



## Criminal Law Enforcement Toward Illegal Production and Distribution of Cigarette

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<http://dx.doi.org/10.18415/ijmmu.v10i2.4444>

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### **Abstract**

Cigarettes are an inseparable part of people's lives, almost all men and some women are smokers. The discussion about smoking is a very broad discussion, depending on the point of view from which smoking is seen. The cigarette industry in Indonesia experienced ups and downs, in 1998 which was the beginning of the crisis, the cigarette industry reached its peak of production. Behind the increase in cigarette production, there are complex issues related to permits for individuals and companies to carry out cigarette production activities in Indonesia. Enforcement of criminal law as a form of complexity of problems related to cigarette production and trade permits is the main object of this research. This study aims to examine criminal law enforcement on illegal cigarette production and trade activities. The present research uses discourse analysis as method of the study in elaborating issues regarding implementation of criminal law toward production and distribution of illegal cigarette. This study concludes that law enforcement related to licensing of illegal cigarette activities and trade can be pursued using two approaches, namely the persuasive and direct action. Persuasive approach by providing education related to licensing violations for cigarette production and trading activities. The intended education can be realized in the form of socialization through digital and non-digital media. Direct action is carried out by conducting prosecutions in accordance with applicable laws for businesspeople in the cigarette industry who do not comply with the rules.

**Keywords:** *Criminal Law; Cigarette; Law Enforcement*

### **Introduction**

Cigarettes are an inseparable part of people's lives, almost all men and some women are smokers. The discussion about smoking is a very broad discussion, depending on the point of view from which smoking is seen. The cigarette industry in Indonesia experienced ups and downs, in 1998 which was the beginning of the crisis, the cigarette industry reached its peak of production. During the crisis, the cigarette industry continued to increase. This condition is due to the efficiency made by large and medium cigarette companies that produce more than one type of cigarette. The company focuses more on capital-intensive machine-rolled kretek cigarettes compared to hand-rolled kretek cigarettes which are labor-intensive and require labor issues. The existence of the cigarette industry, especially small and medium cigarette factories in Indonesia, creates a dilemma. On the one hand, the small and medium cigarette

industry has contributed a sizable portion to state revenue, one of which is through cigarette excise revenue, and the existence of a cigarette factory has also created new jobs for the community. However, it is undeniable that small and medium cigarette factories have not fully complied with the procedure for applying for an excise permit to the relevant agency. There are still doubts about dealing with excise permits and an a priori attitude towards legal and bureaucratic procedures which are considered complicated. People are often not aware that the current government has prepared standard procedures that make it easier for people to obtain excise permits, including individual businesses (Permana, 2007).

There are two kinds of government duties, namely, to regulate and provide services to the public and to control government activities in certain matters. The task of regulating includes making regulations that must be obeyed by the community while the task of providing services to the public includes the government's duty to meet the needs of financial and personal facilities in improving services in the fields of social welfare, economy, health and so on. Permits can be intended for direction by selecting certain people and activities carried out by community members (Pudyatmoko, 2009). In general, the function and purpose of a permit is that the valid permit can run according to its designation, control of government activities related to provisions containing guidelines or regulations, this regulatory function can also be referred to as a function owned by the government that must be carried out both by interested parties and by authorized officials. It can be said that a permit has function as a controlling instrument and an instrument for creating a just and prosperous society, as mandated in the fourth paragraph of the preamble to the 1945 Constitution, then the structuring and regulation of this permit must be carried out as well as possible. By granting permission, the ruler or government must allow the person requesting it to perform certain prohibited actions in the interest of public or shared interests that require supervision.

Laws as well as legislation are made to be implemented thus if laws and regulations can no longer be implemented or have never been implemented then the law can no longer be said to be law (Utomo, 2020). The law can be said to be consistent in the sense that the law is implemented, the law in the form of legal principles contains actions that must be carried out, in the form of law enforcement, law enforcement will always involve humans in it and thus will involve human behavior. itself, because law enforcers themselves come from humans, the law will not be upheld by itself. It means that the law will not be able to realize the promises and wishes contained in the legal regulations themselves (Purnomo, 2002). The element of error is the main element in criminal liability. In the sense that a criminal act does not include matters of criminal liability, a criminal act only refers to whether the act is against the law or prohibited by law, regarding whether a person who commits a crime is then sentenced depends on whether the person who committed the crime has an element of guilt or not. Criminal liability in the common law system is always associated with *mens rea* (punishment).

Mistakes as part of the *mens rea* are also interpreted as mistakes for violating the rules or violating the laws and regulations. Everyone who violates the law then that person must be held responsible for what has been done. Error as an element of accountability in this view states a guarantee for someone and makes control of one's freedom over others. The existence of this guarantee makes a person protected from the actions of other people who violate the law, and as a control because everyone who violates criminal law is burdened with criminal responsibility.

