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Optimization of Supervision of Cigarettes in the Framework of Mitigation of Illegal Cigarette Circulation

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Abstrak

Pendapatan cukai meningkat setiap tahun, begitu juga dengan tarif cukai. Di sisi lain, penghancuran rokok sebagai hasil tindakan Direktorat Jenderal Bea dan Cukai (DJBC) dan keputusan pengadilan mengenai kejahatan cukai, diduga jumlah sebenarnya rokok yang dibutuhkan oleh masyarakat lebih besar daripada jumlah produksi rokok yang tercatat. Apakah ada permintaan untuk rokok ilegal, sehingga ada upaya untuk menyediakan rokok ilegal tersebut? Pertanyaan ini membentuk latar belakang penelitian. Penelitian bertujuan untuk memberikan masukan dalam mengoptimalkan pengawasan untuk mengurangi peredaran rokok ilegal. Metode penelitian adalah studi literatur menggunakan analisis deskriptif kualitatif dengan mengolah data/informasi dalam keputusan kasus pidana cukai khusus yang telah diputuskan oleh Pengadilan. Berdasarkan hasil penelitian, antara lain, tindakan pidana terkait rokok ilegal terjadi di berbagai wilayah, dengan mode yang berbeda untuk wilayah yang berbeda, peran pelaku kejahatan, hal-hal yang dianggap sebagai rokok ilegal. Disarankan kepada DJBC untuk mengambil tindakan terhadap peredaran rokok ilegal secara menyeluruh, mengawasi mesin pembuat rokok, dan meningkatkan pengawasan terhadap penawaran dan penjualan rokok secara online. Selain itu, DJBC dan Badan Kebijakan Fiskal berkoordinasi dalam menyusun studi komprehensif mengenai harga jual eceran rokok tanpa mengurangi tujuan penetapan cukai sesuai dengan Undang-Undang Cukai, sehingga rokok resmi tersedia bagi masyarakat untuk dibeli.

Kata kunci: *Pengawasan, Cukai, Rokok Ilegal*

Abstract

Excise revenues increase every year, and so do excise rates. On the other hand, the destruction of cigarettes as a result of action taken by the Directorate General of Customs and Excise (DJBC) and court decisions regarding excise crimes, it is suspected that the actual number of cigarettes needed by the public is greater than the recorded amount of cigarette production. Is there a demand for illegal cigarettes, so there are efforts to provide these illegal cigarettes? This question forms the background of the research. The research aims to provide input in optimizing supervision in mitigating the circulation of illegal cigarettes. The research method is a literature study using qualitative descriptive analysis by processing data/information in special excise criminal case decisions that have been decided by the Court. Based on the research results, inter alia, criminal acts related to illegal cigarettes occur in various regions, with different modes for different regions, the role of the perpetrator of the crime, things that are considered illegal cigarettes. It is recommended to the DJBC to take action against the circulation of illegal cigarettes end-to-end, supervise cigarette-making machines, and increase supervision over the offer and sale of cigarettes online. Apart from that, the DJBC and the Fiscal Policy Agency are coordinating in preparing a comprehensive study of the retail selling price of cigarettes without reducing the objectives of the imposition of excise as per the Excise Law, so that official cigarettes are available for the public to purchase.
Keywords: *Supervision, Excise, Illegal Cigarettes*

INTRODUCTION

Indonesia is the 4th largest tobacco producing country in the world (after China, India, Brazil) with a product of 237.11 metric tons in 2021 (Statistica, 2023). The distribution of tobacco producing areas is spread across the Republic of Indonesia, including Temanggung, North Sumatra, Lombok, Madura and Jember (Bisnis.tempo.co, 2023).

