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5

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ABSTRACT

2

The results of this study indicate that criminal liability for the crime of selling excisable goods that are not attached to excise stamps is carried out by Saman actors based on the decision of the Batam District Court number with Case Number: 956/Pid.Sus/2017 /PN.Btm dated February 7, 2018 which is wrong One of the findings handed down which reads as follows: To declare that the defendant SAMAN has been legally and convincingly proven guilty of committing a crime as regulated and punishable by a criminal offense in the Single Indictment in violation of Article 54 of Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1992 regarding Excise and Imposing a criminal sentence against the defendant SAMAN in the form of a fine of Rp. 332,320,000,- (three hundred and thirty-two million three hundred and twenty thousand rupiah); provided that if the fine is not paid, it must be replaced with a prison sentence of 1 (one) year, this proves that the deterrent effect for perpetrators of criminal acts in the economic field is not fully imprisoned, and the interest of returning state losses due to violations that have been committed is more effective and efficient in order to restore leakage of state revenue resulting from the crime of selling cigarettes without being attached to excise stamps.

ABSTRAK

Hasil penelitian ini menunjukkan bahwa pertanggungjawaban pidana atas tindak pidana penjualan barang kena cukai yang tidak dilampiri pita cukai dilakukan oleh pelaku Saman berdasarkan putusan PN Batam dengan Nomor Perkara: 956/Pid.Sus/2017 /PN.Btm tanggal 7 Februari 2018 yang salah Salah satu putusan yang diatuhkan berbunyi sebagai berikut: Menyatakan bahwa terdakwa SAMAN telah terbukti secara sah dan meyakinkan bersalah melakukan tindak pidana sebagaimana diatur dan diancam dengan pidana dalam Dakwaan Tunggal yang melanggar Pasal 54 Undang-Undang Nomor 39 Tahun 2007 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 1995 tentang Cukai dan Penjatuhan pidana terhadap terdakwa SAMAN berupa denda sebesar Rp. 332.320.000,- (tiga ratus tiga puluh dua juta tiga ratus dua puluh ribu rupiah); dengan ketentuan apabila denda tersebut tidak dibayarkan maka harus diganti dengan pidana penjara 1 (satu) tahun, hal ini membuktikan bahwa efek jera bagi pelaku tindak pidana di bidang ekonomi tidak sepenuhnya dipidana, dan kepentingan pengembalian negara kerugian akibat pelanggaran yang dilakukan lebih efektif dan efisien dalam rangka mengembalikan kebocoran penerimaan negara akibat tindak pidana penjualan rokok tanpa ditempelkan pita cukai.

2

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I. INTRODUCTION

Fines are a type of crime that has been known for a long time. Of course, the arrangements and ways of applying these penalties vary according to the conditions and developments of society. Likewise in the Western world, fines are the oldest crime. For example, until now in Scotland, the Prosecutor's institution is referred to as the "Fiscal Prosecutor" which historically, the prosecutor's job in Scotland was to collect fines from convicts as a source of state income. According to Muladi and Barda Nawawi Arief, "In the current Criminal Code system, a fine is seen as the lightest type of principal crime. First, this can be seen from the sequential position of the main criminal offenses in Article 10 of the Criminal Code. And second, in general, a fine of imprisonment or confinement. Very few crimes are only punishable by a fine. Third, the number of threats of fines in the Criminal Code is generally relatively light. To see the position and pattern of fines in Indonesian positive criminal law, we first start from the provisions of Article 10 of the Criminal Code, which states that

The basic crimes consist of: Death Penalty; Prison Crimes; Criminal Cage: V; Criminal Fines; Criminal cover (which was added based on Law No. 20 of 1946). Additional Criminal , consisting of: Revocation of certain rights; confiscation of certain goods; Announcement of Judge's Decision.

