

Implementation of the Tax Law on the Imposition of Tobacco Products Tax in the Bintan Free Trade Zone

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KEYWORDS

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ABSTRACT

This research was conducted to determine how the regulation and application of the law on the imposition of cigarette excise in the Bintan FTZ (Free Trade Zone) and how the Tanjungpinang Customs Office oversees the circulation of illegal cigarettes in the Bintan FTZ. This research is empirical juridical research with a descriptive nature. It is known that the legal arrangements regarding the imposition of cigarette excise at FTZ Bintan refer to Law Number 39 of 2007, Law Number 36 of 2000 as last amended by Law Number 44 of 2007, PP Number 41 of 2021, and Ministerial Regulation Finance Number 34/PMK.04/2021. The application of this law can be seen from the substance of the law, where the law on the imposition of cigarette excise in the Bintan FTZ is subject to cigarette excise. From the legal structure, law enforcement overseeing illegal cigarette distribution in the Bintan FTZ consists of Customs, TNI, Polri, the Attorney General's Office, the Judiciary, and the Civil Service Police Unit as supporters. In terms of legal culture, the decline in the results of controlling illegal cigarettes in the Bintan FTZ shows that the level of public trust in the provisions of the Excise Law has begun to increase. Supervision carried out by Tanjungpinang Customs and Excise is carried out in 2 (two) ways, namely preventive and repressive.

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Introduction

The imposition of excise duty on cigarettes in Indonesia is a form of controlling the consumption and circulation of cigarettes which have properties and characteristics that are harmful to human health and the environment. The object of imposition of this excise also includes goods that have special properties and characteristics such as ethanol, beverages containing ethanol and tobacco products. In its development, liquid vape is also regulated as an object of excise tax if it contains tobacco concentrate.

The Corruption Eradication Commission (KPK) is conducting a study in the free zone because it is starting to see the potential for loss of state revenue from cigarette excise due to the provision of cigarette excise exemption facilities in the free zone. The results of the KPK's study found that the cigarette incentive policy in the area led to

indications of abuse and imprecision in exemption from excise duty on cigarettes in free areas. The total potential lost cigarette excise in the period 2018 to 2024, according to the KPK, is Rp. 27 trillion. From these findings, in February 2019, the KPK made a recommendation for the government to revoke the fiscal incentives for smoking in Free Zones.

This KPK recommendation was responded by the government which then revoked the excise exemption facility in the free trade zone legally, by issuing Government Regulation Number 41 of 2021 (PP 41/2021) Concerning the Implementation of Free Trade Zones and Free Ports and revoking Government Regulation Number 10 of 2012 regarding the Treatment Customs, taxation, and excise as well as procedures for the entry and release of goods to and from and are located in areas that have been designated as free trade zones and free ports. Regarding Excisable Goods (BKC) in the form of cigarettes, PP 41/2021 stipulates cigarettes originating from Outside the Customs Area and/or other places within the Customs Area (TLDDP) into the area are free to be subject to and/or duty paid, even for cigarettes that are produced in a factory located in a free area must pay excise duty.

One of the implications of not granting excise duty exemption facilities for cigarettes in free zones is that this also changes the legal substance of the rules governing procedures for the import and/or export of cigarettes to and from free areas including star-free areas. Apart from that, the imposition of excise duty on cigarettes in the free zone is alleged to have the potential to circulate illegal cigarettes in the Bintan Free Trade Zone.

Based on the description above, to find out how the legal arrangements and implementation of the Excise Law are on the imposition of cigarette excise in the Bintan Free Trade Zone and how the Tanjungpinang Customs and Excise carry out the supervision the distribution of illegal cigarettes in the free trade zone (Achmad Ali, 2015). it is necessary to conduct research related to implementing The Excise Law on the imposition of cigarette excise in the free trade zone of starches with the research location in the Tanjungpinang Middle Type B Customs Supervision and Service Office.