Tobacco is a plant grown for its leaves, which are dried and fermented before being put in tobacco products (National Institute on Drug Abuse, 2023). A cigarette is a narrow cylinder containing a combustible material, typically tobacco, that is rolled into thin paper for smoking (Wikipedia, 2023). Tobacco products that meet certain criteria are subject to excise. Based on Article 2 paragraph (1) of Law of the Republic of Indonesia Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise (Excise Law), tobacco products are excisable goods because they have the following properties or characteristics:

a. Consumption needs to be controlled;
b. Its circulation needs to be monitored;
c. Its use can have a negative impact on society or the environment; or
d. Its use requires the imposition of state levies for the sake of justice and balance, subject

to excise based on this law.

Excise on tobacco products (Cukai Hasil Tembakau/CHT) is still a priority in state revenues. Ministry of Finance data shows that CHT contributes between 95% and 96% of total excise revenue in Indonesia (Candra Fajri Ananda, 2023). Excise rates are also experiencing an upward trend as shown in the following table:

Table 1. Average Increase in Cigarette Excise Rates in Indonesia (2015 – 2022)

No.	Year	Increase in Excise Rates (percent)	No.	Year	Increase in Excise Rates (percent)
1.	2015	8,72	5.	2019	No tariff increase
2.	2016	11,19	6.	2020	23
3.	2017	10,54	7.	2021	12,5
4.	2018	10,04	8.	2022	12

Source: Ministry of Finance quoted by Dataindonesia.id, 2023

If we look at the production of cigarettes per year, there is a downward trend in the number of cigarettes produced per year as shown in the following table:

Table 2. Cigarette Production in Indonesia (2015 – 2022)

No.	Year	Number of Cigarette Sticks Production (billion sticks)	No.	Year	Number of Cigarette Sticks Production (billion sticks)
1.	2015	348,1	5.	2019	356,5
2.	2016	341,7	6.	2020	322
3.	2017	336,3	7.	2021	334,8
4.	2018	331,9	8.	2022	323,9

Source: Ministry of Finance quoted by Dataindonesia.id, 2023

From the data above, the average CHT tariff increases every year, the amount of cigarette production has decreased although not sharply as a result of the increase in the CHT tariff (except for data on cigarette production which increased in 2019, but fell again the following year).

In terms of cigarette consumers, based on the results of the National Socio-Economic Survey by the Central Statistics Agency (BPS), the percentage of smoking among people aged the same age and over 15 years is recorded as shown in the following table:

Table 3. Percentage of Smoking in Indonesian Population Aged ≥ 15 Years

No.	Year	Percentage of Smoking in the Aged Population ≥ 15 Years (percent)	No.	Year	Percentage of Smoking in the Aged Population ≥ 15 Years (percent)
1.	2015	30,08	5.	2019	29,03
2.	2016	28,97	6.	2020	28,69
3.	2017	29,25	7.	2021	28,96
4.	2018	32,20	8.	2022	28,26

Source: National Socio-Economic Survey by the Central Statistics Agency (Badan Pusat Statistik), 2023

Smet (1994) said that the age of first smoking at generally ranged between the ages of 11-13 years and they generally smoked before the age of 18 years (Dian Komasari, Avin Fadilla Helmi, 2023).

From the table above, the average number of cigarette consumers is almost the same from year to year, even though there is a trend of increasing CHT rates every year. The pattern of cigarette consumption among people in Indonesia has not shown a significant decline in numbers.

On the other hand, the circulation of illegal cigarettes occurs in society. DJBC recorded 37,200 law enforcement on illegal cigarettes throughout 2022. As of November 18 2022, the value of illegal cigarettes eradicated reached Rp548,32 billion. This number has increased significantly compared to the 2019 period which amounted to Rp 271,41 billion (detikfinance, 2023).

Cases of illegal cigarettes have also been escalated to court trials. Based on data from the Supreme Court of the Republic of Indonesia as of April 27 2023, at least 172 cases have been decided at the district court, high court and Supreme Court of the Republic of Indonesia levels related to special excise crimes. Of the 172 cases, 66 cases were related to the special crime of excise on tobacco products (illegal cigarettes).

