

THE EFFECTIVENESS OF ADVALOREM RATE POLICY IN MINIMIZING THE CIRCULATION OF OTHER TOBACCO PROCESSING PRODUCTS (HPTL) ILLEGAL ELECTRIC CIGARETTE LIQUID/E-LIQUID

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Abstract

One type of Other Tobacco Processing Products (HPTL) in the form of e-cigarette liquid/e-liquid, based on the provisions of PMK Number 146 of 2017, the product is subject to excise duty of 57%, the provisions of which will take effect on July 1, 2018. Along with the times, e-cigarettes or The so-called E-Cigarette has become a trend among young people, because it carries the label as an alternative cigarette to replace conventional cigarettes (cigarettes). With so many e-liquid sales in circulation, there is also the potential for e-liquid to be sold illegally. The research method used is normative juridical research. The conclusion is the effectiveness of the advalorem tariff policy in minimizing the illegal circulation of HPTL e-cigarette liquids/e-liquids, so a legal system theory is needed. Krecitation in the effectiveness of the advalorem tariff policy in minimizing the illegal circulation of HPTL e-cigarette liquids/e-liquids. Pfirsrly, the legal structure, secondly legal substance, thirdly, legal culture and regarding the policy factors for the imposition of maximum advalorem excise rates (57%) by setting basic prices that do not follow market price trends, to HPTL in particular e-cigarette liquid/e-liquid, has created a fairly wide price disparity between the bandrol price (the price determined by the government) and the market price, so that it has the potential to cause circulation e-cigarette liquid/e-liquid illegally.

Keywords: Advalorem Tariff, Other Tobacco Processing Products (HPTL), E-Liquid

INTRODUCTION

Excise is one of the sources of state revenue used to finance state expenditures, apart from the tax sector and BUMN profits. Excise intensification and extensification activities have been carried out by the government to increase excise revenue. The amount of excise revenue from year to year is always predicted to increase. As referred to in Article (1) number (1) of Law Number 39 of 2007 concerning Excise which reads: "Excise is a state levy imposed on certain goods having the nature or characteristics stipulated in this law".

The purpose of certain goods that have the nature or characteristics as stated in Article (2) paragraph (1) of Law Number 39 of 2007 concerning Excise are goods that:

1. Its consumption needs to be controlled.
2. Its circulation needs to be monitored.
3. Its use can have a negative impact on society or the environment.
4. Its use requires the imposition of state levies for justice and balance, subject to excise duty based on this law.

The excise concept adopted by the Indonesian Excise Law is in line with Cnossen's opinion, according to him, excise has three main features that distinguish it from other types of taxes, namely: *selectivity in coverage, discrimination in intent, and often some form of quantitative measurement in determining the tax liability*. Based on this feature, excise duty can be intended for the following purposes: to raise revenue for general purpose, to reflect external costs, to discourage consumption, to charge road users for government provided services, and other objectives.¹

Meanwhile, the object of excise levy, hereinafter referred to as excisable goods (BKC), consists of three types as stipulated in Article (4) paragraph (1) of Law Number 39 of 2007 concerning Excise, which reads:

1. Ethyl alcohol or ethanol, regardless of the materials used and the manufacturing process.
2. Beverages containing ethyl alcohol in any amount, regardless of the ingredients used and the manufacturing process, including concentrates containing ethyl alcohol. Drinks containing ethyl alcohol.
3. Tobacco products, which include cigarettes, cigars, leaf cigarettes, sliced tobacco, and other tobacco processing products, regardless of whether or not substitute or auxiliary materials are used in their manufacture.

The object of the plastic excise levy is still being studied based on the Draft Government Regulation Number ... of 2019 concerning Excisable Goods in the Form of Plastic Bags, in Article 4 explains that the responsibility for excise duty for plastic bags is:²

- a. made in Indonesia is with the Factory Entrepreneur; and
- b. imported is with the Importer or other parties as referred to in the Customs Law.