## **Methods**

The present study uses a normative legal research method that is conducted in finding solutions for legal matters (Isnaini & Utomo, 2019). The research approach used is the statute approach and conceptual approaches.

## Discussion

In legislation no. 81 of 1999 on cigarette safety for health cigarettes are defined as the result of processed wrapped tobacco including cigars or other forms produced from the plant *Nicotiana tabacum*, *Nicotiana rustica* and other species or synthetics containing nicotine and tar with or without additives. Based on the Big Indonesian Online Dictionary cigarettes are defined as tobacco rolls (roughly as big as pinky) wrapped (nipah leaves, paper). Cigarettes are cylinders made of paper with a length of between 70 to 120 mm, containing chopped tobacco leaves. How to light a cigarette by burning at one end after it is inhaled through the mouth with the other end (Heryani, 2014).

Cigarettes based on the packaging material are divided into clobots, kawung, cigarettes, and cigars. Based on the raw materials or contents, there are white cigarettes, clove cigarettes, and klembak cigarettes. Cigarettes based on the manufacturing process include Hand-Rolled Clove Cigarettes and Machine-Rolled Clove Cigarettes. And cigarettes based on the use of filters are presented in the form of Filter Cigarettes and Non-Filter Cigarettes (Aji, A.; Maulinda, L.; Amin, 2015).

A cigarette contains chemical substances that are very harmful to the human body, there are 4000 chemicals in cigarette smoke and the content in a cigarette: 1) Nicotine, this substance is addictive that makes a person addicted to always smoking. This substance is very dangerous for the health of the human or animal body, nicotine causes coronary heart disease and cancer. 1) Nicotine can disrupt a normal heart rhythm resulting in a sudden heart attack; 2) Tar, Tar are present in every burned tobacco product. Tar levels will increase even more when cigarettes are burned. The last puff on a cigarette can contain twice as much tar as the first puff; 3) Insecticides, highly toxic substances and used as insect killers; 4) *Polycyclic*, this substance attacks the lungs and causes fatal damage to active smokers; 5) *Carcinogens*, smoke produced from burning tobacco and cigarette paper contains a variety of chemical substances that are very dangerous and can trigger cancer for anyone who inhales it; 6) Carbon Monoxide, CO gas is very dangerous if inhaled into a person's body, because CO gas will bind to hemoglobin in the blood.

The researchers managed to reveal the presence of about 30 chemical substances capable of triggering cancer in each cigarette, chemical substances that are considered harmful are Beta-Naphthylamine and PAH (*Polycyclic Aromatic Hydrocarbon*). There are still many components that are not widely known to the public, these components include *hydrogen cyanide* (a poison used as a fumigant to kill ants), *ammonia* (a toxic compound), *oxide nitrogen* (anesthetic agent in surgery), *pharmaceutate* (a liquid used to preserve corpses), *arsenic* (a material found in rat poison), *acetone* (a nail peeling agent), *pyridine* (pest-killing agent), *methyl chloride* (the steam is the same as anesthetic), *benzopirene hydrocarbon* compounds, *phenols*, *polonium*, *cadmium*, *acrolein*, *formic acid*, and others (Husaini, 2007).

Based on the explanation above, it is related to the content of harmful chemicals contained in cigarettes so that the presence of regulations governing the sale and distribution of cigarettes is very necessary. In the dictionary of legal terms, *vergunning* is described as a government permit that is required for acts that generally require special supervision, but which are generally not considered completely undesirable things. Licensing is a form of public service that is very prominent in governance. In the dictionary of legal terms, Licensing is the granting of legality to a person or business actor certain activities, both in the form of permits and business registration marks. A permit is one of the most widely used instruments in administrative law to drive the behavior of citizens. The definition of licensing is a form of implementing the function of regulations and is a court owned by the Government for activities carried out by the community. A permit is a decision that allows for acts to be committed that are not prohibited in principle by regulators.

Some experts, interpret licensing with different points of view from one another. The definition of permission according to experts is as follows: a) E. Utrecht interprets *vergunning* as follows: If the rule-maker generally does not prohibit an act, but still allows it to be held on a prescribed basis for each concrete matter, the administrative decree of the state that allows the act to be a *permit (vergunning)*; b)

N. M. Spelt and J. B. J. M. ten Berge, A permit is an approval of a ruler under a law or government regulation to in certain circumstances deviate from the provisions of a statutory prohibition (in a broad sense), while a permit (in a narrow sense) is a binding on a permit regulation that is generally based on the desire of the lawmaker to achieve a specific goal or obstruct adverse circumstances; c) Bagir Manan defines permission in a broad sense, which means an agreement of the ruler under the laws and regulations to allow the performance of certain acts or deeds that are generally prohibited; d) Permission aims and means removing obstructions, prohibited things being allowed, or *Als opheffing van een algemene verbodsregel in het concrete geval*, (as a waiver of the provisions of a general prohibition in concrete events) (Hatta Isnaini Wahyu Utomo, 2019).