Research methods

This research is empirical juridical research with the nature of the research is descriptive-analytical research, data collection techniques were carried out using a qualitative method and a statute approach and a conceptual approach (Ali, 2013). The data used are primary data obtained from observations and interviews and secondary data obtained through library research, then these data are analyzed qualitatively and presented in a qualitative descriptive form (Warman, 2015). The legal theory used in this study is the Legal System Theory by Lawrence M. Friedman and Soerjono Soekanto's theory of legal effectiveness (Soekanto, 2015) (Qamar & Rezah, 2020).

Results and Discussions

Friedman likens the legal system to a factory, where "legal structure" is a machine, "legal substance" is what the machine produces or does, and "legal culture" is whatever or whoever decides to turn on and turn off the machine and decides how the machine is used. In a legal system, law enforcement is the center of "activity" in legal life.

Law enforcement in a broad sense includes activities to implement and apply the law and take legal action against any violations or deviations from the law committed by

legal subjects, either through judicial procedures or arbitration procedures and other dispute resolution mechanisms (alternative disputes or conflicts resolution). In a narrow sense, law enforcement involves acting against violations or deviations from laws and regulations (Manan & SH, 2018).

According to Soerjono Soekanto regarding the theory of legal effectiveness, effective is the extent to which a group can achieve its goals. A law can be effective if it has a positive legal impact, where the law achieves its goal of directing or changing human behavior so that it becomes a legal behavior (Soekanto, 2015).

Application of Law means applying the provisions of laws and regulations that are abstract to concrete events. The application of Law number 39 of 2007 concerning amendments to Law Number 11 of 1995 concerning Excise on the imposition of excise in the Bintan Free Trade Zone means implementing the provisions of the legislation in the field of excise related to the imposition of excise and controlling the circulation of excisable goods in the form of cigarettes in the Bintan Free Trade Zone (Praja, 2011).

Legal arrangements can take the form of what can be done, which is called a right, and what is forbidden or cannot be done, which is called an obligation by every legal subject (Salim, 2013). Legal regulations apart from being a tool for regulating social order (law as a tool of social order), are also a tool for engineering or reforming society (law as a tool for social engineering).

The imposition of excise duty on cigarettes is an act of imposing excise duty on excisable goods in the form of cigarettes. Basically, the payment of excise duty on cigarettes fulfills the requirements to secure the state's rights attached to cigarettes, so that the circulation of cigarettes in society can be approved. The way to pay off excise on cigarettes that are owed the imposition of excise, is done by attaching excise tape (Huda et al., 2022). Payment of excise by affixing excise stamps is carried out by attaching the excise stamps properly and should be in accordance with the applicable laws and regulations. Meanwhile, suppose a pack of cigarettes is not attached with excise tape and has been circulating in the market. In that casethe, the cigarettes in circulation are illegalnd constitute a criminal offense in the field of excise (Frensh et al., 2022).

Pita Kukai is a national security document that shows that BKC has paid its tax payments in paper form withecurity characteristics/elements with certain specifications and designs (Harahap, 2020). Cigarette tax is considered not paid if the cigarette excise stamp does not comply with the applicable provisions, including:

- A. The attached tax tape does not match the stipulated tax rate and/or the basic price of Taxable Goods.
- B. The affixed excise stamps are incomplete or damaged; or
- C. affixed excise stamps or other signs of payment of excise affixed to excisable goods which are not their rights and/or do not comply with the stipulated specifications.

FREE ZONE

In general, the concept of free trade is a concept that presupposes the enactment of a trading system that is freed from obstacles caused by the provisions of a country's government, whether caused by the imposition of tariffs (tariff barriers) or non-tariff barriers (non-tariff barriers) (Priyadi et al., 2022).

The international authority of Customs and Excise to implement a customs and excise control system for goods traffic entering and leaving the FTZ area is regulated in the 1999 RKC in the section "Establishment and control" number 3 which states that Customs must establish arrangements regarding customs control including appropriate requirements with regard to the suitability, construction and spatial layout of the free area (Susilawati & Prihanto, 2015).