Types of BKC in the form of tobacco products, can be described as follows:³

1. Cigarettes are tobacco products made from chopped tobacco wrapped in paper by rolling it, for use, regardless of the substitute or auxiliary materials used in its manufacture. Cigarettes consist of kretek cigarettes, white cigarettes and rhubarb incense cigarettes.
2. Clove cigarettes are cigarettes which are mixed with cloves or parts thereof, either original or imitation, regardless of the amount.
3. White cigarettes are cigarettes which are not mixed with cloves, rhubarb or frankincense. White cigarettes and kretek cigarettes consist of cigarettes made by machine and those made by other means than machines.
4. White cigarettes and kretek cigarettes that are made by machine are those that are in the process of being manufactured, starting from rolling, installing filters, packaging for retail sales, up to the affixing of excise stamps, wholly or in part, using machines, while white cigarettes and kretek cigarettes are made by means of a machine. other than machines are those in the manufacturing process, ranging from rolling, installing filters, packaging for retail sales, to gluing excise stamps, without using machines.
5. White cigarettes and kretek cigarettes made by other means than machines are those that are in the process of being manufactured, from rolling, filtering, packaging for retail sale, to the affixing of excise stamps, without the use of machines,

¹Sijbren Cnossen, *Theory and Practice of Excise Taxation*, New York: Oxford University Press, 2005, p. 2-6.

² Draft Government Regulation Number ... of 2019 concerning Excisable Goods in the Form of Plastic Bags, Article 4.

³Elucidation of Law of the Republic of Indonesia Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise, Letter C, p. 65.

6. Rhubarb frankincense cigarettes are cigarettes which in their manufacture are mixed with rhubarb and/or frankincense, genuine or imitation, regardless of the amount.
7. Cigars are tobacco products made from tobacco leaf sheets, sliced or not, by rolling them in such a way with tobacco, for use, regardless of the substitute or auxiliary materials used in their manufacture.
8. Tobacco slices are tobacco products made with chopped tobacco leaves, for use, regardless of the substitute or auxiliary materials used in its manufacture.
9. Other tobacco products, hereinafter referred to as Other Tobacco Production Results (HPTL) are tobacco products made from tobacco leaves other than those referred to in this letter, which are made in other ways in accordance with technological developments and consumer tastes, without regard to substitute materials or auxiliary materials used. used in its manufacture.

Regarding the excise rate policy, it is regulated based on Article (5) of Law Number 39 of 2007 concerning Excise which reads:

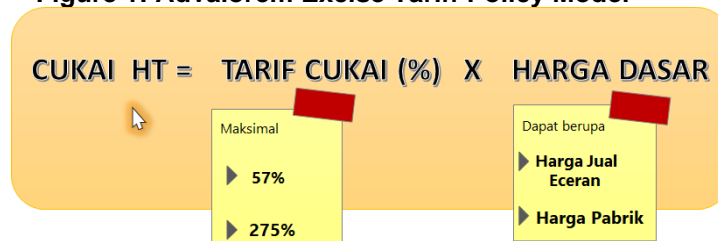
- (1) Excisable goods in the form of tobacco products are subject to excise duty based on the highest tariff:
 - a. for those made in Indonesia: 1. 275% (two hundred and seventy five percent) of the base price if the base price used is the factory selling price; or 2. 57% (fifty seven percent) of the base price if the base price used is the retail selling price.
 - b. for imports: 1. 275% (two hundred and seventy five percent) of the base price if the base price used is customs value plus import duty; or 2. 57% (fifty seven percent) of the base price if the base price used is the retail selling price.
- (2) Other excisable goods are subject to excise duty at the highest rate:
 - a. for those made in Indonesia: 1. 150% (one thousand one hundred and fifty percent) of the base price if the base price used is the factory selling price; or 2. 80% (eighty percent) of the base price if the base price used is the retail selling price
 - b. for imports: 1. 150% (one thousand one hundred and fifty percent) of the base price if the base price used is customs value plus import duty; or 2. 80% (eighty percent) of the base price if the base price used is the retail selling price.
- (3) The excise rates as referred to in paragraphs (1) and (2) can be changed from the percentage of the base price to the amount in rupiah for each unit of excisable goods or vice versa or a combination of both.
- (4) Determination of the target amount of state revenue from excise in the Draft State Revenue and Expenditure Budget (RAPBN) and alternative policies of the Minister in optimizing efforts to achieve revenue targets, taking into account industrial conditions and the aspirations of industrial business actors, are submitted to the House of Representatives of the Republic of Indonesia (DPR RI) for get approval.
- (5) Further provisions regarding the amount of excise tariff as referred to in paragraph (1) and paragraph (2), as well as the change in tariff as referred to in paragraph (3) shall be regulated by a ministerial regulation."

The explanatory provisions regarding excise rates based on Article 5 paragraph (3), namely changes in excise rates as referred to in this paragraph, can be in the form of changes from the percentage of the base price (advalorem) to the amount in rupiah for each unit of excisable goods (specifically) or vice versa. Likewise, it can be a combination of the two systems. This tariff change has several purposes, among others, for the benefit of state revenues, to limit the consumption of excisable goods, and to facilitate the collection or supervision of excisable goods.

