

**EFFECTIVENESS OF CRIMINAL SANCTIONS IN CUSTOMS CRIMINAL ACTS IN THE FIELD OF EXCISE IN TERMS OF THE THEORY OF CRIMINAL LAW (Analysis of the Application of Criminal Sanctions for the Printing of Fake Excise Stamps at the Jakarta Customs and Excise Office)**

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**Abstract**

Law enforcement against counterfeiting cigarette tax band cannot be performed optimally due to factors that affect law enforcement itself. Law enforcement is required because of a violation of the customs excise lately is high enough, one of which counterfeit cigarette tax band conducted by firms to lower middle cigarette manufacturers. As a result of counterfeiting cigarette excise stamps, the potential losses to the state becomes large enough, within a year nearly one trillion. In addition to the state suffered a loss, smoking can also cause heart and good health to the user as active smokers as well as for passive smokers. Thus, the enactment of Law No. 11 of 1995 on Excise as subsequently amended by Act No. 39 of 2007, violations against counterfeiting cigarette excise stamps can be minimized by applying severe criminal system so that a deterrent effect. The issue is whether the punishment of a criminal offense customs have been effective if it is linked with the provisions of Article 50 through Article 62 of Law No. 11 of 1995 as amended by Act No. 39 of 2007 on Excise impose criminal sanctions most eight-year high in the excise criminal offense when the amount of losses the country billions of rupiah and whether criminal sanctions could have a deterrent effect against criminal excise? And how the solution so that punishment of a criminal offense can be effective excise? This study uses normative juridical approach. Research results that the provisions of criminal law governing the punishment of the crime of criminal customs there are weaknesses that the threat of criminal penalties were small or too light. Whereas the purpose of sentencing in the criminal law policy of modern Indonesia has changed from the purpose of punishment as revenge towards punishment with prevention purposes for the penalty should be increased.

**Keywords:** Criminal Acts in the Field of Excise, *Theory of Criminal Law*, Criminal Acts

## INTRODUCTION

Characteristics of excise law<sup>1</sup> the law sticks voting arrangements taxable goods i.e excise on cigarette excise bands, beverages containing ethyl alcohol (MMEA), ethyl alcohol, and the production of other goods subject to excise. The setting is a criminal offense in the field of excise duty provided for in Article 50 through Article 62 of Law Number 11 of 1995 on Excise as amended by Act No. 39 of 2007. The Excise Law is one part of the Customs Law or the *lex specialis* of customs law which is *lex generalis*. Customs law itself is part of the fiscal law.

Definition of import duties,<sup>2</sup> as referred to in Article 1 point 15 of Law Number 10 of 1995 concerning Customs is a state levy based on this law that is imposed on imported goods. Meanwhile, the definition of export duty as referred to in Article 1 point 15a of Law Number 17 of 2006 concerning Amendment of Law Number 10 of 1995 concerning Customs is a state levy based on this law that is imposed on export goods.<sup>3</sup>

Definition excise according to Article 1 paragraph 1 of Law No. 11 1995 of Excise, as amended by Act No. 39 of 2007, is the state levies imposed on certain goods that have nature or characteristics specified in this Act. Nature of goods has the character to be charged levies either domestically or for export.

In this case, the law can be said to have been effective. According to Hans Kelsen, when talking about the effectiveness of the law, also discussed the validity of the law. Legal validity means that legal norms are binding, that people must act according to what is required by legal norms, that people must obey and apply legal norms.<sup>4</sup> The effectiveness of law means that people actually act according to legal norms as they must, that they are actually applied and obeyed.

The effectiveness of the law is inseparable from the role of the community to comply with the law. Do not deny that the law does play a big role in regulating human life. The law itself has many meanings because the law itself has many forms and facets. "In its broadest understanding, the law is any pattern of interaction that arises over and over among many individuals and groups, followed by a relatively explicit acknowledgment from groups and individuals that such patterns of interaction give rise to expectations of mutual behavior that must be met."<sup>5</sup> One of the legal meanings given by Sudikno Mertokusumo, the law is "the whole collection of rules or methods in a shared life, which can be enforced with a sanction".<sup>6</sup>

The first program is about the sentencing of a criminal offense customs have been effective if it is associated with the provisions of Article 50 through Article 62 of Law No. 11 of 1995 as amended by Act No. 39 of 2007 on Excise impose sanctions criminal threats highest six years clearance of a criminal offense when the amount of losses the country billions of rupiah. The second issue of the theory of punishment in Indonesia effectively applied in the criminal provisions of the Act No. 11 of 1995 as amended by Act No. 39 of 2007 on Excise. The next issue is whether the criminal sanctions deterrent effect against criminal clearance.

