

Article Title

The Effectiveness of Implementing Criminal Sanctions as the Last Resort (Ultimum Remedium Principle) in Excise Crimes as an Effort to Recover State Revenue Losses

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ABSTRACT

The application of the ultimum remedium principle in excise-related criminal acts, particularly in the tobacco product sector, reflects a shift towards a more proportional and restorative approach in Indonesian criminal policy. This principle prioritizes administrative and civil measures before resorting to criminal sanctions, aiming to balance law enforcement objectives with economic stability and business sustainability. In the context of tobacco excise, the ultimum remedium approach has been utilized to minimize the negative impacts of excessive criminalization on the national economy, especially on the tobacco industry which significantly contributes to state revenue and regional employment. By implementing administrative sanctions, such as fines or permit revocations, as initial enforcement measures, law enforcement authorities can provide an opportunity for compliance improvement without immediately imposing imprisonment. However, in cases of repeated violations or severe breaches, criminal sanctions remain applicable as a deterrent. This approach aligns with restorative justice principles and supports the optimization of tax revenue collection while preserving fairness and legal certainty. The study underscores that the success of applying the ultimum remedium principle depends on clear regulatory frameworks, consistent enforcement, and inter-agency coordination. Ultimately, this policy serves as a strategic instrument in harmonizing fiscal policy, legal enforcement, and socio-economic interests within Indonesia's excise regime.

Keywords: *Ultimum remedium, excise law, tobacco regulation, criminal policy, restorative justice.*

INTRODUCTION

Article 23A of the 1945 Constitution of the Republic of Indonesia stipulates that taxes and other compulsory levies for state purposes shall be regulated by law (Constitution of the Republic of Indonesia, 1945). This provision serves as the constitutional basis for the imposition of excise, which is further regulated under Law Number 11 of 1995 on Excise, as amended by Law Number 39 of 2007 and most recently by Law Number 7 of 2021 on the Harmonization of Tax Regulations (HPP Law).

Excise is defined as a state levy on specific goods with certain characteristics as regulated by law, and serves as one of the state's revenue instruments aimed at supporting national welfare (Ministry of Finance, 2021). According to Setiawan (2018), the term “cukai” (excise) originates from the Indian language and was officially introduced in Indonesia in 1886 through the Ordinance of 27 December 1886, Staatsblad 1886 Number 249, initially imposed on kerosene, and later expanded to commodities such as distilled alcohol (1898), beer (1931), tobacco (1932), and sugar (1933).

Based on Article 2 of Law Number 39 of 2007, excise is imposed on goods whose consumption needs to be controlled, whose circulation requires supervision, whose use causes negative impacts on society or the environment, or whose use should be burdened with state levies for reasons of justice and balance. Thus, excise serves not only as a source of state revenue but also as an instrument to control the consumption of certain goods (Simanjuntak & Wibowo, 2021).

Excise differs fundamentally from tax. Taxes generally apply to citizens' income, ownership, or transactions, whereas excise is levied only on certain goods for specific purposes, such as consumption control and circulation supervision (Huda, 2020). In the historical perspective of Islamic governance, sources of state revenue such as zakat, infak, sadaqah, jizyah, kharaj, ushr, ghanimah, fai, and baitul mal did not include excise, as large-scale consumption of excisable goods was a new phenomenon under Islamic rule (Al-Hakiem, 2020).

In the context of capitalist states, Maman El Hakiem (2020) emphasizes that cigarette production is driven more by profit motives than considerations of public benefit or harm. In contrast, Islamic governance prioritizes protecting the public from harm, while in modern states, excise is imposed as a form of social risk coverage for the consumption of certain goods. In Islamic law, this concept is closer to the contract of *dhaman* or indemnity for potential future losses.

Under Article 4 paragraph (1) of the Excise Law, there are currently three types of Excisable Goods (*Barang Kena Cukai*, BKC): Ethyl Alcohol (EA), Beverages Containing Ethyl Alcohol (MMEA), and Tobacco Products (HT). Among them, HT—particularly cigarettes—are the most widely consumed commodities. Cigarette products, including e-cigarettes, are subject to high excise rates as a means of controlling consumption (Ministry of Finance, 2023).

High excise rates on tobacco products have led to increased violations, such as the production and distribution of illegal cigarettes without excise stamps or with counterfeit excise stamps. These violations significantly harm state revenue (Customs and Excise, 2023). In 2020, the COVID-19 pandemic exacerbated economic challenges, prompting the government to optimize the excise sector to support the state budget. The introduction of the *ultimum remedium* principle through the HPP Law became part of an adaptive fiscal policy strategy.