In the advalorem excise tariff policy model, excise levies are expressed as a percentage of the base price. The basic price that becomes the benchmark can vary, whether the retail selling price, wholesale price, import price or factory delivery price depending on government policy. The variable that determines the amount of excise charged is the price. One of the advantages of this advalorem policy model is that it creates fairness between premium products whose prices are relatively high compared to low price products. Premium products will be charged an excise levy which is certainly higher than low-priced products.

In the advalorem excise tariff policy model in Indonesia, excise levies are determined by two different variables, namely the excise rate variable and the base price variable. The excise levy formula is illustrated in the following figure.

Figure 1: Advalorem Excise Tariff Policy Model



In the provisions of the Excise Law, the amount of excise tariff that is regulated in detail is the advalorem excise rate system. Article 5 paragraphs (1) and (2) explicitly regulates the amount of the highest advalorem excise tariff on tobacco products as follows:

- 1) for BKC in the form of tobacco products made in Indonesia is 275% of the base price if the base price used is the factory selling price, whereas if the base price used is the retail selling price, the maximum rate that may be set is 57%;
- 2) for BKC in the form of imported tobacco products is 275% of the base price if the base price used is customs value plus import duty, whereas if the base price used is retail selling price, the maximum rate that may be set is 57%.

Currently, the only type of BKC for tobacco products that uses an advalorem excise rate is HPTL. Based on the Minister of Finance Regulation number 146/PMK.010/2017 concerning Excise Tariffs for Tobacco Products, the excise rate imposed on HPTL is an advalorem tariff system. As for bigThe advalorem tariff on HPTL is 57% of the retail selling price. This means that the advalorem tariff has reached the maximum rate based on the provisions of the Excise Law. Under these conditions, the excise policy instrument for HPTL can only be implemented with a tendency to increase the base price for HPTL.

In the advalorem excise rate model, there are two variables that the government can use for excise policy instruments. The first is the excise rate variable and the second is the base price. Considering that the excise rate variable has a maximum limit as regulated in the Excise Law, the government's tendency in implementing excise policy is to prefer the basic price variable as a policy instrument.

Historically, since the introduction of the Excise Law in 1995 and also in previous periods, the excise tariff system for tobacco products implemented in Indonesia has been an advalorem tariff system. However, the advalorem excise tariff policy that is implemented still takes into account the elements of industrial scale, types of tobacco products and retail selling prices. This is to accommodate various different interests, including: labor aspects, public health aspects, protection of small-scale industries, and others.

The interesting thing about the application of this advalorem tariff system is the phenomenon of a fairly large price disparity between the government-established Retail Selling Price (HJE) and the actual Market Transaction Price (HTP). The trend is that the HTP is much lower than the HJE determined by the government.

In Sunaryo's view⁴, provides an interesting description of this phenomenon. Whereas the advalorem tariff system basically has two variable quantities that can be used as policy instruments, namely the base price (HJE) and the excise rate. In practice the most frequently used policy instrument by the Government every year is the HJE, namely by increasing the HJE every year. Although in terms of revenue, this policy is effective for achieving the target of excise revenue, but there are some facts that need to be noted. First, in the period 2000-2007, it turned out that the HTP was much lower than the HJE determined by the Government. Even for small SKT type manufacturers, the price disparity can reach 50% of the HJE. From the Government's HJE determination of Rp. 3,000, in the market, consumers can get it for only Rp. 1,500,-.

It can be further explained, the impact of the disparity phenomenon on the government, producers and consumers. For consumers, of course, they will get tobacco products cheaper than they should. From the aspect of the purpose of excise duty as a consumption restriction, of course this is not appropriate. For producers, high disparity conditions will trigger unhealthy competition between producers. Producer profits will be reduced and potentially cause large losses. For "naughty" producers, efforts to avoid excise payments are a shortcut to avoid losses. Meanwhile, for the government itself, the phenomenon of high disparity will provide a large additional burden of

⁴Sunaryo, et al, Dynamics of Cigarette Excise Tariff Policy, Jakarta: Noura Books, 2019, p. 20.

supervision. The government must anticipate the circulation of BKC for illegal tobacco products, both in the mode of using fake excise stamps,

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Based on the description of the facts of law enforcement against HPTL e-liquid above, it is necessary to analyze the advalorem tariff policy on HPTL, especially e-cigarette liquid/e-liquid. Theoretically, the excise tariff policy has an impact on the circulation of illegal excise objects related to e-cigarette liquids. Therefore, the problem studied in this study is how effective is the advalorem tariff policy in minimizing the illegal circulation of HPTL e-cigarette liquids/e-liquids? The purpose of this paper is to determine the effectiveness of the advalorem tariff policy in minimizing the illegal circulation of Other Tobacco Processing Products (HPTL) e-cigarette liquids/e-liquids.