The authority of Customs and Excise according to the laws and regulations in Indonesia is carried out in an attributive manner in accordance with the Customs Law and the Excise Law. In addition to these two laws, the authority of Customs and Excise is also regulated in statutory regulations governing free trade zones and free ports (Triwulan & Sh, 2016).

In accordance with the authority possessed by Customs and Excise in the free trade zone, namely to supervise the traffic of goods in the free trade zone according to laws and regulations in the field of customs, then from a customs perspective, importing cigarettes from non-FTZ areas or other places in the Customs Area (TLDDP) must fulfill customs obligations in the form of submitting customs notifications (Budiman, 2021).

The customs notification document used for the entry and exit of goods in the free trade zone is the Free Trade Zone Customs Declaration or abbreviated as PPFTZ, which consists of 3 (three) types, namely:

- 1) PPFTZ with code 01, hereinafter referred to as PPFTZ-01, is a customs notification used for the entry and release of goods to and from the free zone from and outside the customs zone, and releasing goods from the free area to other places within the customs area;
- 2) PPFTZ with code 02, hereinafter referred to as PPFTZ-02, is a customs notification used for the entry and release of goods to and from free zones from and to bonded storage areas, other free zones, and Special Economic Zones (KEK);
- 3) PPFTZ with code 03, hereinafter referred to as PPFTZ-03, is a customs notification used for the entry of goods into the free area from other places in the customs area (TLDDP).

Currently, taxes in Indonesia have only imposed on 3 (three) types of goods, including Tobacco Products (HT), Ethyl Alcohol (EA), and Beverages Containing Ethyl Alcohol (MMEA). These three goods can be referred to as Taxable Goods (BKC) or Taxable Objects. The Tax Subjects are divided into BKC Producers/Entrepreneurs (as Taxpayers and Taxpayers) and Consumers (as Tax Underwriters).

Based on laws and regulations, the government has a role to regulate and supervise the amount of tobacco distribution. The method used by the government to regulate the

amount of tobacco distribution is by setting excise rates charged to cigarette entrepreneurs in accordance with applicable regulations and excise structures. Setting a cigarette excise tax will increase government revenue, but will increase the price of cigarettes and it is hoped that it will reduce the demand for and consumption of cigarettes.

As explained by Surono (2013), the excise function can basically be divided into two, namely as a budget air and regular end tool. The budget air function means that excise has an important role in the source of state revenue. The regular end function means that in addition to collecting state revenue, excise is also used as a means of government control over public consumption patterns of excisable goods. The implementation of the implementation of the budget air and regular end functions is carried out by the government through the determination of excise rates and supervision of BKC. Specifically for tobacco excise, the government makes regular rate adjustments every year. The goal is to control public consumption of tobacco products (Sunarmi, 2016).

Although within the Free Trade and Free Harbor Zone (FTZ) there are fiscal facilities in the form of exemption from tax obligations, including excise, for goods used or consumed in the area, the government still imposes state levies on goods brought out of FTZ to non-FTZ areas or Other Places in the Customs Area (TLDDP). Therefore, the government needs to consider the potential for state revenue from cigarettes circulating in the FTZ to increase state revenue.

No	Years	Number of Enforcement (stems)	Proof of Enforcement Letter (SBP)
1.	2017	811.029	80
2.	2018	5.087.544	47
3.	2019	3.400.000	72
4.	2020	938.008	38
5.	2021	1.038.540	99
6.	2022	2.016.072	159

Along with the widespread circulation of special cigarettes in free areas outside the free area areas in the city of Tanjung Pinang, Tanjung Pinang Customs and Excise has taken action to control this. This can be seen in the enforcement data for the period 2017 to January-May 2020 below.

FREE AREA FISCAL FACILITIES

Increased investment in areas that have been designated as Free Trade Areas and Free Ports is the result of economic globalization which has brought about changes and encouraged economic openness, reduced various barriers to trade and encouraged changes in production and distribution patterns of producers in the world so as to create efficiency in the management of imports and issuance of goods, as well as to optimize the provision of fiscal facilities.