This study also wants to examine the effectiveness of court decisions in cases of excise crime that occur after the enactment of Law Number 39 Year 2007 regarding Excise. The study was conducted on secondary data in the form of investigation data from the Directorate General of Customs and Excise in 2011-2014, for example:

1. Riau Islands Special Regional Territory: In 2011, violating Article 54 of Law Number 11 of 1995 as amended by Law Number 39 of 2007; Suspects: Agus Saputra bin Sudarto; The verdict is free from indictment.
2. South Sumatra Regional Office: In 2011, violating Article 55 letter c of Act Number 11 of 1995 as amended by Act Number 39 of 2007; Suspect: Gunawan bin Narkim; Criminal Decision 1 year 4 months and a criminal fine of Rp. 54,000,000.00.
3. Regional Offices of Riau and West Sumatra: In 2012, violating Article 50 and/or 58 of Law Number 11 of 1995 as amended by Law Number 39 of 2007; Suspect: Putut Adiaranto; A 1-year jail sentence.

<sup>1</sup>Eddhi Sutarto, *Hukum Pabean Indonesia*, (Jakarta, Erlangga, 2010), 12.

<sup>2</sup>Teguh Sulistia and Aria Zurnetti, *Criminal Law, New Horizon Post-Reform*, (Jakarta, King Grafindo Persada, 2011), 11.

<sup>3</sup>H. Bohari, *Pengantar Hukum Pajak*. (Jakarta, PT Raja Grafindo Persada: Jakarta, 2012), 11.

<sup>4</sup><http://digilib.unila.ac.id/3913/12/BAB%20II.pdf>. Diakses 24 Desember 2014. Pukul 13.00 WIB.

<sup>5</sup>Roberto M. Unger, *Teori Hukum Kritis*, (Bandung, Penerbit Nusa Media, Cetakan II, 2008), 63

<sup>6</sup>Sudikno Mertokusumo, *Mengenal Hukum*, (Yogyakarta, Penerbit Liberty Yogyakarta, Cetakan II, 2005), 40.

4. North Sumatra Regional Office: 2012, violating Article 58 of Law Number 11 of 1995 as amended by Law Number 39 of 2007; The suspect Felix alias Ameng; 1.5 years imprisonment and Rp.150,000,000.00 fine.
5. Regional Territory of East Java I: In 2013, violating Article 50, Article 54, Article 58 of Law Number 11 of 1995 as amended by Law Number 39 of 2007; Suspect: Misnan bin Karso; Decision Number 290 / Pid.Sus / 2013 / PN.BGL; Criminal verdict imprisonment for 1 year and a criminal fine of Rp. 660,840,950.00.

The criminal act excise against violations of excise bands under Article 50 which says anyone without a permit referred to in Article 14, run their businesses Factory, Storage, or import goods subject to excise payment of excise by way of sticking excise bands resulting in state losses convicted with a maximum imprisonment of four years and a fine of ten times the value of taxes that should be paid.<sup>7</sup>

Violations of excisable goods may be subject to criminal sanctions. The regulation on excise criminal sanctions is regulated in Articles 50 through Article 62 of Law Number 11 of 1995 concerning Excise as subsequently amended by Law Number 39 of 2007. The criminal sanctions under the Customs legislation is composed of criminal fines, imprisonment of six months, the maximum imprisonment of two years, four years and a maximum imprisonment of six years. The imposition of criminal sanctions where the excise duty charged is only six years imprisonment under Article 53 and a maximum imprisonment of four years under Article 50, Article 51, Article 52 and Article 56. While Article 57 set a maximum imprisonment of two years, it had no effect deterrent against perpetrators. Proved the existence of a person sentenced to imprisonment with the same case to repeat his actions and subject to criminal sanctions back. So that criminal prosecution in criminal offenses excise only futile when state losses due to this tax violation big enough.