Research methods

1. Research Form

This research is included in the form of normative juridical research, namely research that emphasizes the use of written legal norms.⁶ This study discusses the effectiveness of the advalorem tariff policy in minimizing the illegal circulation of other tobacco processing products (HPTL) e-cigarette liquids/e-liquids.

2. Research Type

This research is descriptive in nature because it describes the applicable laws and regulations and is associated with legal theories in their practical implementation related to problems, as well as describes/describes the facts that actually occur as a reflection of the implementation of the legislation and principles -Legal principles related to legal theories and their implementation practices.⁷

3. Data type

The type of data used is the type of data with a statute approach. The statute approach is carried out by reviewing all laws and regulations relating to the legal issues being handled. For research for practical activities, this legal approach will open up opportunities for researchers to study the consistency and conformity between one law and other laws or between laws and the Constitution or between regulations and related laws. the effectiveness of the advalorem tariff policy in minimizing the illegal circulation of other tobacco processing products (HPTL) e-cigarette liquids/e-liquids.

4. Types of Legal Materials

a. Primary Legal Material

Namely sources of law that become binding / legal basis such as: the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise, PMK Number 146 of 2007 and Draft Government Regulations Number of 2019 concerning Excisable Goods in the Form of Plastic Bags.

b. Secondary Legal Material

Namely materials that provide an explanation of primary legal sources such as materials in the form of books, daily/magazines and scientific writings.

5. Data collection

⁵<https://national.kontan.co.id/news/ditjen-bea-cukai-telah-menindak-104-kali-vape-illegal-selama-2019>. Retrieved 18 October 2021.

⁶Dian Puji Simatupang, Research Methods Lecture Module, Jakarta: Master of Law Studies Program Unkris, 2010, p. 2.

⁷*Ibid.*

The data collection method used is library research. In this literature study, what is done is to study and read legal and customs books, so that these materials can be related to problems related to this research.

6. Data analysis method

In an effort to be able to answer or solve the problems raised in this study, qualitative data analysis methods were used, because the data obtained were of quality not quantity. After data collection, analysis is then carried out, so that scientifically justifiable conclusions can be drawn.⁸

7. Form of Research Results

The form of research results according to the type of research that is descriptive in nature, analysis is a method that serves to describe or provide an overview of the object under study through data or samples that have been collected as they are without analyzing and making conclusions that apply to the public.⁹

DISCUSSION

Talking about the effectiveness of the law, it must first be able to measure the extent to which the rule of law is obeyed or not. If a rule of law is obeyed by most of the targets for which it is obeyed, it will be said that the rule of law in question is effective.¹⁰

Related to the theory of legal effectiveness according to Soerjono Soekanto¹¹ is that the effectiveness of a law is determined by 5 (five) factors, namely:

1. The legal factor itself (law).
2. Law enforcement factors, namely the parties that form and apply the law.
3. Factors or facilities that support law enforcement.
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.

Several opinions have been put forward about the theory of effectiveness such as Bronislaw Malinoswki, Clarence J. Dias, Allot and Murmer. Bronislaw Malinoswki argues that the theory of the effectiveness of social control or law, law in society is analyzed and divided into two, namely: (1) modern society, (2) primitive society, modern society is a society whose economy is based on a very broad market, specialization in industry and the use of advanced technology, in modern society laws are made and enforced by authorized officials.¹²

According to Clarence J. Dias in Marcus Priyo Guntarto as follows, there are 5 (five) conditions for the effectiveness of a legal system including:¹³

1. It is easy or not the meaning of the contents of the rules is captured.
2. The extent to which people in the community know the contents of the relevant regulations.
3. Efficient and effective mobilization of the rule of law is achieved with the help of administrative officials who are aware of involving themselves in such mobilization efforts, and citizens who are involved and feel they have to participate in the process of legal mobilization.
4. There is a dispute resolution mechanism that must not only be easily contacted and included by every member of the community, but must be effective enough to resolve disputes.
5. There is an assumption and recognition that is quite evenly distributed among members of the community who think that the rules and legal institutions are indeed capable of being effective.