With the destruction of cigarettes as a result of action by the DJBC and court decisions regarding excise crimes, it shows the fact that there is a need for illegal cigarettes. What is the crime of cigarette excise? How is the distribution of illegal cigarettes monitored? Why is there distribution of illegal cigarettes? It is necessary to do research. This research aims to provide input in order to optimize supervision of excise tax on tobacco products in the form of cigarettes in order to mitigate the circulation of illegal cigarettes.

RESEARCH METHOD

The method used in this research is a literature study using qualitative descriptive analysis regarding excise on tobacco products in the form of cigarettes. Qualitative description is aimed at expressing and understanding a phenomenon, process, perspective or view of life (Wahdi Suardi, 2023). The data used in this research are decisions on criminal cases specifically for excise on tobacco products in the form of cigarettes listed on the portal of the Supreme Court of the Republic of Indonesia, namely https://mahkamahagung.go.id/. Based on the Republic of Indonesia Supreme Court portal as of April 27 2023, there were 176 decisions on criminal cases specifically for excise on tobacco products in the form of cigarettes. From 176 decisions, 60 decision data were obtained which could be analyzed. The time when the crime occurred was 2016 to 2022.

RESULT AND DISCUSSION

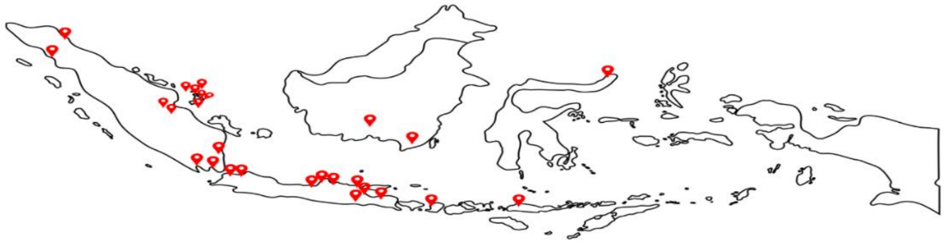
Result

This regulation of cigarette excise was a consequence of the mushrooming cigarette trade in the Dutch East Indies from 1880 to 1931. This was shown in research conducted by Van der Reijden, which was contained in the book "Djawa Kretek". Van der Reijden's research shows that in 1932 there were 165 cigarette factories in Kudus, Central Java. By 1931, sales of white cigarettes had reached 7.1 billion cigarettes per year. Meanwhile, kretek cigarette production reached 6.42 billion cigarettes per year (Agung Jatmiko, katadata.co, 2023). These regulations regarding excise then underwent changes, until most recently with the issuance of Law of the Republic of Indonesia Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise (UU Excise).

Analysis of the mode of excise crime on cigarettes

Enforcement activities against violations of excisable tobacco products (BKCHT) in the form of cigarettes are carried out in various regions in Indonesia. Places where criminal acts occur (locus) include the following areas: Riau Islands, Bangka, Aceh, Riau, Lampung, Banten, Jakarta, North Sulawesi, West Nusa Tenggara, East Nusa Tenggara, Central Kalimantan, South Kalimantan, Central Java, East Java and Madura, as in the image below:

Figure 1. Location (locus) where action occurred for the special criminal act of excise on BKCHT in the form of cigarettes



Source: Supreme Court of the Republic of Indonesia, data processed, 2023

Enforcement activities spread across various regions show that excise crimes on cigarettes occur both in Indonesia's border areas with Singapore and in the territory of the Republic of Indonesia.

Based on data from the Annual Report Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) ISC 2011-2015, some areas of Indonesian waters are prone to piracy, including the Malacca Strait, Singapore Strait and waters in the Riau Islands. These waters are a world trade route, and countries in the world are very interested in the security and safety conditions of shipping in these waters (G.P. Handoko, 2023).