The problem appearing in criminal law research is how setting a goal of formality in criminal provisions in the Law - Law No. 11 of 1995 on Excise as amended by Act No. 39 of 2007 which supports the rule of law in the field of customs? Why criminal provisions in Law Number 11 of 1995 on Excise as amended by Act No. 39 of 2007 as a formality and does not meet the fairness of law enforcement is not yet clear positive benefits that where the purpose of the law is associated with loss country? How criminal law policy by the government and parliament in the formation of Law No. 11 of 1995 on Excise as amended by Act No. 39 of 2007? What solutions do in order to provide a deterrent effect against perpetrators of criminal acts excise? Excise laws should provide legal certainty as well as justice and expediency in the application of criminal sanctions that state's loss is not great. Thus the identification of the problem lies in the politics of criminal law taken in the establishment of pause clause such as a political criminal law in those chapters, and a solution for the lack of deterrent effect of criminal acts excise violators.

Research on the effectiveness of criminal sanctions in criminal offenses of customs excise terms of the legal theory of punishment (analysis of the application of criminal sanctions printing false banderole at the Regional Office of Customs and Excise Jakarta), will answer the research question is whether the criminal prosecution of a criminal offense excise duty has been effective if associated with the provision of Article 50 through Article 62 of Law No. 11 1995 as amended by Act No. 39 of 2007 of excise imposed sanctions highest penalty of eight years in customs criminal offense when the amount of losses the country billions of rupiah and whether criminal sanctions could have a deterrent effect against criminal clearance? and how the solution so that the criminal prosecution of a criminal offense can be effective excise?

## METHODS

This research using normative juridical approach is research that emphasizes the use of legal norms in writing that is associated with the practice and perception do informant.<sup>8</sup> Thus it can be seen in the customs of punishment associated with restorative justice.

The data used is primary data and secondary data. Shape research suit research diagnostic type namely legal research observe above symptoms an excise criminal sanctions against level deterrent community not crimes excise.

## RESEARCH RESULT AND DISCUSSION

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<sup>7</sup>Lihat Undang-undang Nomor 39 Tahun 2007 tentang Cukai.

<sup>8</sup>Dian Puji Simatupang, *Petunjuk Penelitian Usulan Penelitian Disertasi*, (Jakarta, Program Studi Doktor Ilmu Hukum Unkrisna, 2013), 5.

### **Politics of Criminal Law contained in Article 50 to Article 62 in Excise Crime**

Content of politics of law that should be contained in the Law on Customs and Excise (*Ius constituendum*) as a renewal of national laws and policies in the field of customs and excise as follows namely in the Law of Customs there are several national policy should be preferred for preparing the country in the competition of international trade namely, among others; rules are rules regarding tariff setting. Meanwhile the Excise Act, the emphasis on criminal sanctions is further enhanced. Criminal sanctions cannot be mild.

The politic of criminal law in sentencing excise crimes, such as counterfeiting cigarette excise bands should use the theory of punishment with prevention purposes. Prevention or deterrence theory is not unlike retributive theory; the theory of deterrence is a form of punishment which is dominated by the view consequentialist. Unlike the retributive view that sees only criminal sanctions in retaliation alone, then in theory deterrence looking at their other goals that are more useful than just retaliation. The views expressed Betham that criminal who received severe for ameliorative effect (reforming effect). But he acknowledged that severe criminal must be accepted by the people before being implemented or affected. From that perspective the criminal law should not only be used as a means of retaliation against criminals, but only for the purpose of preventing crime. So from that view clear that criminal function is as a means of prevention. However, despite the general theory of deterrence is regarded as a good theory of sentencing objectives in the perspective of prevention and control of crime.

Related to crime prevention in the field of customs, the authority of the excise is the authority given to the Directorate of Customs and excise duty to check whether excisable goods has paid excise payment. The examination was conducted at the plant, storage areas and other places that are used to store excisable goods. Customs and Excise Officials action cannot be done abruptly. There needs to be a notification and devices that support legislation. As in Act No. 11 of 1995 concerning Customs as amended by Act No. 37 of 2009 has been set on the issue of authority in the field of taxes and the legal device.