In his book, Achmad Ali, quoted by Marcus Priyo Guntarto, who argues that law enforcement can be effective if:

1. The relevance of the rule of law to the needs of the target person.
2. Clarity of the formulation of the substance of the rule of law, so that it is easily understood by people who are the target of the law.
3. Optimal socialization to everyone who is the target of the law.
4. The law should be prohibitive, not mandatory. In general, prohibitor laws are easier to implement than mandatory laws.

⁸ *Ibid.*

⁹ Sugiyono, Quantitative, Qualitative, and R&D Approach Educational Research Methods, Bandung: Alfabeta, 2009.

¹⁰ Salim HS and Erlis Septiana Nurbani, Application of Legal Theory in Thesis and Dissertation, Jakarta: Rajawali Press, 2013, p. 375.

¹¹ Soerjono Soekanto, Factors Affecting Law Enforcement, Jakarta: PT. Raja Grafindo Persada, 2008, p. 8.

¹² Salim HS and Erlies Septiani, Op.Cit., p. 308.

¹³ *Ibid.*

5. The sanctions that will be threatened in the law must be matched with the nature of the law being violated, a sanction that is appropriate for a particular purpose, may not be appropriate for a particular purpose. The weight of the sanctions threatened must be proportional and possible to be implemented.¹⁴

Bustanul Arifin quoted by Raida L. Tobing et al, said that in a country based on law, a law is effective if it is supported by three pillars, namely:

- a. Authoritative agencies or law enforcement can be relied on.
- b. Systematic clear legal regulations.
- c. Public awareness of the law is high.¹⁵

In relation to the effectiveness of the advalorem tariff policy in minimizing the illegal circulation of HPTL e-cigarette liquids/e-liquids, it is necessary to first define the meaning of e-cigarettes. The definition of e-cigarettes has been regulated in Article 1 number 1 Regulation of the Minister of Trade Number 86 of 2017 concerning Provisions on the Import of E-Cigarettes. Electronic Cigarettes are cigarette devices that are used by heating a liquid that produces smoke and is inhaled by the wearer, which includes liquid nicotine and liquid nicotine substitutes used as the contents of electric machines and apparatus included in Tariff Headings/HS:

1. ex. 8543.70.90: Electrical machinery and apparatus, having separate functions, not specified or included elsewhere in this Chapter. - Other machinery and apparatus: - - Other, used for E-Cigarettes.
2. ex. 8543.90.90: Electrical machinery and apparatus, having separate functions, not specified or included elsewhere in this Chapter. - Parts: - - Other, used for E-Cigarettes.
3. ex. 3824.99.99: Prepared binders for casting molds or cores; chemical products and preparations of the chemical industry or related industries (including preparations consisting of mixtures of natural products), not elsewhere specified or included. - -Others: - - - - Other, which are used for E-Cigarettes.
4. ex. 2403.99.10: Other manufactured tobacco and manufactured tobacco substitutes; "homogenized" or "reformed" tobacco; tobacco extracts and essences. - - Other : - - - Tobacco extracts and essences.
5. ex. 2403.99.30: Other manufactured tobacco and manufactured tobacco substitutes; "homogenized" or "reformed" tobacco; tobacco extracts and essences. - - Others : - - - Other.
6. ex. 2403.99.90: Other manufactured tobacco and manufactured tobacco substitutes; "homogenized" or "reformed" tobacco; tobacco extracts and essences. - - Others: - - - Other.

The regulation of e-cigarette liquid/e-liquid is poured in Regulation of the Minister of Finance Number 146/PMK.010/2017 of 2017 concerning Excise Tariffs on Tobacco Products. In Article 1 number 14 PMK 146/2017 it is explained about Other Tobacco Processing Products (HPTL), namely:

Other Tobacco Processing Products (HPTL) are tobacco products made from tobacco leaves other than those referred to in numbers 4 to 13 which are made differently in accordance with technological developments and consumer tastes, without regard to substitute materials or auxiliary materials used in their manufacture.