In terms of licensing, the government has a very important role in all forms of business activities, both permitted and not allowed, carried out by any person or party concerned (Isnaini & Wanda, 2017). Every citizen who will carry out a business activity must have a permit from both the central and local governments. Permits functioning as arrangements are the spearhead of legal instruments in the administration of government. Closing norms in the set of legal norms. One of the manifestations of this provision is Permission. Based on the types of provisions, permits are included as constitutive provisions, i.e., a provision giving rise to a new right not previously possessed by a person whose name is listed in that provision, or *beschikkingen welke iets toestaan wat tevoren niet geoorloofd was* (a provision that allows something previously not allowed). Provisions on licensing have the function of regulating and ordering. As a function of regulating, it is intended that permits or permits for places of business, buildings and other forms of community activities do not conflict with each other, so as to create order in terms of community life.

The term crime comes from a term known in Dutch criminal law, namely *Strafbaar feit*. *Strafbaar feit* consists of three words, namely *straf*, *baar* and *feit*. *Straf* translated by criminal and law. *Baar* translated can or may. *Feit* is translated acts, events, violations, and deeds (Chazawi, 2007). Legislators have used the word "*strafbaarfeit*" to replace the term crime in the Criminal Code (KUHP) without providing an explanation of what is meant by the word *strafbaarfeit*, so that various opinions arise in the doctrine about what is meant. with the *strafbaarfeit*, as suggested by Hamel and Pompe.

Hamel said that: "*Strafbaarfeit* is the behavior of people (*menselijke gedraging*) which is formulated in wet, which is against the law, which deserves to be punished (*strafwaardig*) and is done by mistake". While Pompe's opinion regarding *Strafbaarfeit* is as follows: "*Strafbaarfeit* can be formulated as a violation of norms that is intentionally or unintentionally carried out by the perpetrator" (Saleh, 1983). Moeljatno stated that the term punishment which comes from the word "*straf*" and the term "punished" which comes from the word "*wordt gestraft*", is a conventional term. Moeljatno disagreed with these terms and used unconventional terms, namely "criminal" to replace the word "*wordt gestraft*". If "*straf*" is defined as "punishment", then *strafrecht* should be defined as punishments. Furthermore, Moeljatno said that "punished" means "served with punishment" both criminal law and civil law (Muladi; Barda Nawawi Arief, 2005). According to Moeljatno, a criminal act is an act that is prohibited by a rule of law, the prohibition is accompanied by threats (sanctions) in the form of certain crimes for anyone who violates the prohibition (Gunadi, 2014).

Law enforcement is the process of making efforts to uphold or function legal norms as a guideline for behavior in traffic or legal relations in the life of society and the state (Arief, 2007). Law enforcement is an attempt to realize the ideas of justice, legal certainty, and social benefits into reality. So, law enforcement is essentially a process of embodiment of ideas. Law enforcement is the process of carrying out efforts to uphold or function legal norms in a real way as a guide for actors in traffic or legal relations in the life of society and the state. Law enforcement is an attempt to realize legal ideas and concepts that the people expect to become reality. Law enforcement is a process that involves many things (Shanty, 2008). Law enforcement is the process of carrying out efforts to uphold or function legal norms in a real way as a guide for actors in traffic or legal relations in the life of society and the state.

Law enforcement is an effort so that legal norms can function and can be used as a guideline for behavior for the community. Law enforcement also has a reciprocal relationship with society. Soerjono Soekanto said that the main and purpose of law enforcement is with activities to adjust value relationships contained in strong and manifest principles accompanied by actions as a series of final process value presentations, to create and maintain social peace. The concept of total law enforcement requires that all values behind legal norms be upheld without exception (Rahardjo, 2000). The concept that is full requires the need for restrictions on the total concept with a formal law to protect individual interests. The concept of actual law enforcement emerged after it was believed that there is discretion in law enforcement due to existing limitations and lack of community participation.

## **Conclusion**

The increasing number of smokers in Indonesia opens opportunities for businesspeople in the cigarette production and trade sectors. Regulations regarding the flow of cigarette production and trade in Indonesia have been carefully regulated by the Indonesian government in various policies. The rise of business actors in the production and trade of illegal cigarettes shows that these actors carry out their business activities by not complying with the rules or policies imposed by the Indonesian government. Enforcement of criminal law related to rules or policies regarding cigarette production and trade in Indonesia needs to be improved to minimize various problems that arise due to the lack of enforcement of criminal law on these rules.

Approaches to criminal law enforcement on the production and trade of cigarettes in Indonesia can be carried out in various ways, namely through persuasive and direct acts. The intended persuasive approach is through digital and non-digital socialization processes. This approach is in line with Soerjono Soekanto's opinion about the embodiment of legal concept ideas so that people understand the rules imposed by the government. While the direct acts aim to realize ideas on legal concepts totally without exception. The direct acts have functions as the final process to realize, maintain and maintain the peaceful life of society and the state.

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