The Singapore Strait is a strait located to the east of the Malacca Strait and west of the South China Sea. The island of Singapore is located to the north of this strait and the Riau Islands to the south (Pujo, Prasetiyo. 2015). In the period 2011 to 2015, piracy occurred in the waters of Nipah Island and the Singapore Strait as shown in the table below (G.P. Handoko, 2015):

Table 4. Piracy data in the waters of Nipah Island and the Singapore Strait Period 2011-2015

Number of piracy incidents	2011	2012	2013	2014	2015
	13	19	10	28	36

Source: Koarmabar, data processed.

The table above shows that piracy incidents tend to increase from year to year. One of the criminal acts of excise tax on cigarettes that is the subject of this research occurred in the waters of Nipah Island, which borders Singapore.

The mode of crime committed in one region may be different from another region. Criminal acts related to excise on cigarettes can be in the form of violations of Law of the Republic of Indonesia Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs (Customs Law) and can also be of the Excise Law.

There are several things that need to be reviewed further regarding the mode of crime related to excise on cigarettes, namely:

1. Illegal cigarettes can be identified as:
    1) Cigarettes attached with fake excise stamps;
    2) Cigarettes attached with used excise stamps;
    3) Cigarettes that are not attached with excise stamps (plain cigarettes);
    4) Cigarettes attached with misrepresented excise stamps;
    5) Cigarettes attached with excise stamps that are incorrectly designated (excise stamps for hand-rolled kretek cigarettes (SKT) are attached to machine-made kretek cigarettes (SKM).
2. The articles most often violated are Article 54 of the Excise Law and Article 56 of the Excise Law, namely violations for offering, selling, delivering, providing, hoarding, storing and possessing illegal cigarettes. This can be seen from the perpetrators of criminal acts, most of whom act as salesmen, traders and couriers. There are only a few cases where the perpetrators are those who make illegal cigarettes.
3. In terms of areas where criminal acts related to excise on cigarettes occurred:
    1) Criminal acts that occur in Indonesia's border areas with other countries, Indonesian waters (such as the Riau Islands region) which border with other countries, and areas that are included in Free Trade Areas and Free Ports such as Batam, the crime that often occurs is smuggling cigarettes from abroad, unloading or removing imported goods outside the customs area or other places without DJBC permission;
    2) The perpetrators of criminal acts related to illegal cigarettes that occurred in Sumatera, Kalimantan, Sulawesi and Nusa Tenggara were mostly traders, cigarette sellers and/or couriers/expedition parties, while the origin of illegal cigarettes was said to come from the islands of Java and Madura;
    3) The perpetrators of crimes related to illegal cigarettes on the islands of Java and Madura are mostly salespeople, parties who stockpile illegal cigarettes, parties who make cigarettes without a permit and/or provide fake excise stamps and/or used excise stamps.

Based on Prakarsa's (Widya Kartika) research on, illicit cigarettes in Indonesia are very different from illicit cigarettes in many countries. In general, illegal cigarettes come from smuggling. However, because the majority of smokers in Indonesia prefer kretek cigarettes, which are produced domestically and largely unique to Indonesia, illicit cigarettes due to smuggling is very limited. Illicit cigarettes in Indonesia likely come from small and microscale producers.

4. There are facts that cigarette entrepreneurs who already have NPPBKC:
    1) Apart from producing cigarettes in accordance with a permit, they also produce cigarettes without a permit (including producing according to orders);
    2) Selling used excise stamps.
5. The sales pattern carried out by the perpetrators is mostly offered to stalls or shops, but there are sales made online.