HPTL includes:¹⁶

- a. Extracts and Essences. Tobacco Extracts and essences of tobacco are tobacco products in the form of liquid, solid or other forms originating from the processing of tobacco leaves made by extraction or other methods in accordance with technological developments and consumer tastes without regard to substitute materials or auxiliary materials in the manufacture, which are provided to consumers. the final product in retail sales packaging, which is consumed by heating it using an electric heater and then smoking it. Tobacco extracts or essences include liquids that are used as filling ingredients for vape, electrically heated tobacco products or tobacco capsules (cartridges/tobacco capsules).¹⁷ Tobacco extracts and essences that are imported together with

¹⁴Marcus Priyo Gunarto, *Criminalization and Penalization in the Context of Functionalizing Regional Regulations and Levies*, Dissertation, Semarang: Diponegoro University Semarang, 2011, p. 71. Quoted by Salim HS and Erlies Septiana Nurbaini, *Op.Cit.*, p. 308.

¹⁵Raida L. Tobing, et al, *The Effectiveness of the Money Laundering Law*, National Legal Development Agency, Research Results, Jakarta: Ministry of Law and Human Rights, 2011, p. 11.

¹⁶ Regulation of the Minister of Finance of the Republic of Indonesia Number 146/PMK.010/2017 concerning Excise Tariffs on Tobacco Products, Article 19.

¹⁷ Regulation of the Director General of Customs and Excise Number Per-05/BC/2019 concerning Submission of Notification of Other Finished Tobacco Processed Excisable Goods, Article 1 point 4.

- the equipment to consume them, are treated as a separate commodity from the equipment used to consume them.¹⁸
- b. Molasses Tobacco. Molasses tobacco is tobacco product that comes from tobacco leaf processing which is made and shaped in such a way according to technological developments and consumer tastes without regard to substitute or auxiliary materials in its manufacture, which is heated using a shisha/hookah (long pipe filled with water to suck tobacco). or a similar device, which is consumed by smoking.
 - c. Inhaling Tobacco (Snuff Tobacco). Inhaled Tobacco (Snuff Tobacco) is a tobacco product originating from the processing of tobacco leaves which is made and shaped in such a way according to technological developments and consumer tastes without regard to substitutes or auxiliary materials in its manufacture, which are consumed by inhalation.
 - d. Chewing Tobacco (Chewing Tobacco). Chewing Tobacco (Chewing Tobacco) is a tobacco product originating from the processing of tobacco leaves which is made and shaped in such a way according to technological developments and consumer tastes without regard to substitutes or auxiliary materials in its manufacture, which are consumed by chewing.

Specifically for Other Tobacco Processing Products (HPTL), the excise rate on tobacco products is set at 57% (fifty-seven percent) of the retail selling price proposed by the tobacco products manufacturer or importer.¹⁹ “The imposition of excise on e-liquid because the basic ingredients of the product come from tobacco.”²⁰ He emphasized that the Director General of Customs and Excise would only impose a 57% excise duty on e-cigarette liquids/e-liquids or vapes containing tobacco. Meanwhile, apart from that, it is free from excise taxes. According to the Director General of Customs and Excise, Heru Pambudi, all liquids containing tobacco are subject to excise duty. If nothing contains tobacco, it is not imposed.²¹

Imposition related to the Advalorem tariff policy is one of the tariffs used in import duties and excise, in addition to specific tariffs and mixed tariffs. According to the OECD Glossary of Statistical Terms, an Advalorem tariff is a levy imposed on imports in a fixed percentage value. Based on the WTO Glossary Terms, Advalorem tariffs are tariffs imposed in the form of a certain percentage of the price.²²

Launching from the World Integrated Trade Solution (WITS) website of the World Bank, the Advalorem tariff is the most commonly used tariff and is defined as an import duty rate that is calculated based on a certain percentage of the product value. In addition, referring to the IBFD International Tax Glossary, ad valorem tax in Latin means value based. The Advalorem concept is widely applied to value added tax (VAT), import duties, and excise. Meanwhile, based on the OECD Glossary of Tax Terms, ad valorem tax is a tax on goods or property expressed as a percentage of the selling price or estimated value. This means that advalorem taxes are also often applied to property taxes imposed on real estate.

Referring to Cornell Law School advalorem tax is usually applied to real estate taxes. An important characteristic of an advalorem tax is that it is proportional to the value of the underlying asset, unlike a specific tax, which is fixed regardless of the value of the underlying asset.

In essence, an advalorem tariff is a set tariff or levy imposed based on a certain percentage of the price of goods. Referring to Article 12 of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, the highest advalorem tariff for import duty is set at 40% of the customs value. Meanwhile, the advalorem tariff for excise, one of which applies to Other Tobacco Processing Products (HPTL) or alternative tobacco which is subject to 57% of the retail selling price as stipulated in Article 6 PMK No.146/PMK.010/2017 sttd PMK Indonesia No.156/PMK .010/2018.