Based on the order of the main criminal offenses, it appears that the fine is the lightest principal crime. Although there is no provision that expressly states so. However, nowadays many experts are questioning the benefits and moral basis of the imprisonment. The increasing development of crime encourages people to question the effectiveness of the prison sentence for achieving prison goals, in addition to the emergence of negative consequences from the imposition of the prison sentence. The development of criminal acts in the economic field as well as the increasing acceptance of corporations as perpetrators of criminal acts encourages efforts to streamline the application of this fine. Indonesia as a developing country, one of whose income is through Customs and Excise levies, the responsibility of which will be borne by the apparatus of the Directorate General of Customs and Excise, such as cigarettes. However, there are still many cigarette factories or entrepreneurs who commit violations in the form of distributing cigarettes without excise in Indonesia.

Excise is a state levy that functions to block the distribution of goods that must pay off excise, with the consequence that excise makes a significant contribution to state revenue . One of the characteristics of excisable goods is tobacco products, namely cigarettes as described in Article 4 paragraph 1 of the Excise Law, which is subject to excise duty because cigarettes are goods that are widely circulated and need to be monitored because their use can cause adverse effects on the population and ecology. in Indonesia. Cigarettes that are widely circulated in Indonesian society must be legal cigarettes with the main characteristic that there is an excise band wrapped in the cigarette pack. However, over time, the circulation of legal cigarettes began to be juxtaposed with cigarettes that were widely circulated without being wrapped in excise stamps on the packaging, which were later called illegal cigarettes. Cigarette entrepreneurs without excise stamps can be called violating the Excise Law, with the aim of avoiding tax obligations to the state. Control of excise-free cigarettes requires the government to work together with all parties, such as supervisory agencies, enforcement agencies, as well as cigarette producers and the public. Good cooperation from all agencies such as the Directorate General of Customs and Excise, the Civil Service Police Unit, and the Industry Service are believed to have a positive impact in terms of supervision, control, and law enforcement. However, the fact is that there are still very many widely circulated cigarettes without excise stamps in the territory of Indonesia which can be said to be non-compliant with the applicable Excise Law. Law enforcement in eradicating the circulation of illegal cigarettes without excise is in the form of preventive law enforcement which can be in the form of conducting legal counseling, carrying out observations and conducting patrols, while repressive law enforcement is in the form of making arrests, confiscation or deterrence and market operations.

II. RESEARCH METHODS

Based on the formulation of the problem above, the specifications of this research are the authors apply sociological normative legal research, namely normative legal research methods . The data collection technique in this research is for primary data conducted by documentary studies and interviews and for secondary data carried out by studies of primary, secondary and tertiary legal materials. The analytical method used in this study is a qualitative analysis method, namely all data obtained or collected are edited, processed and arranged systematically and then analyzed qualitatively in order to obtain clarity of the problems to be discussed.

III. RESULTS AND DISCUSSION

One of the important factors that attracts why excise is often discussed by various circles of society is its role in development in the form of its contribution to state revenues which is reflected in the State Revenue and Expenditure Budget which always increases from year to year, in addition to its main function, namely the regulator which in basically limiting, reducing or even eliminating the circulation of excisable goods that have a negative impact on health and public order. Excise is one form of indirect tax, but it has different characteristics, which are special, which are not shared by other types of taxes, and are not even similar to other types of taxes which are both classified as indirect taxes. Considerations regarding the establishment of Law Number 11 of 1995 concerning Excise are.

- a. Excise laws and regulations that have been used as the basis for collecting excise taxes are no longer in accordance with developments in the law and the national economy;
- b. The legal basis for collecting excise duty so far consists of several ordinances that provide different treatment in the imposition of excise, so that it does not reflect the principle of justice and has not been able to optimally utilize the potential of existing excise objects and pay less attention to aspects of community protection.

