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Criminal Liability of Illegal Cigarette Smugglers in Pematangsiantar

Study of Decision No. 213/Pid.B/2023/PN Pms

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ABSTRACT

Illegal cigarette smuggling is an illegal act that results in a loss of state revenue and creates unfair economic competition. Therefore, to prevent this practice, the government has imposed an excise policy. However, in reality, this effort has not been able to fully suppress the smuggling of illegal cigarettes. This is proven by the prevalence of smuggling cases, even though the perpetrators have been subject to criminal sanctions. This research examines two main problems on how the juridical review of the sanctions implementation related to the purpose of punishment for perpetrators of the illegal cigarette smuggling crime in Decision No. 213/Pid.B/2023/PN Pms, and the judge's strategy in imposing a decision in order to create legal certainty and justice. This is a normative legal research where the results indicate that the implementation of criminal sanctions of a one year and six months prison sentence for the illegal cigarette smugglers in the case is still relatively light and has not provided a deterrent effect, both for the perpetrators and the wider community. Therefore, it is necessary to impose heavier criminal sanctions as a form of legal liability for the perpetrators. In addition, judges in making decisions must consider juridical and non-juridical aspects. It does not only focus on juridical aspects, but also needs to consider non-juridical factors in order to prevent errors and manipulation in the examination of cases and the implementation of sanctions against defendants.

Keywords: *Illegal Cigarette Smuggling, Judge's Consideration, Liability*

INTRODUCTION

When it comes to living as a nation, it is necessary to ensure that there is effective cooperation between the government and the community. The active participation of the community plays a major role in achieving development goals. Good cooperation between the government and the community is expected to ensure the achievement of development goals, thus creating a just and prosperous society. Despite the fact that Indonesia faces various challenges that may hinder national development, both the positive and negative impacts of these efforts deserve to be considered. One of the positive benefits of national development is an increase in the welfare and prosperity of the community, however, on the other hand, an increase in crime is a significant negative impact that may hinder the progress of development.¹

Along with related prohibitions, the law specifies what can and cannot be done. Corruption is one crime that occurs frequently and is considered to be fairly phenomenal. In addition to damaging the nation's economy and state finances, this crime violates the community's social and economic rights.² Article 1 Paragraph 3 of the 1945 Constitution states that the Republic of Indonesia is a state of law, serves as the supreme authority for enforcing justice and the truth in Indonesia. Law is a set of regulations that govern certain behaviors and actions in society.³

The development of technology and the globalization of trade have opened up opportunities for potential criminals to develop new methods of distributing cigarettes with counterfeit excise tapes. This phenomenon can be explained by several interrelated key factors. Technological advances provide new means for criminal offenders to design and refine techniques for the production, distribution and sale of illegal cigarettes and counterfeit excise tapes.⁴

The growing number of active smokers in Indonesia does not bring any positive impact on public health. In response, the government implemented a series of policies to reduce the negative effects of tobacco production. One of the policies implemented is the imposition of excise tax on tobacco products.

There are several basic characteristics in the imposition of excise tax. Tobacco excise has contributed significantly to state revenue. One type of excise

¹ Haryono Haryono, Ananda Saputra, and Rendi Kurnia Saputra, "Efektivitas Pengawasan Bea Cukai Terhadap Peredaran Rokok Ilegal," *Jurnal Ilmiah Mahasiswa Merdeka EMBA* 3, no. 2 (2024): 33, <https://jom.umri.ac.id/index.php/emba/article/view/1199>.

² Aaron Alexander, "Peran Masyarakat Dalam Penegakan Hukum Di Indonesia," *Ijolares: Indonesian Journal of Law Research* 1, no. 1 (2023): 11–15, <https://www.scribd.com/document/668096326/IJOLARES-Indonesian-Journal-of-Law-Research-Volume-1-No-1-Maret-2023>.

³ Ahmad Yunus, "Tindak Pidana Peredaran Rokok Ilegal Perspektif Pertanggung Jawaban Pidana," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 3 (May 30, 2024): 385–97, <https://doi.org/10.62383/aliansi.v1i3.439>.

