amount of money circulating for cigarettes would still increase. Amid the issue of significant cigarette price increase, it was compressed by irresponsible parties who sold illegal (untaxed) cigarettes. After two weeks of investigation and research by the investigative team, they found a surprising discovery - the widespread circulation of untaxed cigarettes in Cianjur Regency.

The investigation team found that the circulation of illegal cigarettes was spread in the Cianjur area, particularly in the Mande area and its surroundings. There was not only one brand of cigarettes circulating, various brands of cigarettes were sold freely by small kiosks to large distributors. One of the brands circulating was the Style brand filter cigarette. The investigative team searched for the source of the illegal goods and where they were circulating.

The impact of the circulation of untaxed cigarettes resulted in high losses for the country. With the circulation of untaxed cigarettes, the country lost tens of billions and even trillions of rupiahs. The police and the local government security officers in Cianjur Regency conducted raids on markets and found hundreds of illegal cigarette packs. After conducting socialization with direct sources from Customs and Excise, residents and traders were able to understand or distinguish between legal and illegal cigarettes. The cigarette industry is a single commodity that contributes the largest tax and duty to the Gross Domestic Product (GDP), around 10-11%. It has negative externalities, particularly related to health issues, which pose problems for its development. Therefore, many regulations are carried out to obtain an optimal balance related to health and labor.

The Cianjur Regency government continues to try to suppress the circulation of illegal cigarettes, one of which is through the 'Crush Illegal Cigarettes' Movement in collaboration with the Office of Supervision and Service of Medium Type Customs and Excise in Bogor. According to the Head of the Legal Section of the Cianjur Regency Secretariat, the 'Crush Illegal Cigarettes' movement is a real effort to optimize taxes as a fiscal instrument in controlling taxable goods in accordance with regulations to prevent potential state revenue leakage. The widespread circulation of illegal cigarettes in society resulted in reduced tax revenue for the state and had an impact on people's welfare.

Cianjur Regency is an area that produces both tax and tobacco, due to tobacco farming in several districts. Revenue from tobacco tax, such as cigarettes, will be used as the Tobacco Tax Revenue Sharing Fund (DBHCHT) in every area given by the central government. The

DBHCHT in Cianjur Regency plays a crucial role in financing various sectors, such as the health sector, law enforcement, and the welfare of farmers and workers in the tobacco industry.

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