Imposition of excise rates on certain goods that have a nature or characteristics defined in the Act need to be expanded limits and scope that can provide the flexibility and power of the law in an effort to increase or expand the excise object by taking into account the aspirations and capabilities. Besides object boundary assertion clearance, also needs improvement levy excise administration system and increasing law enforcement efforts (law enforcement). The imposition of excise duty on goods that are classified as excisable goods can be used as an instrument to control the level of consumption of goods - certain goods, protect the environmental damage, prevent moral decay of society and creating fairness and balance on the use of certain goods in the community,

Various consideration of the principles of fairness into the goals constantly in mind by the Government in carrying out the distribution of financial resources. The government even explicitly mentions that the equalization or equalization treatment of all regions is a destination that should not be compromised. If the Government saw no one region has made progress resulting in state revenue greater than those areas are eligible for the more part;

If contained area farther behind then the task of the central government is doing the equalization based on a formula that should not be ad hoc, because if ad hoc means giving full authority to the government or even the Minister of Finance. It would be dangerous because the Minister of Finance may set policies according to his own taste. In addition, the formula is made and is the result of indicators was also agreed in various forums, such as the House of Representatives (DPR), the Regional Representatives Council (DPD), and in forums Development Planning Meeting (Musrenbang) between Local government and the Central government.

The government found as far as the basic distribution of tobacco excise, the provisions of Article 66A paragraph (1) of Law 39/2007 is in conformity with the principles of fairness and does not conflict with the constitution. Besides these provisions are also a form of instrumental policy, because of each tobacco-producing provinces an equal share of 2% of the tobacco excise. However, if the Applicant considers unfair distribution of tobacco excise of 2% is given to the provincial tobacco excise is a form of injustice against the region which is a tobacco product as agricultural products, it should matter in question belong to the realm of legislative review, not a problem under the authority of a constitutional test.

The government also confirmed that the tobacco excise funds constitute state revenue, essentially levied or paid by the people who buy or consume tobacco products in question, so that it becomes less appropriate if the distribution fund tobacco excise only enjoyed by certain provinces.

Di addition, the Government as a public servant has a duty to service society as well as possible, including providing a sense of justice, seeks fair as possible to the public, so that all

revenues should be provided for the welfare of the people as a whole. To that end, the Government argued that the funds from tobacco excise will better meet the demands for social justice, efficient, effective, and well-targeted if given directly to the public through the development programs that can be felt by all people. However, the Government is also aware that these things are not included in the scope of the problem of the constitutionality of the matter in question.

The government and Parliament has given stating that in actual sense provinces tobacco excise obtain funds from the tobacco tax by 2% (two percent) is the province where the factory cigarette / tobacco are, essentially levied or paid by the people who bought or consuming tobacco products, which would then acquire the distribution fund tobacco excise, the Court is of the opinion that the terms of allotment of funds excises on tobacco products as defined in Article 66A paragraph (1) of the Act a quo, so that the Court disagrees it the Government and Parliament, as one of the activities funded from the proceeds of the tobacco tax is an increase in the quality of raw materials and the development of the social environment.

Characteristics of excise law that goods subject to excise collection arrangement which is against cigarette excise bands, beverages containing ethyl alcohol (MMEA), ethyl alcohol, and the production of other goods subject to excise. The setting is a criminal offense in the field of excise duty provided for in Article 50 through Article 62 of Law Number 11 of 1995 on Excise as amended by Act No. 39 of 2007. The Excise Law is one part of the Customs Law or the lex specialist of customs law which is lex generalis. Customs law itself is part of the fiscal law.

Violations of excisable goods may be subject to criminal sanctions. The regulation of excise criminal sanctions is regulated in Article 50 to Article 62 of Law Number 11 of 1995 concerning Excise as subsequently amended by Law Number 39 of 2007. Criminal sanctions in the Excise Law consist of criminal fines, maximum imprisonment six months, maximum imprisonment of two years, four years and a maximum prison sentence of six years. Imposing of an excise criminal sanction which is only imprisoned for six years in Article 53 and imprisonment for a maximum of four years in Article 50, Article 51, Article 52, and Article 56. Whereas Article 57 regulates that the threat of imprisonment for a maximum of two years does not have a deterrent effect on the perpetrators. Proven existence of a prisoner with the same case who repeated his actions and subjected to criminal sanctions again. So that punishment in excise taxation is only in vain even though the state loss due to tax violations is quite large.

Whereas the provisions of criminal law regulating criminal penalties for excise crimes constitute the weakness of conviction, namely the threat of criminal penalties that are small or too light. Whereas the purpose of punishment in the politics of modern criminal law in Indonesia has changed from the goal of punishment because of revenge towards punishment with the aim of prevention. For that, the threat of punishment should be increased.