⁴ Admin Web Bea dan Cukai, "Bea Cukai Gelar Operasi Dan Sosialisasi Rokok Ilegal," Kementerian Keuangan Direktorat Jenderal Bea dan Cukai, 2023, <https://www.beacukai.go.id/berita/bea-cukai-gelar-operasi-dan-sosialisasi-rokok-ilegal.html>.

tax in question is excise tax on tobacco products.⁵ It is necessary to regulate the consumption of certain goods with specific characteristics or features. Since their use may have detrimental effects on the environment or society, their circulation ought to be monitored closely. In order to accomplish justice and balance, state charges must also be applied to the consumption of these items. These certain goods are further designated as excisable goods in accordance with the excise law.⁶

Illegal cigarettes refer to cigarettes distributed in Indonesia that do not comply with the applicable regulations. Types of illegal cigarettes include cigarettes without excise tax stamps, cigarettes with counterfeit excise tax stamps, cigarettes using excise tax stamps that are not appropriate for their purpose, unlicensed cigarette production, cigarettes using used excise tax stamps, and any other administrative violations.

The government institution with the authority to determine excise tax is the Ministry of Finance of the Republic of Indonesia. In order to regulate excise tax, the Ministry of Finance established a special institution, the Directorate General of Customs and Excise (DGCE), based on Law of the Republic of Indonesia No. 17/2006 on the Amendment to Law No. 10/1995 on Customs, and Law of the Republic of Indonesia No. 39/2007 on the Amendment to Law No. 11/1995 on Excise.⁷

Cigarettes are one of the goods subject to excise. Article 3B of Law No. 39/2007 confirms that all provisions stipulated in Law No. 39/2007 on the Amendment to Law No. 11/1995 on Excise apply to excisable goods. In the context of illegal cigarettes, several characteristics exist, including: First, cigarettes without an official excise tape issued by Customs, known as plain cigarettes; Second, illegal cigarettes with counterfeit excise tapes, i.e. cigarettes that have been packaged but use unofficial excise tapes; Third, cigarettes with used excise tapes, i.e. excise tapes that have been used on previous products or other products; Fourth, cigarettes with incorrectly designated excise tapes; and Fifth, cigarettes with incorrectly personalized excise tapes. These last two types of illegal cigarettes are actually subject to excise tax in accordance with the original excise tax band, but not in the amount intended for the cigarette. Each excise tax band has unique features related

⁵ Gregorius Edowardo Ferari and M. Pudjihardjo, "Analisis Pengaruh Produksi Rokok Legal Dan Banderol Rokok Terhadap Peredaran Rokok Ilegal (Studi Kasus Rokok Kretek Mesin, Rokok Kretek Tangan, Dan Rokok Putih Mesin Di Indonesia Tahun 2010 – 2019)" (Universitas Brawijaya, 2021), <http://repository.ub.ac.id/id/eprint/191832>.

⁶ Irwandi Syahputra, Erdianto Erdianto, and Widia Etorita, "Penegakan Hukum Peredaran Rokok Ilegal Tanpa Cukai Berdasarkan Undang-Undang Nomor 39 Tahun 2007 Perubahan Atas Undang-Undang Nomor 11 Tahun 1995 Tentang Cukai Di Wilayah Hukum Kantor Pengawasan Dan Pelayanan Bea Dan Cukai (Kppbc) Tipe Madya Pabean B Kota," *Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau* 3, no. 1 (2016): 1–15.

⁷ Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 39 Tahun 2007 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 1995 Tentang Cukai" (2007), <https://peraturan.bpk.go.id/Details/39962/uu-no-39-tahun-2007>; Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 17 Tahun 2006 Tentang Perubahan Atas Undang-Undang Nomor 10 Tahun 1995 Tentang Kepabeanan" (2006), <https://peraturan.bpk.go.id/Details/40189>.

to the product in question, containing information such as the number of cigarettes, type of cigarettes, and even company personalization.⁸

One manifestation of crime in the distribution or trade of illegal cigarettes can be found in case decision No. 213/Pid.B/2023/PN/Pms, in which the defendant Jansen Sinaga together with Amri (who is included in the Wanted Person List (DPO) of the Pematangsiantar Customs and Excise Supervision and Service Office Type C) committed an act of offering, delivering, selling, or providing goods that are not attached to excise tapes for retail sale, in the context of smuggling and distributing illegal cigarettes. Jansen Sinaga purchased the illegal cigarettes from Amri for Rp8,000 per pack of 4,889 packs, with a total price paid of Rp39,112,000 without accompanying proof of transactions such as invoices, receipts, or other documents. Jansen Sinaga intended to resell the illegal cigarettes at a price of IDR10,000 per pack, with the aim of obtaining economic benefits from the sale of cigarettes that were not attached with excise tapes.