With reference to the national legal politics, the unification of the material regulated in Law Number 11 of 1995 concerning Excise is an effort to simplify the law in the excise sector which is expected to be implemented in a practical, effective and efficient manner. New things regulated in Law Number 11 of 1995 concerning Excise that are not contained in the five excise ordinances that have been in force previously include provisions on administrative sanctions, appeal agencies, audits in the excise sector, and investigations. The new things in their implementation will better ensure the protection of the interests of the community and create a business climate that can better support the pace of national development. Law Number 11 of 1995 concerning Excise, in addition to aiming at fostering and regulating, also pays attention to the principles:

- a. Justice in balance, ie excise duty is only borne by people who should be obliged to do so and all parties involved are treated in the same way in the same terms and conditions;
- b. Providing incentives that are beneficial for national economic growth, namely in the form of excise exemption facilities, for example excise exemptions on excisable goods used for research and scientific development purposes.
- c. Restrictions in the context of protecting the public in the fields of health, order and security;
- d. Neutral in the collection of excise that does not cause distortion to the national economy;
- e. Administrative feasibility with the intention that the implementation of excise administration can be carried out in an orderly, controlled, simple, and easily understood manner by members of the public;
- f. The interest of state revenues, in the sense that the flexibility of provisions in the law can guarantee an increase in state revenues, so as to anticipate the need for increased financing for national development;

- g. Supervision and application of sanctions to ensure compliance with the provisions stipulated in the law.

Based on Law no. 11 of 1995 concerning Excise, the imposition of excise duty on three products, namely tobacco products, beverages containing ethyl alcohol (MMEA) and ethyl alcohol (EA) was the result of an appointment with various considerations based on the rules of the Dutch era. However, in the future, to determine a new object of excise duty, the determination will be based on four characteristics, namely goods whose consumption must be limited, goods whose distribution must be controlled, goods whose consumption has an impact on environmental damage and as a means to fulfill tastes, togetherness and justice in society. Goods that meet these criteria may be subject to excise duty. The background of the personalization of excise stamps is the widespread circulation of illegal cigarettes using various modes which are not only detrimental to the state, but also to factories/cigarette companies that operate legally. With the implementation of personalization of excise stamps, at least it can create a conducive business competition among existing cigarette factories/companies and also reduce the number of illegal cigarettes. Excise levies are intended for certain purposes desired by government authorities so that a product is not freely consumed by the public. The reason for the imposition of excise is of course discriminatory in accordance with the basic objectives desired by the government. With regard to the purpose of excise levy, identify several basic objectives of excise collection by state authorities, including:

- a. To increase revenue (to raise revenue). Similar to other tax levies, the excise instrument also has a budgetary function, namely as an important source of state revenue.
- b. To compensate for the costs of externalities (to reflect external costs). The costs of externalities are losses or gains suffered or enjoyed by economic actors due to the actions of other economic actors. The cost of externalities will cause the market to be unable to achieve efficiency (disconomies externality). In the context of excise levies, the intended externality costs are the burdens that must be borne by the government as a result of consumption of products subject to excise. A simple illustration is as follows: the consumption of cigarettes will affect the health of individuals and society.
- c. To control consumption (to discourage consumption). Excise is an effective instrument that can prevent consumption of products that have a negative impact such as cigarettes and alcoholic beverages.
- d. To charge road users for government-provided services. Basically the provision of public infrastructure to the community is the duty and responsibility of the government. Especially if the financing of the infrastructure built is not of interest to the private sector.
- e. For other purposes, such as: funding scientific research, supporting job creation, and others.

IV. CONCLUSION

After taking data and discussing it, it is concluded as follows: That refers to the decision of the Batam District Court with Case Number: 956/Pid.Sus/2017/PN.Btm dated February 7, 2018 the decision handed down by the Judge, namely Penal Fines, considering that the application of criminal penalties is imposed on cigarette entrepreneurs or factories that have been registered but in fact still committing a violation will be subject to a fine, of course one of the considerations of the Panel of Judges examining the amount of the fine and the length of confinement can have a deterrent effect on the Defendant based on the values of justice and legal values.

Factors Barriers and Constraints in the Implementation of Fines Due to Violation of Excise Crimes, namely, Legal Structure Factors, Law Enforcement Officials Factors, Community Factors and Legal Culture Factors considering the effectiveness of supervision and law enforcement against the circulation of cigarettes without excise stamps is still happening due to lack of public awareness in addition to The state losses are also caused by not having a small nominal amount, not to mention the economic opinion of a small part of the community is relatively low, of course

they choose to consume cigarettes that are much cheaper than the prices that have been determined in the market.

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