But it is also necessary to strive for ADR as stated by Teguh Sudarsono in the hope of a win-win solution such as an effort to compensate the state financial losses if the prison sentence does not also provide a deterrent effect. In addition to other legal remedies such as civil lawsuits.

Research on state financial losses due to counterfeiting of cigarette excise stamps carried out on 300 cases where the figures found state financial losses due to counterfeiting of cigarette excise stamps as in table 4 below:

**Table 4. National Financial Losses Due to False Excise Tape**

No.	Year	Number of Cases	Total State Financial Losses
1.	2010-2011	60	Rp, 300 billion, or 0.49% of the target reception, 2010 amounting to Rp 63 billion.
2.	2012-2014	200	Rp, 596 billion, or around 0.7% of target excise revenue Rp, 79 trillion.
3.	2015	40	Rp, 580 billion.

Di side state losses due to counterfeiting cigarette excise bands then the loss of the human costs of the passive and active smokers are also very high. The content contained in cigarette. More than 4000 chemicals contained therein. Hundreds of which are toxic substances and about 70

ingredients in it are cancerous. Hazardous materials on a cigarette, among others:<sup>9</sup>

**Carbon monoxide.** Substances that are often found in car exhaust fumes can bind themselves to hemoglobin in the blood permanently, thus blocking the supply of oxygen to the body. This makes you get tired quickly.

**Tar When smoking,** the tar content in cigarettes will be sucked up. This substance will settle in your lungs and have a negative impact on the performance of the small hair lining the lungs. Though the hair is responsible for cleaning germs and other things out of your lungs.

**Oxidant gas.** This gas can react with oxygen. Its presence in the body further increases the risk of stroke and heart attack due to blood clots.

**Benzene.** Substances added to this fuel oil can damage cells at the genetic level. This substance is also associated with various types of cancer such as kidney cancer and leukemia.

Thus Law Number 39 the Year 2007 regarding Excise becomes a lex specialist derogate legi generalist against the Criminal Code. The specific nature of the Excise Law is that it regulates both criminal and administrative sanctions with the aim of preventing state financial losses and also the danger to human health itself.

### The solution in Providing a Deterrent Effect Against the Criminal Acts

Counterfeiting is the process of making, adapting, imitating objects, statistics, or documents (see fake documents), with a view to deception. Crimes similar to fraud are crimes of deceiving others, including through the use of objects obtained through forgery. Copying, copying, reproducing are not considered fakes, although they may later become fakes as long as they know and wish not to be published. In the case of making money or currency, it is more often called counterfeiting. Consumer goods but also imitate when they are not produced or produced by manufacturers or producers.<sup>10</sup>

The criminal offense in the Criminal Code is regulated in Article 263 through Article 276. Article 263 of the Criminal Code defines the definition of counterfeiting as follows: (1) Anyone who makes a fake letter or falsifies a letter that can give rise to rights, a bond or a debt-free, or which is intended as evidence rather than something with the intention to use or order someone else to use the letter as if the contents are true and not forged, threatened, if the use can cause harm, due to falsification of the letter, with a maximum imprisonment of six years. (2) Threatened with the same crime, whoever intentionally uses fake or forged letters, as if true, if the use of the letter can cause harm.

Counterfeiting is the act of altering or mimicking using a ruse so as to resemble the original. Various forgeries:

1. Intellectual counterfeiting intellectual falsification of the contents of the letter / article.
2. Counterfeiting: counterfeiting currency, Banknote State / bank, and used as the original.
3. Counterfeiting material: falsification of the form letter / article.
4. Brand counterfeiting: counterfeiting brand with the intention of using /telling others use it as if the original brand.
5. Counterfeit stamp: counterfeit stamp issued by the State / imitation signature, which is required for the validity of the stamp duty for the purpose of use / get someone else to wear it as if the original seal.
6. Counterfeiting inscription: forgery writings include letters, certificates, document / signature impersonation of others, with the intention of publishing rights, erase the debt and use / encouraging others to use as if writing original.<sup>11</sup>

Counterfeiting crime is a crime in which an untruth or a system of fake or false on a matter (object) that things had appeared from the outside as if it is true, but in fact contrary to the actual.<sup>12</sup> According to Roman law, which is seen as *de eigenlijke falsum* or as a criminal offense the actual counterfeiting is forgery of securities and counterfeit currency and had then been supplemented with a range of offenses that actually cannot be considered as a forgery, so that the offense is in the doctrine

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<sup>9</sup>AloDokter, Bahaya Mengonsumsi Rokok, <http://www.alodokter.com/> diunduh pada tanggal 9 Oktober 2015, pukul 04.00 WIB.