Based on Article 50 of Law No. 39 of 2007 Concerning the Amendment to Law No. 11 of 1995 Concerning Excise, any person who carries out the activities of a factory, storage place, or import of excisable goods without a permit as referred to in Article 14, with the intention of avoiding the payment of excise, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years, as well as 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.

The formulation of the problem in the background of this research is how criminal liability for violators of illegal cigarette distribution in the Pematangsiantar area in case No. 213/Pid.B/2023/PN Pms and how legal considerations by judges in deciding cases of violations of illegal cigarette distribution in the Pematangsiantar area in the same case. The purpose of this research is to determine the criminal liability of perpetrators of illegal cigarette distribution case in Pematangsiantar in case No. 213/Pid.B/2023/PN Pms as well as to evaluate whether the legal considerations conducted by the judge are appropriate in deciding the case.

RESEARCH METHODOLOGY

This research is normative legal research, which focuses on the study of legal norms sourced from laws and regulations that are relevant to the problem under study.⁹ This approach aims to interpret, systematize, and evaluate existing legal norms to provide a coherent and insightful understanding of the legal dimensions pertinent to the subject matter. This method is particularly valuable for identifying

⁸ Admin Web Bea dan Cukai, "Kenali Lima Ciri Rokok Ilegal," Kementerian Keuangan Direktorat Jenderal Bea dan Cukai, 2024, <https://www.beacukai.go.id/berita/kenali-lima-ciri-rokok-ilegal.html>.

⁹ Peter Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017), <https://books.google.co.id/books?id=CKZADwAAQBAJ>.

inconsistencies or ambiguities in the legal system and offering potential solutions to address the identified issues.¹⁰

The data in this research is secondary data consisting of primary legal materials, which are Decision No. 213/Pid.B/2023/PN Pms and other relevant laws and regulations. Secondary legal materials include books, journals, and research results related to the focus of the research, while tertiary legal materials include legal dictionaries. This research applies the descriptive analysis method, by describing or depicting clearly the problem of the criminal act of smuggling illegal cigarettes in the Pematangsiantar as described in Decision No. 213/Pid.B/2023/PN Pms.

RESULT AND DISCUSSION

Criminal Liability of Illegal Cigarette Smugglers in Pematangsiantar: Case No. 213/Pid.B/2023/PN Pms

In criminal law, there is the principle of *geen straf zonder schuld*, which refers to no punishment with no guilt. This principle asserts that a person cannot be sentenced if they are not proven to have committed a mistake or violated the applicable law, where the individual is bound as a legal subject in a positive legal system in a jurisdiction.

The imposition of punishment on a person is based on the existence of actions that violate the law and cause legal consequences or outcomes, as regulated in the applicable laws and regulations and accompanied by criminal sanctions.

In the case a quo, the judge's decision regarding the actions of the legal subject refers to the criminal liability for the criminal offense committed by the defendant. Judges in deciding cases must ensure that the elements of guilt have been proven legally and convincingly in accordance with applicable criminal law principles.

In the case a quo, criminal liability against the defendant Jansen Sinaga can be imposed if the person concerned is proven to have committed a criminal act. In this case, a person or legal subject can only be sentenced if they fulfill the elements of criminal responsibility that have been determined in the applicable criminal law. Therefore, the authors will elaborate on the criminal liability of the defendant with reference to the elements relating to the criminal offense committed, as follows:

1. Committing a Criminal Act (Against the Law)

In the case a quo, the unlawful act committed by the defendant was participation in distributing illegal cigarettes. This action is regulated in several laws and regulations related to the criminal offense, including:

- a. Article 54 in conjunction with Article 29 Paragraph (1) of Law No. 11 of 1995 on Excise, as amended by Law No. 39 of 2007 on the

¹⁰ Achmad Subagyo and Dr. Moh. Saleh, "The Liability of Tax Officials for the Expiration of Tax Debt Billing," *IUS POSITUM: Journal of Law Theory and Enforcement* *Journal Of Law Theory And Law Enforcement* 2, no. 1 (March 8, 2023): 105–21, <https://doi.org/10.56943/jlte.v2i1.276>.

Amendment to Law No. 11 of 1995 on Excise, in conjunction with Article 55 Paragraph (1) to 1 of the Criminal Code (KUHP).

- b. Provisions regarding punishment for those who participate in criminal offenses as stipulated in Article 55 Paragraph (1) to 1 of the Criminal Code, namely those who commit, those who order to commit, and those who participate in committing the act.

