

UDC 34

THE DILEMMA OF ENFORCEMENT OF CRIMINAL SANCTIONS AGAINST THE CRIME OF EXCISE

Syahputra Irwandi*, Endri Endri

Department of Law, University of Maritim Raja Ali Haji, Tanjungpinang, Indonesia

*E-mail: Irwandisyahputra94@gmail.com

ABSTRACT

The provisions for criminal acts regarding Excise in Law Number 39 of 2007 concerning amendments to Law Number 11 of 1995 concerning Excise regulates prohibited matters, such as prohibitions against people who offer, deliver, sell, or provide for sale. In addition, several articles in the excise law contain provisions for imprisonment and fines, both alternative and cumulative. Along the way, the enforcement of criminal sanctions against excise crimes finds a dilemma, namely the application of sanctions—this research is normative legal research using primary and secondary legal materials. The problem approach used in this research is the statute approach and the case approach. The steps are to identify, take an inventory and analyze the dilemmas related to enforcing criminal sanctions against excise crimes. The position of criminal sanctions in the excise law explicitly regulated the *Ultimum Remedium*. Therefore, the use of criminal sanctions for excise crimes must consider several categories; there is an element of absolute intent and a repetition of actions.

KEY WORDS

Dilemma, criminal sanctions, excise.

Fundamental values of the State, values of Pancasila are the basis of all laws in the State of Indonesia. The Preamble to the 1945 Constitution, which includes the values of Pancasila, contains Four Main Thoughts which the second main idea states that the State wants to realize social justice for all Indonesian people. In this case, the State must recognize the general welfare of all citizens (Kaelan, 2010). To discover the ultimate goal for the welfare of all Indonesian people, one of which can be through revenue from the imposition of Excise. According to the law, Excise as a state levy imposed on certain goods that have characteristics or characteristics is state revenue to realize the nation's welfare. Goods are subject to excise duty based on the law on Excise on interests because of how they, how they move around, how they can hurt the community or the environment, or how their use needs to be taxed by the State for fairness and balance (Jusriyati, 2006).

The goods that are subject to excise duty in each country vary depending on the policies of each government. Excise is a state levy imposed only on the use of certain goods within the customs area. Currently, the excise duty managed by the Directorate General of Customs and Excise is Excise on tobacco products such as cigarettes, cigars, leaf cigarettes, sliced tobacco, and other tobacco products; excise duty on beverages containing ethyl alcohol in any amount; and excise duty on ethyl alcohol or ethanol (Sutedi, 2012). So that legal duties and functions are needed so that everything works as it is supposed to.

Related to the function of law, which is part of the role of law as a rule of law that has a coercive and commanding nature, the law has consequences as sanctions. So, as time has passed, the role and function of law have changed in a good way. The part and function of law are no longer limited to just creating security and public order. Instead, the role and function of law have grown to help make the welfare of society and the nation (the welfare state) (Najih, 2016). Therefore, the law has a higher position if it can achieve welfare and not only as a protector in life (Z. Ali, 2009).

At least three types of laws can be called "special" (Sudarto, 1981). These are specific special criminal laws, administrative rules with criminal penalties, and laws with special criminal statutes that make certain groups of people or actions illegal (Sudarto, 1981). So

that excise crimes in the group of administrative regulations that contain criminal sanctions. The excise law regulates the traffic of goods or the circulation of excisable goods. For example, In-Law Number 39 of 2007 about Amendments to Law Number 11 of 1995 about Excise says that anyone who offers, delivers, sells, or provides for sale goods subject to excise duty that is not packaged for the seller is sold or does not have Excise. Tape attached, so everyone saves, keeps, owns, sells, buys, or gives away goods that are subject to excise duty, but that the seller has already sold or does not have.

These goods are related to excisable interests in termination, inspection, prevention, and sealing. Civil Servant Investigators (PPNS) of Customs and Excise. Are licensed people who work for Customs and Excise?. Who are Criminal Investigators in the field of Customs and Excise?. As stated in Law-Law Number 8 of 1981 about the Criminal Procedure Code, certain Civil Servant Officials in the Directorate General of Customs and Excise have extra power as Investigators to look into criminal cases in the Customs and Excise field (Sutarto, 2010). Customs and Excise officials can ask the Indonesian National Police, the Indonesian National Armed Forces, and other agencies for help with their jobs under the Excise Law. The following table has information about how Customs and Excise will enforce the law from 2017 to 2021:

Table 1 – The Directorate of Enforcement and Investigation of Indonesian Customs and Excise

No	Year	Type of Enforcement	Catch
1	2017	24,337	7,0 T
2	2018	18,204	11,76 T
3	2019	21,062	5,69 T
4	2020	21,779	6,11 T
5	2021	28,858	24,00 T