<sup>10</sup>Taufik Ridho, Analisis Pemalsuan, <http://id.wikipedia.org/wiki/Pemalsuan>, diakses pada tanggal 29 Oktober 2014, pukul 12.40 WIB.

<sup>11</sup>Andi Hamzah, *Terminology Hukum Pidana*, (Jakarta, Sinar Grafika, Cetakan I, 2008), 112.

<sup>12</sup>Lisa, Pengertian Pemalsuan, <http://makalah-hukum-pidana.blogspot.com/2010/11/tindak-pidana.html>, Diakses pada tanggal 29 Oktober 2013, pukul 12.45

also called *quasti falsum* or false forgery.

According to the Director of Enforcement and Investigation of the Central Office at the Jakarta Directorate General of Customs and Excise, the criminal provisions in Law Number 11 of 1995 concerning Excise as subsequently amended in Act Number 39 of 2007 have supported the rule of law in the field of Excise. In the view of the Director of Enforcement and Criminal Investigation in Indonesia, it has been effectively applied in the criminal provisions in Law Number 11 of 1995 as amended by Law Number 39 of 2007 concerning Excise. Even criminal sanctions that provide a deterrent effect (Deterrence Effect) will affect the perpetrators of excise crime.

Law Number 39 the Year 2007 regarding Excise has been effective. It can even be said that the Excise Law has provided legal certainty. The Director of Enforcement and Investigation agreed that if said the Excise Law had provided justice and benefit in the application of criminal sanctions so that state losses were not large. The maximum penalty of eight years in an excise criminal offense is in accordance with the total loss of his country reaching billions of rupiah. Likewise in the case of law enforcement against counterfeiting of cigarette excise stamps can be carried out optimally. On the part of law enforcement and investigation, it is necessary because violations of customs in the field of excise have been carried out optimally. So, according to the Director of Enforcement and Investigation, there are no factors which become obstacles in law enforcement.

A severe criminal system can have a deterrent effect. At present, the counterfeit of cigarette excise stamps carried out by companies is a medium-sized cigarette producer. There is no need for a revision of the law to minimize violations in the excise sector, but there needs to be more stringent supervision in investigating violations in the customs field. The legal provisions governing customs affairs should adjust to international conventions and international customs practices.

Furthermore, the regulation of criminal sanctions contained in the Customs Law and Excise Law has been regulated in the range of minimum /minimum/maximum and maximum/maximum/maximum criminal sanctions. Furthermore, for the imposition of sanctions, one can consider the number of state losses caused as well as other potential impacts that occur, so that it is expected to provide justice and benefits in the application of criminal sanctions. For example: the greater the state loss, the greater the criminal sanction. Based on the description above, it can be said that the imposition of criminal sanctions in the Customs Law and the Excise Law can have a deterrent effect which in fact amounts to state losses reaching billions of rupiahs.

The Customs Law and the Excise Law are *lex specialis* in the field of fiscal matters, so it needs to be prioritized in relation to the security aspects of the country's finances. For the application of criminal sanctions it should be optimized for criminal penalties, so as to provide revenue for state finances, and then consider imprisonment to provide a deterrent effect for violators. In addition to increasing the capacity of the Directorate General of Customs and Excise as an authorized institution in supervising the traffic of imported and exported goods, it is also necessary to have support and various parties in efforts to overcome the smuggling of goods and services in Indonesia, such as: support for other law enforcement agencies (including: TNI ) in assisting DJBC's enforcement action, as well as community participation in providing information about smuggling that occurs, so that we can suppress the smuggling efforts in Indonesia. In addition, the imposition of maximum sanctions in accordance with the state losses incurred is expected to provide a deterrent effect for smugglers.

In his opinion, law enforcement in the Customs and Excise field has been quite effectively implemented. It can be stated here that in 2013 DGCE has taken action against violations in the field of customs and excise as many as 4,699 cases with a potential state loss of Rp.293,209,527,393, -. Whereas for 2014 (up to February 2014), 718 cases have been taken.

The imposition of progressive sanctions on perpetrators who repeat violations in the Customs and Excise field is also expected to be one of the factors that produce a deterrent effect so that violators do not repeat their actions.