Although the national excise revenue target for 2023 was IDR 227.21 trillion, realization reached only IDR 221.85 trillion or 97.64% (Ministry of Finance, 2023). The decline was attributed to reduced production and consumption, a shift to cheaper excisable goods, and rampant circulation of illegal excisable goods.

Law enforcement on excise-related criminal acts falls under the authority of Civil Servant Investigators (PPNS) within the Directorate General of Customs and Excise, as regulated in Law Number 8 of 1981 on Criminal Procedure. In criminal law theory, punishment serves as a last resort (*ultimum remedium*) to be applied only when other legal measures are ineffective (Muladi & Arief, 2010). However, in practice, criminal sanctions are often the primary choice.

The “Gempur Cukai Hasil Tembakau” operation in South Sulawesi, West Sulawesi, and Southeast Sulawesi in 2024 resulted in 1,912 enforcement actions, seizing approximately 20 million illegal cigarettes with an estimated potential loss of IDR 18.90

billion. Of these cases, 107 were resolved through the *ultimum remedium* mechanism with total fines of IDR 6.14 billion, while four cases proceeded to investigation (Sulbagsel Customs, 2024).

One case decided by the Parepare District Court in 2024 imposed a prison sentence of 1 year and 2 months, along with a fine equal to twice the excise value—IDR 294.36 million—with a subsidiary imprisonment of 3 months. This data shows that the application of *ultimum remedium* in excise-related crimes remains relatively limited compared to the use of criminal sanctions (Parepare District Court, 2024).

This phenomenon raises a fundamental question: to what extent can the effective application of the *ultimum remedium* principle optimize the recovery of lost state revenue without undermining the goal of controlling the consumption of excisable goods? This study is also important to identify the factors influencing the implementation of the principle within the jurisdiction of the Regional Office of the Directorate General of Customs and Excise for South Sulawesi, West Sulawesi, and Southeast Sulawesi.

METHOD

Scientific research is a systematic and planned effort to obtain valid knowledge using specific methods. This study employs a normative-empirical approach, which combines normative (juridical) legal research with the empirical aspects of sociology of law. The normative approach focuses on examining legal norms governing corporate criminal liability, particularly those regulated under the Law of the Republic of Indonesia Number 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes. Meanwhile, the empirical approach examines legal phenomena in social reality (*law in action*), namely how such legal norms function and are implemented in practice.

In this normative-empirical research, a qualitative research method is applied in accordance with Emzir's approach, which relies on inductive reasoning and focuses on uncovering various perspectives and social meanings emerging from research participants. Qualitative research is particularly suitable for studying complex social and legal phenomena, as it allows space for the voices and experiences of the subjects under study, thereby producing an in-depth understanding of the criminal liability of Non-Bank Money Changer Service Providers (*KUPVA Bukan Bank*) in money laundering crimes.

RESULT AND DISCUSSION

A. Application of the *Ultimum Remedium* Principle in Tobacco Excise Crimes

The application of the *ultimum remedium* principle in excise-related crimes, particularly in the tobacco products sector, has a significant impact on the effectiveness of law enforcement and the recovery of state revenue losses. This

principle positions criminal law as a last resort, to be applied only after administrative sanctions have been imposed first (Muladi, 2019). Its objective is to ensure that the legal process is not merely repressive, but also preventive and restorative, thereby reducing the number of violations while optimizing the recovery of state revenue.

This approach has proven to provide a more effective deterrent effect. Offenders are required to pay fines substantially higher than the profits gained through illegal means (Siahaan, 2021). Thus, in addition to preventing repeat violations, the state receives adequate financial compensation that can be directly used to offset losses resulting from such offenses.

The main benefits of applying *ultimum remedium* in the tobacco excise sector include a decrease in administrative violations due to faster case resolution through non-litigation channels (Ministry of Finance, 2023). This process also helps reduce the burden on the courts, enabling the judiciary to focus more on major and complex cases.

Furthermore, this mechanism enhances law enforcement effectiveness by reallocating the resources of law enforcement officers to handle high-priority cases (Harahap, 2022). Minor offenses, such as administrative non-compliance, can be resolved through administrative fines or procedural corrections without lengthy criminal trials.

Court decision data from the jurisdiction of the South Sulawesi Regional Office of the Directorate General of Customs and Excise (KWBC Sulbagsel) for the 2023–2025 period indicate that Article 54 of Law Number 11 of 1995 in conjunction with Law Number 39 of 2007 on Excise remains the most frequently applied article in prosecutions. This provision stipulates imprisonment of 1–5 years and/or fines ranging from 2 to 10 times the amount of excise owed.