The reasons for granting fiscal facilities, especially exemption from excise duty for the entry and circulation of BKC HT in free trade areas prior to the issuance of Government Regulation Number 41 of 2021 concerning the Implementation of Free Trade Areas and Free Ports, are due to the geographical location of the area which is very strategic and the development of sustainable infrastructure, the availability of large areas sufficient for economic activities such as investment and industrial production supported by a large number of productive human resources, having economic value for its natural resources, so that with all its potential it can attract foreign investors to invest in Free Trade Zones and Free Ports which will have implications on the opening of employment opportunities, increasing the regional and national economy in order to realize the welfare of the people to achieve advanced Indonesia. This is stated in. Government Regulation Number 10 of 2012 concerning Customs, Tax and Excise Treatment and Procedures for the Entry and Release of Goods to and From and Being in Areas That Have Been Designated as Free Trade Areas and Free Ports (EJ & Setyawan, 2022).

ENFORCEMENT OF EXCISE LAW IN FREE ZONES

Adjustment of regular tariffs by setting the highest tariff on cigarette excise makes it possible for some people or entrepreneurs to try to avoid the imposition of the excise by means that are illegal according to laws and regulations. The increase in excise rates on tobacco products is one of the triggering factors in excise evasion and which ultimately triggers the distribution of cigarettes illegally, this is because high excise rates will cause the selling price of cigarettes on the market to become more expensive so this condition encourages individuals who wish to earn huge profits by distributing cigarettes illegally and selling them at a lower price than cigarettes on which excise has already been paid. Therefore, sanctions in the field of excise are determined to give punishment to those who violate excise laws (Ramadhan, 2017).

In the Excise Law, some articles contain criminal sanctions and administrative sanctions. Criminal sanctions are generally given to any person who deliberately evades the payment of cigarette excise, while administrative sanctions are generally given to manufacturers, importers or retail outlets who distribute and sell cigarettes without permits and conditions that have been enforced (RIZQI et al., 2017).

According to Friedmann, law enforcement is a system composed of three main subsystems: legal structure, legal substance, and legal culture. These three subsystems

then become benchmarks or indicators that show whether law enforcement has been effective or not.

The application of the Excise Law to the imposition of excise duty and the circulation of illegal cigarettes in the Bintan Free Trade Area is carried out using the theory of Friedman's Legal System as follows:

- a. In terms of legal substance, the laws and regulations governing the imposition of excise duty in free trade areas and monitoring the distribution of illegal cigarettes have been clearly stated in the Excise Law with its derivative regulations in the form of a Minister of Finance Regulation which regulates (1) controlling the consumption of tobacco products ; (2) distribution of illegal cigarettes; and (3) achievement of excise revenue targets. The imposition of cigarette excise in the free trade area is emphasized again in Article 61 of Government Regulation 41 of 2021, which states that excisable goods in the free trade area are subject to excise or must pay excise. Furthermore, the imposition of cigarette excise in the Bintan Free Trade Area is also oriented towards economic growth and social welfare, which is following the substance of the Excise Law that 2% of excise revenue nationally will be distributed to excise-producing and tobacco-producing areas with a focus on welfare. public. Based on the things mentioned above, according to the author, the substance of the law regarding the imposition of excise duty on cigarettes in the FTZ area is currently appropriate and has fulfilled the principles of forming good legislation (Pinayungan et al., 2018).
- b. The legal structure in this case is the law enforcement apparatus that implements legal provisions. Law enforcers in controlling the distribution of cigarettes in the Bintan Free Trade Area consist of Tanjungpinang Customs and Excise at the Oversight Unit and from DGCE external parties such as the Police and the Attorney General's Office, to Law Enforcement Officials (APH) at the judiciary. Other related APHs are APHs within the Regional Government as a support, namely the Pramong Praja Police Unit. In addition to these law enforcement officers, in supporting the effectiveness of law enforcement against the circulation of illegal cigarettes in free trade areas, BP Kawasan is also required. It is necessary to involve APH from the local government and Regional BP because they better understand the condition of the community in a place. Therefore DGCE always strengthens synergies with other APHs through continuous coordination(Ritonga et al., 2023).
- c. Legal culture is the attitude of society towards law and the legal system, including beliefs, views, thoughts and expectations related to the legal system. Legal culture is related to the performance of its apparatus, including regarding the welfare of its apparatus. The decline in the results of prosecution of illegal cigarettes collected based on the Proof of Enforcement on Illegal Cigarette Strike Operations at KPPBC TMP B Tanjungpinang shows that the level of public trust in the provisions of the Excise Law has begun to increase (Ramadhan, 2020). People who incidentally are smokers are starting to switch to the use of legal cigarette consumption. From the health aspect related to controlling cigarette consumption in the community, the