Discussion of supervision over excisable goods cigarettes

DJBC carries out services and supervision of excise, including excise on tobacco products (BKCHT) in the form of cigarettes. Action taken by DJBC has been pursued both in terms of supervision and implementation in the field. With regard to the mode of crime related to excise on cigarettes which has been described previously, there are matters that need to be paid attention to in the context of supervising excise, namely:

1. Action against perpetrators involved in the end-to-end chain of illegal cigarettes

If we look at the role of perpetrators of criminal acts as couriers, captains, crew members, salespeople, then it is necessary to map the pattern of action (and the perpetrators involved) carried out on suspected criminal acts related to excise on cigarettes end-to-end. The meaning here is that in conducting an in-depth investigation of the perpetrators involved, the examination of the parties involved does not only stop at the perpetrators who are in the middle and/or at the end of the chain of criminal acts (couriers, sales), but also needs to be explored at the origin (manufacturer, owner, party who ordered) of the illegal cigarettes. It is hoped that monitoring through intensive action in areas suspected of being places of origin for illegal cigarettes will be able to reduce/pressure the number of illegal cigarettes.

2. Supervision of online cigarette sales

The development of sales patterns through e-commerce and online business has changed the pattern of supervision not only in the form of physical supervision, but it is necessary to optimize supervision through intelligence activities for suspected violations of illegal cigarette sales online.

3. Supervision of cigarette making machines

The growing business of making cigarettes to order (sewn) and the illegal cigarettes that are widely sold are machine-made kretek cigarettes (SKM), so it is necessary to monitor cigarette-making machines. Some things you need to pay attention to regarding cigarette making machines are:

a. For cigarette companies that are about to close and/or shut down, it is necessary to monitor the cigarette making machines, whether they will be transferred to other parties or whether the machines will be destroyed;

b. For cigarette making machines that will be written off (old machines), it is necessary to know the party who bought/received/owned the cigarette making machine;

c. Regarding the import of cigarette making machines, records and supervision must be carried out, bearing in mind that the import of cigarette machines is not necessarily carried out by cigarette entrepreneurs or parties who have a permit to produce cigarettes.

Analysis of cigarette price factors

Based on the information in the decision of the criminal excise tax case on cigarettes, the illegal cigarettes offered to stalls and/or other parties were mostly machine-made kretek cigarettes (SKM). These cigarettes are sold at cheap prices. The following table is a sample of the prices of illegal cigarettes:

Table 6. Sample Types and Prices of Illegal Cigarettes Traded

No.	Place where the crime occurred (Locus)	Types of illegal cigarettes and number of cigarettes	Selling Price per Stick and Year of Sale (Illegal Cigarettes)	The lowest retail selling price (Harga Jual Terendah/HJE) limit per stick in accordance with the Minister of Finance Regulation	Excise rates per stick in accordance with Minister of Finance Regulations
1.	Lampung Region	SKM amounted to 1,296,000 sticks	Rp6.000,00 per pack @ 20 sticks, so the selling price per stick is Rp300,00. (Year 2020)	The lowest HJE for SKM Group I is Rp1.700,00, and the lowest HJE for SKM Group II is Rp1.020,00.	The SKM Group I excise rate is Rp740,00. SKM Group II (lowest HJE) excise rate Rp455,00.
2.	Banten Region	SKM amounted to 160,000 sticks	Rp30.000,00 per slop @ 10 packs @ 20 sticks, so the selling price per	The lowest HJE for SKM Group I is Rp1.120,00, and the lowest HJE for SKM Group II is Rp715,00.	The SKM Class I excise rate is Rp590,00. SKM Group II (lowest HJE)

No.	Place where the crime occurred (Locus)	Types of illegal cigarettes and number of cigarettes	Selling Price per Stick and Year of Sale (Illegal Cigarettes)	The lowest retail selling price (Harga Jual Terendah/HJE) limit per stick in accordance with the Minister of Finance Regulation	Excise rates per stick in accordance with Minister of Finance Regulations
			stick is Rp150,00. (Year 2019)		excise rate Rp370,00.

Source: Supreme Court of the Republic of Indonesia RI, data processed, Minister of Finance Regulation regarding excise rates on tobacco products, 2020.

When compared to the selling price of illegal cigarettes per stick of the SKM type of Rp300,00 and Rp150,00 as in the sample above, the price of cigarettes per stick sold at retail is much lower than the retail selling price per stick as regulated in the Minister of Finance Regulation.