2. The Ability to be Held Liable

In the case a quo, the defendant Jansen Sinaga was declared physically and mentally healthy during the trial at the Pematang Siantar District Court. This was evidenced by his ability to provide firm and competent answers and understand the questions posed by the Panel of Judges. The defendant also admitted that he had committed a criminal act by participating in the distribution of illegal cigarettes, which is a violation of the applicable laws and regulations. In addition, the defendant understood that his actions were against the law and realized the consequences of his actions. Thus, the defendant Jansen Sinaga was proven to have the ability to be liable for his actions.

3. The Presence of a Fault Form: Willfulness or Recklessness

The actions committed by the defendant constitute a form of guilt by participating in the distribution of illegal cigarettes, which are cigarettes without excise. In this case, the defendant should and must be held liable for his actions which resulted in a loss to the state. Based on this mistake, the authors will elaborate on the proof that the defendant's actions fulfill the elements of criminal liability, both in the form of intent and negligence in the case a quo.

4. Absence of Excuses

In the case a quo, on the basis of the facts revealed at trial, the judge did not find any excuse that could remove the criminal liability of the defendant Jansen Sinaga. Thus, the charges filed by the Public Prosecutor have fulfilled the elements of the offense charged, and there are no justifying reasons that could absolve the defendant from criminal liability for his involvement in distributing illegal cigarettes.

The judge's decision in the criminal case of illegal cigarette distribution involving the defendant Jansen Sinaga, especially in relation to his acts of participation, was in accordance with the applicable laws and regulations. Criminal liability can be defined as the burden placed on the defendant by the judge in the form of imprisonment and administrative punishment. The burden is imposed on the basis that the defendant's actions have fulfilled the elements or conditions necessary to be held legally liable. In addition, based on the facts revealed in the

trial, there were no reasons that could eliminate the criminal liability of the defendant and his colleagues for the criminal acts they had committed.¹¹

Appropriateness of Judges' Legal Considerations in Decisions on Illegal Cigarette Distribution Cases in Pematangsiantar: Case No. 213/Pid.B/2023/PN Pms

In imposing criminal decisions, judges must rely on the values of God Almighty and Fair and Civilized Humanity, as stated in the state ideology of Pancasila. This is reflected in the imperative of each verdict which reads: "For the sake of justice based on the Almighty God." Therefore, in imposing punishment, judges are responsible for ensuring the achievement of truth, justice and legal certainty for the legal subjects concerned.

As justice enforcers, judges play an important role in realizing a sense of justice in society. Judges are part of the subsystem of judicial institutions, officials who exercise judicial power. One of the primary duties of judges is to decide cases, where through their decisions, criminal sanctions against perpetrators of criminal acts can be applied fairly and lawfully.

In making a decision, judges are obliged to pay attention to and consider relevant legal aspects in a case. Despite the principle stating that judges have freedom in making decisions, this freedom must remain within the legal framework and in accordance with applicable laws and regulations.¹²

Based on the flow of the case a quo, the investigation process carried out by the Enforcement and Investigation Section Team (P2 Section) at the Pematangsiantar Customs and Excise Supervision and Service Office Type C Customs has included the articles alleged to the defendant. The provisions are set out in the Indictment of the Public Prosecutor of the Pematangsiantar District Prosecutor's Office, which is then stipulated and applied in the decision of the Pematangsiantar District Court No. 213/Pid.B/2023/PN Pms.

The decision is in accordance with the applicable criminal provisions in the Criminal Code (KUHP), namely Article 54 in conjunction with Article 29 Paragraph (1) of Law of the Republic of Indonesia Number 11 of 1995 concerning Excise, as amended by Law of the Republic of Indonesia Number 39 of 2007, as well as Article 55 Paragraph (1) to 1 of the Criminal Code.

In passing sentence, the judge not only decided on imprisonment for the defendant, but also applied administrative sanctions. This is in line with the provisions in the excise sector, where administrative sanctions are imposed as a

¹¹ Anthoni Y. Oratmangun, "Kajian Hukum Terhadap Kemampuan Bertanggung Jawab Menurut Pasal 44 KUHP," *Jurnal Universitas Sam Ratulangi* 4, no. 5 (2016): 179, <https://doi.org/https://doi.org/10.35796/les.v4i5.11966>.