thing that needs to be considered is why the imposition of cigarette excise in the Bintan Free Trade Area is appropriate, according to the authors, the prevalence of smoking in Indonesian society, which has become a culture, is still relatively high, including in the Bintan FTZ, and there are still many smokers among smokers. ages 10-18 years. It is clear that the culture of the Indonesian people who still perpetuate the bad habit of smoking is of course still the main reason for the imposition of excise duty (MEGAWATI & Edorita, n.d.).

Currently, no factories produce cigarettes in Tanjungpinang City, so all cigarettes consumed by residents in the Bintan Free Trade Area and the Tanjung Pinang city area come from factories in other places within the Customs Area (TLDDP).

In fact, until now the circulation of illegal cigarettes in the Bintan Free Trade Area is still happening, especially through small businesses and dealers who the supervision of the Tanjungpinang Customs has not optimally touched. Therefore, KPPBC TMP B Tanjungpinang needs to carry out more detailed supervision (Romli Atmasasmita, 2016).

In terms of law enforcement against the circulation of illegal cigarettes, Tanjungpinang Customs and Excise organized Operation Combat Illegal Cigarettes to suppress the circulation of illegal cigarettes, encouraging demand for legal BKC, to achieve optimal state revenue.

Supervision is basically directed to avoid the possibility of deviation from the objectives to be achieved. The purpose of supervision is divided into preventive and repressive supervision. Preventive supervision is intended to prevent irregularities in the implementation of activities. As quoted from Hardjasoemantri, the process of investigating and imposing sanctions is the final part of law enforcement, prior to this process, it is necessary to carry out preventive enforcement, namely monitoring the implementation of regulations, as an effort to wisely convince someone to move from an act of violation to an action that complies with the provisions of the regulation. applicable.

Law enforcement activities carry out repressive efforts in controlling illegal cigarettes in the Free Trade Area. The practice of implementing repressive law enforcement by KPPBC TMP B Tanjungpinang in the Bintan Free Trade Area was further explained by Boy Simatupang carried out through supervision activities carried out according to Customs and Excise authorities based on laws and regulations and carried out systematically, synergistically and comprehensively (Yanuari & Prangsi, 2020). Repressive law enforcement by KPPBC TMP B Tanjungpinang in the Bintan Free Trade Area is carried out through supervision activities carried out according to Customs and Excise authorities based on statutory regulations and carried out systematically, synergistically and comprehensively. The said authority is exercised according to function by 3 Units, namely the Intelligence Unit, Enforcement Unit and Investigation Unit, where the main functions are:

- a. The Intelligence function in information management includes planning, collecting, assessing, analyzing, distributing and evaluating data or information, which the Intelligence Unit carries out;

- b. The enforcement function in carrying out patrols and physical efforts that are administrative in nature includes termination, inspection, prevention, sealing, and other actions, which the Enforcement Unit carries out;
- c. The function of handling cases includes research on alleged violations, investigations, handling of goods resulting from prosecution and evidence, issuing recommendations for the imposition of administrative sanctions, and other activities related to handling customs and excise cases, which the Investigation Unit carries out.