The HJE trend, which is increasing from year to year, could be a trigger for demand for illegal cigarettes. As a comparison, the retail selling price per stick of illegal SKM cigarettes as in the case above is Rp150,00 per stick (in 2019) and Rp300,00 per stick (in 2020). Meanwhile, the lowest official HJE for SKM Group II cigarettes for 2019 was Rp715,00 per stick, in 2020 it was IDR 1,020.00 per stick.

HJE and excise rates for tobacco products (including SKM cigarettes) have increased from year to year. The following table shows the HJE and excise taxes on SKM cigarettes from year 2018 to 2023:

Table 7. Table of Retail Selling Price Limits Per Stick or Gram of SKM Type Tobacco Products (Domestic Tobacco Products and Imported Tobacco Products) Period 2018 – 2023

No.	Year	SKM Group I[1]		SKM Golongan II	
		Lowest HJE limit per stick or per gram	Excise rates per stick or per gram	Lowest HJE limit per stick or per gram	Excise rates per stick or per gram
1.	2018[2]	Rp1.120,00	Rp590,00	Rp715,00	Rp370,00
2.	2019[3]	Rp1.120,00	Rp590,00	Rp715,00	Rp370,00
3.	2020[4]	Rp1.700,00	Rp740,00	Rp1.020,00	Rp455,00
4.	2021[5]	Rp1.700,00	Rp865,00	Rp1.020,00	Rp525,00

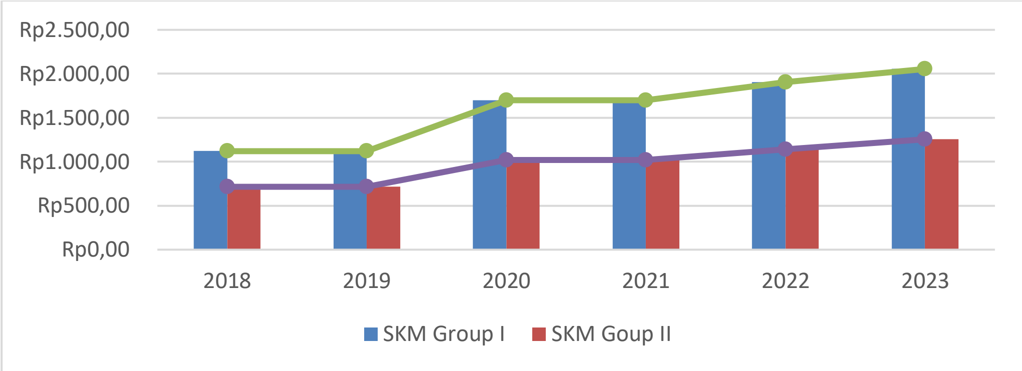
5.	2022[6]	Rp1.905,00	Rp985,00	Rp1.140,00	Rp600,00
6.	2023[7]	Rp2.055,00	Rp1.101,00	Rp1.255,00	Rp669,00

Source: Ministry of Finance, data processed.

Note:

1. The lowest HJE for imported SKM cigarettes is the same as the lowest HJE for Category I SKM cigarettes originating from within the country
2. Minister of Finance Regulation Number 146/PMK.010/2017 concerning Excise Tariffs for Tobacco Products. Excise rates for tobacco products based on Minister of Finance Regulation Number 146/PMK.010/2017 have come into effect since January 1, 2018.
3. Minister of Finance Regulation Number 156/PMK.010/2018 concerning Amendments to Minister of Finance Regulation Number 146/PMK.010/2017 concerning Excise Rates for Tobacco Products. Excise rates for tobacco products based on Minister of Finance Regulation Number 156/PMK.010/2018 have come into effect since January 1, 2019.
4. Minister of Finance Regulation Number 152/PMK.010/2019 concerning the Second Amendment to Regulation of the Minister of Finance Number 146/PMK.010/2017 concerning Excise Tariffs for Tobacco Products. Excise rates for tobacco products based on Minister of Finance Regulation Number 152/PMK.010/2019 come into effect on January 1, 2020.
5. Minister of Finance Regulation Number 198/PMK.010/2020 concerning Excise Tariffs for Tobacco Products. Excise rates for tobacco products based on Minister of Finance Regulation Number 198/PMK.010/2020 will come into effect on February 1, 2021.
6. Minister of Finance Regulation Number 192/PMK.010/2021 Concerning Excise Tariffs for Tobacco Products in the Form of Cigarettes, Cigars, Leaf Cigarettes or Kluffs, and Sliced Tobacco. Excise rates for tobacco products based on Minister of Finance Regulation Number 192/PMK.010/2021 will come into effect on January 1, 2022.
7. Minister of Finance Regulation Number 191/PMK.010/2022 concerning the Second Amendment to Regulation of the Minister of Finance Number 192/PMK.010/2021 concerning Excise Rates for Tobacco Products in the Form of Cigarettes, Cigars, Leaf Cigarettes or Kluffs, and Sliced Tobacco. Minister of Finance Regulation Number 191/PMK.010/2022 regulates Tobacco Excise Tariffs for 2023 and 2024. Tobacco Excise Tariffs for 2023 will come into effect on January 1, 2023, and Tobacco Excise Tariffs for 2024 will come into effect on January 1, 2024

The lowest HJE trend for SKM cigarettes can be seen in the following graph:



Graph 1. Lowest HJE Trend for SKM Groups I and II Year 2018-2023

Perpetrators of criminal acts related to excise tax on cigarettes generally carry out these acts based on economic motives. Illegal cigarettes are sold at a relatively cheap retail price per stick. This is understandable considering that illegal cigarettes are sold in stalls or shops with the market share generally being consumers from the middle to lower economic levels.

The low price of illegal cigarettes is thought to be because many people with low incomes buy them. (Arowadi Lubis et.al. 2021) said that high expenditure on smoking can raise poverty since there is a substitutional effect from saving to spending due to cigarette consumption. According to (Supriadi & Rusyiana 2018), the poor even prefer cigarettes to rice if they don't have enough to buy both. World Health Organization provide key fact that around 80% of the world's 1.3 billion tobacco users live in low-and middle-income countries. Data has shown that two-third smokers reside in low-and middle-income countries (LMICs). Indonesia has been known as an LMIC with high smoking rates at global scale. In 2016, smoking rates on Indonesia ranked 1st in the Southeast Asia region (Yusnia Monica et.al., 2022). Therefore, a comprehensive study is needed from a policy perspective as an effort to change the pattern of public demand in meeting cigarette consumption needs.

CONCLUSION

The analysis and discussion reveal widespread instances of excise tax evasion on cigarettes across various regions. The modus operandi of excise crimes varies between regions, primarily involving individuals within the illegal cigarette production and distribution chain. These perpetrators, often downstream parties like skippers, crew members, couriers, and salespersons, contribute to the affordability of illegal cigarettes compared to official ones. The study sheds light on the identification of illegal cigarettes, prevalent types, and the motives driving these criminal acts. DJBC and the Fiscal Policy Agency of the Ministry of Finance prepared a comprehensive study of cigarette production, HJE cigarettes, without reducing the objectives of the imposition of excise as per the Excise Law, so that the need for cigarettes in society can be met by officially providing cigarettes that can be purchased by the public. The Directorate General of Customs and Excise (DJBC) has been actively monitoring and regulating cigarette production and distribution. Enforcement measures, including prosecution and investigation activities, have been implemented, resulting in the confiscation and destruction of illegal cigarettes. To address the issue, recommendations include optimizing DJBC's supervision, conducting comprehensive studies on cigarette production and prices, and ensuring that legal cigarettes are accessible to the public while adhering to excise regulations. These measures aim to mitigate the distribution of illegal cigarettes and uphold the objectives of excise laws.

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