Although this provision grants judges flexibility in determining sanctions, in practice, the minimum penalty is still often applied, resulting in suboptimal recovery of state revenue losses. If the convicted party fails to pay the fine, their assets may be confiscated. However, if the confiscated assets are insufficient, the fine is replaced with imprisonment.

Replacing fines with imprisonment has a fundamental weakness, namely that state losses are not fully recovered (Marzuki, 2020). Once the substitute imprisonment is served, the convict is freed from the obligation to pay the fine, meaning the state loses potential revenue. Moreover, this adds to the state's financial burden due to the cost of incarceration.

A normative gap is also evident in the Law on the Harmonization of Tax Regulations (*UU HPP*), which does not specifically regulate the duration of substitute imprisonment if fines remain unpaid (Republic of Indonesia, 2021). As a result, judges

apply Article 30 of the Criminal Code, which may undermine the effectiveness of the *ultimum remedium* principle.

Interviews with Customs and Excise officers reveal that some offenders refuse administrative settlements due to an inability to pay fines amounting to three times the excise value or because they believe they are not guilty. In such cases, investigations proceed until a court verdict is rendered. This process takes longer, delaying the recovery of state revenue losses.

The *ultimum remedium* principle is inherently aligned with the objectives of excise law enforcement, namely securing state revenue through administrative fines (Ten Berge, 2018). If fines cannot be paid, only then should criminal law be applied. Thus, this mechanism prioritizes a reparative over a punitive approach.

Administrative sanctions in the excise sector may take the form of reparative, punitive, or regressive measures. Reparative sanctions restore the situation to its original state, punitive sanctions impose additional punishment, while regressive sanctions revoke previously granted rights (Ten Berge, 2018). These can be applied proportionally to ensure compliance and prevent repeat violations.

The successful implementation of *ultimum remedium* also heavily depends on coordination between the Directorate General of Customs and Excise and the Attorney General's Office of the Republic of Indonesia. Such synergy is necessary to ensure that the termination of investigations in the interest of state revenue can be carried out optimally. The application of the opportunity principle (*asas oportunitas*) allows prosecution to be set aside in the interest of public welfare and state revenue (Simanjuntak, 2022).

Overall, *ultimum remedium* is not intended to weaken law enforcement, but rather to strengthen it through a fair, efficient, and humane approach. Criminal law remains a deterrent of last resort for serious violations, while minor offenses are addressed administratively.

This approach also supports business continuity, particularly for small-scale industry operators, as administrative sanctions can be tailored to avoid shutting down legitimate business activities. At the same time, the state still obtains compensation from the violations committed.

Thus, the application of *ultimum remedium* in tobacco excise crimes is a law enforcement strategy that not only emphasizes deterrence but also prioritizes the recovery of state revenue, the efficiency of legal processes, and social justice for both offenders and the broader community.

B. Factors Influencing the Effectiveness of Criminal Sanctions Implementation as the Last Resort (Ultimum Remedium) in Excise Criminal Offenses for the Recovery of State Revenue Losses

The discussion on the effectiveness of applying the ultimum remedium principle in excise criminal offenses, particularly in the context of recovering losses to state revenue, requires a comprehensive examination of the influencing factors. According to the theory of legal effectiveness put forward by Soerjono Soekanto (2008), the success of law enforcement is determined by five main factors: legal norms or legal substance, law enforcement officers, supporting facilities or infrastructure, the community, and legal culture. These five factors are interrelated in determining whether the application of ultimum remedium can be optimally implemented in practice.

The application of ultimum remedium in the excise sector emphasizes the use of criminal law instruments only as a last resort, after administrative measures and fines fail to achieve an adequate resolution (Muladi & Priyatno, 2010). This principle is reflected in Article 14 of Law Number 7 of 2021 on the Harmonization of Tax Regulations (UU HPP), followed by various implementing regulations, including Minister of Finance Regulation Number 237/PMK.04/2022 and Government Regulation Number 54 of 2023. However, the effectiveness of this principle's implementation is influenced by factual conditions in the field related to these five factors.

1. Legal Substance Factor (Legal Norms)

Clear, consistent, and enforceable legal provisions are essential prerequisites for the effectiveness of ultimum remedium. In the excise context, firm regulations have been established under the UU HPP and its derivatives. For example, Government Regulation Number 54 of 2023 stipulates that investigations into certain excise violations may be terminated if the offender pays an administrative fine amounting to four times the excise duty owed. This approach shifts the focus from imprisonment to recovering state revenue losses (Hidayat, 2023).