The obstacles faced by KPPBC TMP B Tanjungpinang itself in implementing law enforcement against the circulation of illegal cigarettes in the Bintan Trade Area area according to the Head of the Tanjungpinang Customs and Excise Office which was submitted in writing through Boy Yosua Simatupang include:

- a. Areas declared as Free Zones in Bintan Regency are located in enclaves, where not all areas in Bintan Regency are declared as Free Zones. This is also coupled with the lack of markers/monuments/monuments showing the boundaries between Free Zones and Areas that are not Free Zones. The supervisory unit in carrying out enforcement must first make sure regarding the location where the enforcement will be carried out.
- b. The working area of KPPBC TMP B Tanjungpinang which is very broad includes 1 Municipality and 4 Regencies which are located on different islands, which is not balanced with the number of Human Resources (HR) currently available. At present, only 112 employees carry out services and supervision in the work area of TMP B Tanjungpinang, where 32 supervisory activities are carried out.

Furthermore, according to Boy, the activities carried out by KPPBC TMP B Tanjungpinang in carrying out their duties to implement supervision and law enforcement regarding the distribution of illegal cigarettes in the Bintan Free Trade Area Area have so far been carried out with several activities, including:

- a. Carry out regular outreach to the public regarding Customs and Excise rules, especially regarding the distribution of illegal cigarettes.
- b. Carry out routine supervision through market operations and Illegal Cigarette Fighting Operations whose implementation period is carried out simultaneously nationally.
- c. Synergize with other Law Enforcement Agencies and Apparatuses related to law enforcement against the distribution of illegal cigarettes.

Apart from doing the things above, according to Boy, the solutions expected by KPPBC TMP B Tanjungpinang as law enforcers are based on the obstacles faced in implementing the task of implementing law enforcement against the circulation of illegal cigarettes in the Bintan Free Trade Area, including:

- a. Cancellation of the designation of the Bintan Area as an area designated as a Free Zone or the designation of the entire Bintan Island as an area designated as a Free Zone to facilitate the monitoring of goods entering/exiting from/to Bintan Island.

- b. Reorganization within the Directorate General of Customs and Excise which aims to reactivate Service and Supervision Offices in other Regencies. KPPBC TMP B Tanjungpinang is a combination of several KPPBC that used to exist on Dabo Singkep Island, Tarempa and Bintan Island itself as well as additional human resources and supporting infrastructure, given the wide working area of KPPBC TMP B Tanjungpinang.
- c. Simplifying the Customs and Excise system, including the application of a single document between free zones.

Conclusion

The legal arrangements regarding the imposition of excise duty on cigarettes in the Bintan Free Trade Area refer to the Law on Excise and the Law on Free Trade Zones and Free Ports Become Laws. One way to apply the law on illegal cigarette circulation in free trade areas is to enforce the law. According to the author, law enforcement carried out by Tanjung Pinang Customs and Excise, seen from the substance of the law regarding the imposition of excise duty on cigarettes in the FTZ area, is currently appropriate and has fulfilled the principles of forming good legislation. In terms of legal structure, law enforcement in controlling the distribution of cigarettes in the Bintan Free Trade Area consists of the Tanjungpinang Customs and Excise Unit in the Supervision Unit and from external parties DGCE such as the Police and Prosecutors' Office, Law Enforcement Officials in the judiciary and APH within the Regional Government as a supporter, namely the Unit Pramong Praja Police with support from Regional BP.

Finally, in terms of legal culture, with the decline in the results of illegal cigarette prosecution collected based on the Proof of Enforcement on Illegal Cigarette Combat Operations at KPPBC TMP B Tanjungpinang, it shows that the level of public trust in the provisions of the Excise Law has begun to increase. People who incidentally are smokers are starting to switch to the use of legal cigarette consumption. Supervision carried out by KPPBC TMP B Tanjungpinang is carried out in 2 (two) ways: preventive and repressive. Preventive law enforcement efforts are carried out by organizing education and counseling on provisions in the field of excise to the public in each regency/city which is included in the Bintan FTZ area; observation or surveillance activities of the intelligence team in the Enforcement and Investigation Section (Section P2) as well as based on the collection of information on illegal cigarette distribution by the Civil Service Police Unit (Satpol PP) in each district/city included in the Bintan FTZ area.

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