In analyzing the effectiveness of the advalorem tariff policy in minimizing the illegal circulation of HPTL e-cigarette liquids/e-liquids, a legal system theory is needed. According to Lawrence

¹⁸ Regulation of the Minister of Finance of the Republic of Indonesia Number 146/PMK.010/2017 concerning Excise Tariffs on Tobacco Products, Article 20.

¹⁹ Regulation of the Minister of Finance of the Republic of Indonesia Number 146/PMK.010/2017 concerning Excise Tariffs on Tobacco Products, Article 6 paragraph (3).

²⁰ Quddus, Ghina Ghalia, Next Year Vape Liquid Will Be Subjected to Excise, accessed from <https://economic.kompas.com/read/2017/11/03/160812526/tahun-Depan-cairan-vape-dikenakan-cukai> on October 15, 2021 .

²¹ Ariyanti, Fiki, Vape Liquid Does Not Contain Tobacco Excise Free 57 Percent, accessed from <https://www.liputan6.com/bisnis/read/3154538/cairan-vape-tak-mengandung-tobakau-bebas-cukai-57-percent> on October 15, 2021.

²² Association of Indonesian Higher Education Tax Centers, What is Ad Valorem Tariff? Accessed from <https://atpetsi.or.id/apa-itu-tarif-ad-valorem> on October 15, 2021.

Friedman²³, the legal system includes first, the legal structure, namely the moving parts in a system mechanism or facility that exists and is prepared in the system. In this case The Directorate General of Customs and Excise (DJBC), the Ministry of Finance (Kemenkeu) has carried out eradication of entrepreneurs who e-cigarette liquid/e-liquid illegally. In 2018 Customs and Excise has taken action against the circulation of illegal vape e-liquid as many as 218 cases, in 2019 as many as 249 cases.²⁴ Then in 2020 as many as 575 cases and in 2021 as many as 115 cases.²⁵ These facts can show that Customs and Excise has not been optimal in carrying out supervision of e-cigarette liquid/e-liquid, because there are still many illegal e-cigarette liquids/e-liquids found, so this can be said to be ineffective.

Then the legal substance (legal substance), namely the actual results issued by the legal system. In this case it is Law Number 39 of 2007 Regarding Amendments to Law Number 11 of 1995 concerning Excise and Regulation of the Minister of Finance of the Republic of Indonesia Number 146/PMK.010/2017 concerning Excise Tariffs for Tobacco Products, related to Other Tobacco Processing Products. The regulation of e-cigarette liquids in Indonesia on July 18, 2018 Customs gave an initial permit in the form of an Excise Goods Entrepreneur Identification Number (NPPBKC) to several e-cigarette liquid manufacturers. This was done in connection with the stipulation of the Minister of Finance Regulation (PMK) Number 146/PMK.010/2017 concerning Tobacco Products Excise Tariffs which took effect from 1 July 2018. In the regulations that came into effect on 1 July 2018, e-cigarette liquid/e-cigarettes liquid which is the Result of Other Tobacco Processing (HPTL) is subject to excise duty of 57%. The imposition of these tariffs is an effort to intensify excise on tobacco products and is a government instrument to control consumption and supervise the circulation of e-cigarette liquids/e-liquids. Although the Minister of Finance Regulation (PMK) Number 146/PMK.010/2017 has been in effect since early July 2018, the Government decided to provide relaxation in which the implementation time was postponed to 1 October 2018.

This is intended so that e-cigarette/e-liquid entrepreneurs have sufficient time to prepare permits and obtain excise stamps from the Government. The permit in the form of NPPBKC that has been issued by the government is a sign that currently the circulation of e-liquid has been regulated by the government based on legal provisions. In addition to being regulated in Minister of Finance Regulation (PMK) Number 146/PMK.010/2017, the government has also established several supporting regulations for the HPTL industry in order to provide more legal certainty, improve services in the excise sector, and increase state financial revenues. Among them through PMK Number 66/PMK.04/2018 concerning procedures for granting, freezing, revocation of NPPBKC, PMK Number 67/PMK.²⁶

Third, legal culture, namely public attitudes or values, moral commitment and awareness that encourage the operation of the legal system, or the overall factors that determine how the legal system gains a logical place within the cultural framework of the community. In this case, it can be seen in the phenomenon that enthusiasts of e-cigarette users are increasing. People think that the use of e-cigarettes can help them not to use conventional cigarettes. Product existence e-cigarette liquid/e-liquid legally supplied by an official producer licensed by the NPPBKC, always followed by e-cigarette liquid/e-liquid which is illegal. Many entrepreneurs sell various products e-cigarette liquid/e-liquid which are sold illegally due to the large number of requests from people who use e-cigarettes, so this cannot be said to be effective.