Nevertheless, relatively new regulations, such as PMK 237/PMK.04/2022, require time for dissemination and technical adjustment. The interrelation of this regulation with various other provisions—such as supervision procedures, state property management, and fine payment mechanisms—necessitates cross-unit coordination. The absence of detailed technical procedures, such as operational SOPs, risks inconsistent application across regions (Prasetyo, 2024).

2. Law Enforcement Apparatus Factor

Law enforcement officers play a vital role in ensuring consistent application of the ultimum remedium principle. The Directorate General of Customs and Excise (DGCE) has enforcement authority under Government Regulation Number 49 of 2009, including conducting physical inspections, sealing, and prevention measures. However, the professionalism of officers must be maintained through compliance with the code of ethics as stipulated in Minister of Finance Regulation Number 190/PMK.01/2018 (Soekanto, 2008).

The quality of human resources (HR) is a decisive factor. Every Customs and Excise Civil Servant Investigator (PPNS) must possess technical competence, integrity, work discipline, and law enforcement skills. In practice, however, the number of PPNS remains limited. In the DJBC Sulbagsel Regional Office, for instance, only 37 PPNS are

available, not all of whom serve in enforcement and investigation, limiting the scope of supervision (Rohendi, 2024).

3. Facilities and Infrastructure Factor

The effectiveness of law enforcement also depends on the availability of adequate facilities. Limitations in operational facilities, unintegrated IT infrastructure, and negative growth policies in staffing are significant obstacles (Saputra, 2023).

An integrated information system could accelerate inter-unit coordination and facilitate monitoring of illegal excisable goods (BKC) circulation. Without such facilities, enforcement processes slow down, especially in cases of illegal tobacco product distribution, which require rapid field response.

4. Community Factor

Public legal awareness is a key factor in legal effectiveness (Kelman, 2006). In excise enforcement, low public awareness is often driven by economic factors—such as the lower price of illegal cigarettes—as well as low education levels affecting regulatory understanding.

The distribution of illegal BKC is often protected by rogue officers outside DGCE, weakening enforcement efforts (Kurniawan, 2022). Therefore, enforcement strategies cannot rely solely on repressive measures but must also involve public outreach and economic empowerment—for example, through the development of Tobacco Product Industry Zones (KIHT) such as in Soppeng Regency, South Sulawesi, which can channel illegal producers into the formal sector.

5. Legal Culture Factor

Legal culture reflects the values and societal views toward law (Soekanto, 2008). In tobacco excise cases, ingrained smoking habits pose a major challenge, as society does not always perceive excise as a control instrument but rather as an economic burden.

However, the healthy lifestyle trend of the past decade presents an opportunity to change public perception. Anti-smoking campaigns, media support, and community-based initiatives can strengthen the legitimacy of high excise rates and enforcement against illegal BKC (Haryanto, 2021).

Culturally based approaches can also leverage religious values. For example, in the case of Alcoholic Beverage Excise (MMEA), religious leaders can raise legal awareness through sermons linking excise violations to moral and public health considerations.

The effectiveness of *ultimum remedium* in excise criminal offenses will be optimal if all five factors operate synergistically. Clear legal substance, professional enforcement officers, adequate facilities, active community participation, and a supportive legal culture together form an effective and fair law enforcement system (Soekanto, 2008).

If one factor is weak, overall effectiveness declines. For example, good regulations will be ineffective without officers with integrity and sufficient resources. Similarly,

repressive measures will not succeed without a conducive legal culture and high public awareness.

This multidimensional approach aligns with the goal of *ultimum remedium*, which prioritizes the recovery of state revenue through administrative mechanisms before resorting to criminal instruments. Proper implementation can increase state revenue while reducing the burden on the criminal justice system.

CONCLUTION AND SUGGESTIONS

The application of the *ultimum remedium* principle in tobacco excise criminal offenses positions criminal law as the last resort after administrative sanctions have been optimized, with the primary objective of recovering state losses, creating a deterrent effect, and maintaining the sustainability of legitimate businesses. This approach enables swift and efficient case resolution through fines exceeding the value of illicit gains, thereby reducing the burden on the judiciary and allowing law enforcement to focus on high-priority cases. The effectiveness of *ultimum remedium* in excise law enforcement depends not only on existing regulations but also on the quality of implementation in the field. Improvement efforts should be directed toward strengthening technical regulations, enhancing human resource capacity, modernizing infrastructure, fostering public legal awareness, and aligning policies with prevailing cultural values. Recommended that the implementation of the *ultimum remedium* principle in tobacco excise criminal offenses be supported by comprehensive policy reforms, including the strengthening of technical regulations, the enhancement of human resource capacity for law enforcement officers, and the modernization of supervision and investigation infrastructure.

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