Looking for legal solutions in enforcing excise criminal law as stipulated in the laws in Articles 50 through 62, it is necessary to review the underlying legal theory.

The basic concept of excise is essentially objective taxation. The understanding is that the nature of excise taxation originates from the object, without regard to the state of the duty of the taxpayer (subject). Furthermore, in article 2 of the Excise Law the limits on the characteristics of the BKC can be imposed as objects of excise taxation, namely: certain items which have the characteristics or characteristics:

1. Consumption should be controlled;
2. Circulation needs to be monitored;
3. Use can have negative impacts for society or the environment; or
4. Usage charging state levies need for justice and balance.

If a reference to the basic function of excise duty as an instrument of taxation in Indonesia is one instrument excise tax on goods that have different characteristics with the instrument taxes on other goods. Different characteristics of the most important are the nature of discriminatory or selective elections to the object subject to excise. Judging from its function, in general, there are two major contributions to the development excise tax, i.e. taxes as an instrument of government and excise budgetary as regulated tool. So the solution to provide a deterrent effect against perpetrators of criminal acts excise duty is to provide the maximum criminal penalty on the basis of the legal theory of development. Namely that the law as a means of manipulating the public. To avoid violations in the field of customs

## **CONCLUSION**

Violations of excisable goods may be subject to criminal sanctions. The regulation on excise criminal sanctions is regulated in Article 50 to Article 62 of Law Number 11 the Year 1995 concerning Excise as subsequently amended by Law Number 39 of 2007. The criminal sanctions under the Customs legislation is composed of criminal fines, imprisonment of six months, the maximum imprisonment of two years, four years and a maximum imprisonment of six years. The imposition of criminal sanctions where the excise duty charged is only six years imprisonment under Article 53 and a maximum imprisonment of four years under Article 50, Article 51, Article 52 and Article 56. While Article 57 set a maximum imprisonment of two years, it had no effect deterrent against perpetrators. Proved the existence of a person sentenced to imprisonment with the same case to repeat his actions and subject to criminal sanctions back. So that criminal prosecution in criminal offenses excise only futile when state losses due to this tax violation big enough. That the provisions of criminal law governing criminal prosecution against customs crime sentencing any vulnerability that the threat of criminal penalties were small or too light. Whereas the objective of sentencing in criminal law of modern Indonesian politics has changed from the purpose of punishment as revenge towards criminalization with the aim of prevention. for the penalty should be increased.

The politics of criminal law in sentencing excise crimes, such as counterfeit cigarette excise bands should use the theory of punishment with the purpose of prevention. Prevention or deterrence theory is not unlike retributive theory, the theory of deterrence is a form of punishment which is dominated by the consequentialist view. Unlike the retributive view, the criminal sanctions view is only as retaliation, then in theory deterrence looking at their other goals that are more useful than just retaliation. The views Betham states that severe criminal is acceptable because of the ameliorative effect (reforming effect). But he was acknowledged that severe criminals must be accepted by the people before being implemented or affected. From that perspective the criminal law should not only be used as a means of retaliation against criminals, but only for the purpose of preventing crime. So from that view clear that the criminal function is as a means of prevention. However, despite the general theory of deterrence is regarded as a good theory of sentencing objectives in the perspective of prevention and control of crime.

The deterrent effect solution against perpetrators of criminal acts excise duty is to provide the maximum criminal penalty on the basis of the legal theory of development. Namely that the law as a means of manipulating the public. To avoid violations in the field of customs.

The criminal act of counterfeiting cigarette excise bands viewed from the perspective of administrative law countries is closely linked to the State policy in order to improve the welfare of the people through funding obtained from customs and tax revenue.

Various researched one of them carried out by the Center for Economic Studies and Public Policy at the University of Gajah Mada in 2010 states that the State losses due to counterfeit cigarette excise bands reach hundreds of billions of rupiah for each year.

Law enforcement through the imposition of criminal sanctions based on Law No. 11 of 1995 which has been amended by Act No. 39 of 2007, which imposed sanctions the highest penalty of eight years of the offenses excise has been unable to provide a deterrent effect against perpetrators.

From the perspective of the law of the State administration, it is possible to pursue various things aimed at preventing the occurrence of acts which are detrimental to the State relating to cigarette excise duty. These things are:

Judicial review against regulations or policies relating to the excise tax, for example regulations on cigarette excise tax rate increase. On one side of the cigarette tax increase to improve the opinion of the State but on the other hand if the cigarette tax increase is not supported by the ability of cigarette producer and consumer of cigarettes it will result in the emergence of their efforts or other parties to look for shortcuts. (Approach based on the rule of law).