Source: *Enforcement Data, 2022.*

Based on the table above, in 2021, there will be a high fluctuating increase in cases consisting of 28.858 types of prosecution with a total catch of 24.00 T. This figure is very different from previous years. For example, 2018 was the year in which the minor type of prosecution was 18,204, Meanwhile, 2019 was the year in which the smallest number of catches was 5.69 T. In 2021, that 01 illegal BKC HT operation will throughout Indonesia; of 3,868, these operations resulted in prosecutions in the tobacco product excise sector with a total number of prosecutions of 12,045 cases, (SBP and BA Tengah). This number has increased compared to the trial in 2020, which was 6,327 cases, this increase in the number of prosecutions to the rise in enforcement actions on tobacco excise during the 2021 Gempur operation period. In 2021, the number of prosecutions in general/overall also increased by 32.5% compared to the number of prosecutions in 2020. As for the value of goods resulting from prosecution (BHP), the total national that experienced a very significant increase of 284% from 2020 with a total value of + Rp. 24 trillion. The following is the number of SPDP (Investigation Notification Letters) for 2021, which will be in the following table:

Table 2 – Number of SPDP (Investigation Notification Letters) in 2021

No	Types of Excisable Goods	Amount
1	Tobacco Products	156
2	MMEA	16
Total		172 Cases

Source: *Performance Report of the Directorate General of Customs and Excise 2021.*

Based on the table above, there were 172 cases of excise crimes that went as far as the investigation stage. However, when compared to the results of the illegal BKC HT operations, there were 12.045 (twelve-thousand forty-five) prosecutions, (SBP and BA Tegah). Moreover, several articles in the excise law contain provisions for imprisonment and fines, both alternative and alternative/cumulative. So that the exciting thing is how ideally, a case can be raised the criminal case or only in the form of action sanctions. The Formulation of the problem on the above background, the formulation of the problems raised in this study

are What is the position of criminal sanctions in the Excise law?, What is the Dilemma of Enforcement of Criminal Sanctions Against Excise Crimes?.

METHODS OF RESEARCH

Research is a way to find out what's true (Sunggono, 2016). The author will do research as an empirical legal study, or legal research, which is based on secondary data as the first set of information and then primary data, or information from the field (Epstein & Martin, 2014). This research is descriptive, which means that it tries to accurately describe a situation or symptom, or find out if there is a link between a sign and other symptoms in society by describing an event that happened in a certain place at a certain time that paints a picture of the problem that needs to be looked into.

In the jurisdiction of the Tanjungpinang City Customs and Excise Office, this location considering this area, is one of the areas that have a relatively high potential for the occurrence of excise crimes. Primary data is data obtained directly from the first source, In addition, the authors now receive data from respondents in the field regarding matters relating to the problem under study. Researchers got secondary data from literature studies, laws, books, dictionaries, encyclopedias, and the internet (McConville & Chui, 2017). To collect data in this writing, the author uses several methods, namely:

- An interview or interview is a form of verbal communication, so it is a conversation that aims to obtain information (Nasution, 2006). Directly to the Enforcement and Investigation Section, namely the Intelligence Sub-Section and the Enforcement and Operational Facilities Sub-Section;
- Literature review, namely, the author takes, examines, examines, and analyzes various quotations from reading books, literature, or supporting books related to studied problems.

Based on the problem formulation and discussion of the problems, the author's data analysis technique used qualitative methods. At the same time, the way of thinking used by the author is deductive, namely the narrowing of the general part, which is a widespread problem to a more specific problem.

RESULTS AND DISCUSSION

Position of Criminal Sanctions in the Excise Law

Criminal sanctions are sorrow or suffering inflicted on someone guilty of committing an act prohibited by criminal law; with this sanction, it is hoped that people will not commit a crime (M. Ali, 2015). They stated that criminal sanctions are divided into the leading crime and additional punishment. The main sentence consists of the death penalty, imprisonment, confinement, fines, and imprisonment. In contrast, other liabilities consist of revocation of certain rights, confiscation of certain goods, and the announcement of a judge's decision. They stated that criminal sanctions are into two groups: major crime and additional punishment. The main sentence consists of the death penalty, imprisonment, confinement, fines, and imprisonment. In contrast, other liabilities consist of revocation of certain rights, confiscation of certain goods, and the announcement of a judge's decision. In the formulation of sanctions criminal provisions, it must state the criminals' qualifications explicitly, whether they are cumulative, alternative, or cumulative.

Cumulative, using the word "And" means that sanctions are imposed on both if imprisonment and a fine are juxtaposed. And if one of the choices says "or," then only one of them is used. And the last one has to do with cumulative alternative provisions that use the word "and," which means that the imposition can be either one or both. The Criminal Code does not recognize the formulation of incremental criminal sanctions, namely the formulation of criminal threats with editorial conjunctions (Rahardjo, 2009; Soekanto, 1989). As previously stated, Lamintang stated that the criminal code provisions do not recognize the accumulation of maximum criminal penalties for a particular crime, especially imprisonment

with a fine or detention with a fine. Is it a fundamental principle of the foremost criminal and only applies to general crimes originating in the Criminal Code?.