¹² Firmansyah Hilipito, "Pertanggungjawaban Pidana Terhadap Pelaku Turut Serta (Medepleger) Melakukan Tindak Pidana Menurut KUHP," *RECIDIVE: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 4, no. 5 (2016): 132, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/12649>.

form of compensation for the state for the defendant's actions in distributing illegal cigarettes without an excise tax band.

Law No. 11/1995 on Excise, as amended by Law No. 39/2007 on the amendment of Law No. 11/1995 on Excise, maintains its legal norms by applying civil law sanctions. The sanction can be in the form of filing an objection, appeal, or lawsuit against the determination made by customs and excise officials in determining the amount of excise. In addition, this law also regulates administrative sanctions in the form of fines imposed for errors committed by the defendant.

Based on Article 54 of Law No. 11 of 1995 on Excise, as amended by Law No. 39 of 2007 on the amendment of Law No. 11 of 1995 on Excise, there are provisions regarding criminal penalties and administrative fines. The criminal penalties stipulated in the article are imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years, as well as 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.

In the verdict of case Number 213/Pid.B/2023/PN Pms, the amount of the fine imposed must consider the value of the excise tax that should have been paid on the tobacco excisable goods found and confiscated from the defendant. Based on the Regulation of the Minister of Finance of the Republic of Indonesia Number 192/PMK.010/2021 concerning Tobacco Products Excise Tariffs, the lowest tariff for Machine Clove Cigarettes (SKM) is set at Rp600 (six hundred rupiah) per stick.

In this case, the excisable goods of tobacco products found were all not attached with excise tapes, and were the remaining unsold goods. Based on the legal facts, the defendant was proven to have participated in delivering the illegal cigarettes. Therefore, the total value of tobacco excisable goods to be charged to the defendant is Rp69,169,680 (sixty-nine million one hundred sixty-nine thousand six hundred eighty rupiahs).

Considering the aggravating and mitigating circumstances, the judge in deciding the case must intend to impose a punishment that aims to bring the defendant to realize his actions and provide an opportunity to correct the mistake through the imposition of criminal sanctions, commonly known as philosophical considerations. In the case a quo, the judge considered both juridical and sociological considerations towards the defendant. Therefore, the judge decided and stated that the defendant, Jansen Sinaga, had been proven legally and convincingly guilty, and imposed a prison sentence of 1 (one) year and 8 (eight) months, as well as a fine of Rp138,339,360 (one hundred thirty-eight million three hundred thirty-nine thousand three hundred sixty rupiah). On the condition that if the fine is not paid, it shall be replaced by imprisonment for 2 (two) months. This decision is in accordance with the nature of the defendant's actions, the circumstances when the actions were committed, and taking into account the punishment system that applies in Indonesia.

CONCLUSION

The implementation of sanctions in the case of the illegal cigarette distribution involving the defendant Jansen Sinaga reveals that the act was committed jointly with the aim of distributing illegal cigarettes, that is, cigarettes with no excise tape attached. As a result of these actions, the state suffered losses. In case No. 213/Pid.B/2023/PN Pms, the defendant was proven to have acted as a co-perpetrator (*medepleger*), having acted together with other defendants in different files to distribute illegal cigarettes. The defendant can be held criminally responsible for his actions, as the criminal offense committed fulfills the elements of the applicable offense as revealed in the facts of the trial. In addition, the act was committed consciously and intentionally, hence the defendant should be held criminally liable in accordance with the applicable legal provisions.

In reaching a decision, judges are obliged to investigate, observe, and comprehend legal values and a sense of justice within society, as mandated by the principles of judicial power. The implementation of positive law by judges must pay attention to the values and sense of justice that develop in the society, resulting in decisions that reflect substantive justice. The judge's consideration in imposing a sentence on the perpetrator of participation (*medepleger*) in the crime of illegal cigarette distribution is grounded in two main aspects, including:

1. Juridical considerations, which focus on proving the elements of the charge. This aspect includes how the charge may justify the occurrence of legal events based on valid evidence in accordance with the applicable statutory provisions.
2. Sociological considerations, which take into account the social background of the defendant and the impact of the imposed punishment on society. In this case, the judge considers that the punishment given must benefit the surrounding environment rather than merely being repressive.

Thus, the legal basis used by the judge in handing down Decision No. 213/Pid.B/2023/PN Pms is in accordance with applicable legal provisions, and is based on the principles of divinity and justice which serve as the cornerstone of the criminal justice system in Indonesia.

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