The increases in cigarette excise tax would be offset by increasing the number of taxable

goods (BKC). Until now, Indonesia is still in the country "extremely narrow" in the imposition of excise duty, which is only about 3 kinds of goods subject to excise consisting of ethyl alcohol, beverages containing ethyl alcohol and tobacco products. While in other countries are generally mixed, and more than three (3) types of BKC. As an illustration, for example, the Finnish excise tax on 16 types of goods, the French 14 types of goods, India 28 types of goods, Japan 24 species, Malaysia as many as 14 types of goods, Germany 13 species and Singapore excise tax on 10 types of goods. Meanwhile, the OECD countries today use any excise rates on three types.

Basically, the arguments or reasons for wearing excise rates on BKC in some countries are varied, among others:

1. to control (limit) the circulation of goods that are considered immoral or unhealthy if consumed by the public.
2. to avoid the occurrence of negative externalities (to internalize external diseconomies).
3. Excise can also be imposed on non-essential goods or on consumption of luxury goods, and
4. Excise is also used as a means to create employment (employment creation) and one of the other factors that is not less important is that excise is a source of state revenue (government revenue) in financing development.

Based some arguments and possible revenue potential excise, have been twelve (12) the type of goods to be charged excise i.e. Soap, detergents, mineral water, cement, sodium cyclamate and saccharine, natural gas, methanol, tires, soft drinks, plywood, fuel oil and dry battery / batteries.

From a consideration of potential, stability and flexibility of their excise receipts in the first stage have three (3) types of goods which are taxed are prioritized for cement, soft drinks, and new.

1. Maximizing the function and role of the Government through the Department of Supervision and Customs and Excise services, the Department of Trade and Industry, as well as POM to monitor the circulation of the cigarette tax and the coordination of the results of monitoring, have been done so it can be handled in the case of problems related to the cigarette tax. POM has a role to conduct surveillance of tobacco products in circulation, advertising and promotion of tobacco products based on Government Regulation No. 109 in 2012 and the Regulation of the POM RI No. 41 of 2013 on the control of tobacco products in circulation, the inclusion of health warnings in advertising and packaging on tobacco products and promotions.
2. Provide insight to the wider community, especially the cigarette producers and actors of illegal excise on policies priorities for the use of funds from tobacco excise (DBHCHT) and the tax policy in relation to the tobacco industry, as well as other customs legislation.
3. Audit and verification against tobacco companies.

Based on article 16 of Law No. 11 of 1995 on Excise stipulates that every employer must administer well. Customs officials authorized to conduct the audit and verification of the administration of the manufacturer for 10 years. This study aims to determine the truth of the amount of taxes that should be paid. If it turns out that based on the audit and verification is found cheating or lack of payment of excise duty, then following up the findings can be awarded based on the level of violation or mistake with administrative sanctions or criminal penalties in accordance with prevailing regulations.

4. Examination

Customs officials are entitled to physical and document BKC (excisable goods). Article 35 of the Law No. 11 of 1995 on Excise, Customs and Excise officials authorized to conduct a physical inspection at the factory, the place - the place of storage or other places used to store BKC unpaid or customs exemption.

Customs and Excise officials periodically visit the factory to inspect the situation to the factory, excise tax inventory, production, and other routine activities. With more effective and efficient checks it is expected that tax revenues will be optimized.

## **SUGGESTION**

Based conclusion, the researchers suggest is:

1. Additional accumulative both criminal penalties, fines, civil namely return state losses of the number of falsified tax stamp.
2. Can give additional criminal sanctions to confiscate criminal assets in order to refund the financial losses due to the actions state actors make counterfeit cigarette tax band.
3. One can attempt the use of Alternative Dispute Resolution in order to refund the state financial losses.
4. Amendment Act No. 39 of 2007, as an above amendment to Act No. 11 of 1995 on excise duty on the imposition of criminal sanctions, especially an additional form of redress by way of seizing the assets of offenders.

- Justice Customs and Excise to be changed in procedural law as comparable as judicial corruption, Judicial Customs and Excise in a trial specifically for heavier Judge initial conviction against the accused perpetrators of counterfeiting excise bands.

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