In addition to the legal system, effectiveness *advalorem* tariff policy in minimizing the illegal circulation of HPTL e-cigarette liquids/e-liquids it can be seen from the policy of imposing the maximum *advalorem* excise rate (57%) and the determination of the base price (*bandrol* price) which does not follow the market price trend towards HPTL in particular e-cigarette liquid/e-liquid, has created a fairly wide price disparity between the *bandrol* price (the price determined by the government) and the market price. The phenomenon that occurs is the price tag is far below the market price. This has the potential to create conditions of uncertainty and concern for the government as well as BKC HPTL entrepreneurs.

²³Lawrence M. Friedman, *The Republic of Choice: Law, Authority, and Culture*, Yale: Harvard University Press, 1990, p. 88.

²⁴ <https://katadata.co.id/happyfajrian/finansial/5e9a4e57425f4/selong-2019-bea-cukai-tangani-4724-case-rokok-dan-miras-illegal> on October 18, 2021.

²⁵ <https://www.beacukai.go.id/berita/tegakkan-Hukum-dan-amankan-hak-negara-bea-cukai-lakupemusnahan-bmn-hasil-penindakan.html> on October 18, 2021.

²⁶Ministry of Finance, Directorate General of Customs and Excise, Customs and Excise gives initial permits to vape liquid manufacturers, www.beacukai.go.id, on October 15, 2021.

Furthermore, the psychological effect for excise policy makers is that the state should get a higher excise value because of the large price difference. On the other hand, for HPTL producers, especially e-liquid, there are always concerns if the government increases the excise burden beyond their expectations. Not to mention it is associated with the issue of unfair tax rates when compared to conventional cigarettes. The HPTL entrepreneur's great concern about the excise burden allows BKC Producers who have been selling illegally so far to be reluctant to turn into legal Producers. This is what causes the circulation of illegal HPTL BKC to continue so that it can be said to be ineffective.

CLOSING

Based on the discussion above, it can be concluded that to analyze the effectiveness of the advalorem tariff policy in minimizing the illegal circulation of HPTL e-cigarette liquids, a legal system is needed. There are three studies in the effectiveness of the advalorem tariff policy in minimizing the illegal circulation of HPTL e-cigarette liquids/e-liquids. First, the legal structure, namely the moving parts in a system mechanism or facility that exists and is prepared in the system, namely Directorate General of Customs and Excise Ministry of Finance (Kemenkeu). The two legal substances are the actual results issued by the legal system, namely the existence of Minister of Finance Regulation (PMK) Number 146/PMK.010/2017 has been in effect since early July 2018. Third, legal culture (legal culture), namely public attitudes or values, moral commitment and awareness that encourage the operation of the legal system, or the overall factors that determine how the legal system obtains a logical place within the cultural framework of the community, in this case the number of enthusiasts. E-cigarette users are increasing.

In addition to the legal system, the policy factor of imposing a maximum advalorem excise rate (57%) and the determination of the base price (bandrol price) which does not follow the market price trend towards HPTL, especially e-Liquid for e-cigarettes, has created a wide price disparity between bandrol prices. (government fixing price) with market price. This has the potential to create conditions of uncertainty and concern for the government as well as BKC HPTL entrepreneurs. The HPTL entrepreneur's great concern about the excise burden allows BKC Producers who have been selling illegally so far, who are reluctant to turn into legal Producers. This is what causes the circulation of illegal HPTL BKC to continue, so it can be said that it has not been effective.

SUGGESTION

The suggestion in this paper is to support the effectiveness of the excise tariff system on HPTL, especially e-cigarette liquids/e-liquid, it is necessary to reconsider the maximum advalorem excise rate policy (57% tariff) and the bandrol price setting that does not follow market price trends. The main objective is to minimize the disparity between the market price and the bandrol price. There are 2 alternative policies that can be developed, namely:

1. lowering the advalorem excise rate on the one hand and adjusting the government-set price (bandrol price) to approach the market transaction price on the other.
2. completely shifting the advalorem excise tariff system to a specific excise rate system, as applied in the excise system for conventional cigarettes (cigarettes). The policy of specific excise tariffs on cigarettes has proven its effectiveness in reducing the circulation of illegal cigarettes.

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