Laminating, the Dutch WvS *Memorie van Toelichting* (MvT), which shows how lawmakers thought about the most severe offenses, says that it can't be right to have two main types of criminal offenses at the same time because the crime of deprivation of liberty is a different kind of crime with the other goal. The cumulative formulation system is known in laws and regulations outside the Criminal Code at 10.18%. In contrast, the incremental - combined or mixed alternative approach, also known as the impure cumulative system, is known in the formulation Criminal Code in the form of imprisonment and a fine of 23.15%. The placing threat of essential criminal sanctions with a cumulative alternative penalty will affect the severity of sanctions for certain acts that are still in the light category.

The law of the Republic of Indonesia Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise contains threats that are cumulative and cumulative alternatives, which can follow:

1) Cumulative Criminal Provisions:

- a. Article 50 states that any person without a permit, as referred to in Article 14, who carries out factory activities, storage areas, or imports excisable goods to evade excise payments shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years.
- b. Article 52 says that a factory owner or owner of a storage area who takes excisable goods out of the factory or storage area without following the rules in Article 25 (1) to avoid paying Excise will be jailed for at least one year and up to five years and have to pay a fine of the at least two times, the value of excise duty and up to ten times the value of the excise duty that should have been paid.
- c. Article 54 states that any person who offers delivers, sells, or makes available for sale excisable goods that are not packaged for retail sale or are not attached with excise stamps, or are not affixed with other signs of payment of Excise as referred to in Article 29 paragraph (1) shall be subject to criminal sanctions. Imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of at least 2 (two) times the value of excise duty and a maximum of 10 (ten) times the value of the Excise that should pay.
- d. Article 56 says that anyone who hoards, keeps, owns, sells, exchanges, gets, or gives excisable goods that he knows or should have a good reason to think came from a crime against this law will be jailed for at least one year.
- e. Article 57 states that any person who without permission opens, releases, or damages a lock, seal, or security sign as regulated in this law with imprisonment for a minimum of 1 (one) year and a maximum of 2 (two) years.

2) Cumulative Alternative Criminal Provisions:

- a. Article 58 states that any person who offers, sells, or delivers excise stamps or other signs of payment of excise duty to those who are not entitled to or buys, receives, or uses excise stamps or other signals of the amount of excise duty which is not their right, shall be punished with imprisonment of at least 1 (one) years and a maximum of 5 (five) years and a fine of at least 2 (two) times the excise value and a maximum of 10 (ten) times the excise value that should pay.
- b. Article 58A states that:
 - (1) Everyone who illegally accesses electronic systems related to services and supervision the excise sector shall deal with imprisonment for a minimum of 1 (one) year, a maximum of 5 (five) years, and a fine of at least Rp. 50,000,000.
 - (2) The activities described in paragraph 1 that make it impossible to pay state taxes based on this law are punishable by a prison sentence of at least two years and up to 10 years, as well as a fine of at least IDR 1,000,000,000.00, (one billion rupiahs).

The policy of using criminal sanctions in administrative legislation is a critical issue, considering that, in general, the function of criminal sanctions is only as a compliment or a subsidiary, which means that if it is not necessary, do not use criminal sanctions as a means.

Furthermore, because sanctions in criminal law are harmful in the sense that they can cause suffering both physically and psychologically; therefore, it is said that criminal law is a dangerous system of sanctions (Maroni, 2016). So, in applying the criminal sanctions to an act, it must pay attention to the purpose behind the show, which is criminal sanction. The Excise Law includes a group of administrative legislation which contains criminal provisions; However, some expert views state that criminal sanctions are complementary sanctions. Still, if you look at the excise law regarding the position of criminal sanctions, it is not clear that the criminal sanctions are the last resort or that criminal law is the ultimate weapon.

The Dilemma of Enforcement of Criminal Sanctions Against Excise Crimes

Law enforcement in the crime of Excise is faced with several problems, both coming from the legal substance, legal structure, and legal culture of the community. The criminal sanctions are considered necessary in dealing with administrative crimes; this is because, on the one hand, due to the development of the era of administrative corruption, there has also been a development that was initially only a violation of organizational activities—extraordinary crime. For example, armed with a forest management permit, it turns out that they carry out illegal logging, and so on (Maroni, 2016). Contains all of the administrative parts of the excise law.

Because of this, it is essential to change how administrative crimes are considered. At first, they were only seen as breaking the law (*wet delicate*), so the punishments were light. Now, they are seen as serious crimes that can lead to the death penalty. Therefore, the decision of sanctions, both the type (*transport*), the severity (*Strafmaat*), and how to implement them (*Strafmodalitet*) in administrative legislation, must be able to realize the purpose of punishment for violations of the law (Maroni, 2016). Therefore, the severity and severity of a penalty for an act that violates the provisions of excise law have been explicitly regulated in parts of the article. Both administratively and criminally sanctioned (Jaya, 2008; Purbacaraka, 1977).

If the use of criminal sanctions without paying attention to the purpose of punishment. It will result in addition to the loss of the characteristics of criminal law with negative sanctions; more than that, the existence of criminal sanctions will not be obeyed by the community only considered as a 'toothless tiger' because effectively tackling crime in society. The community's perspective and public awareness are very influential in law enforcement. Sometimes a variety of difficulties are encountered if the community does not support law enforcement.

The use of criminal law in various laws and regulations in Indonesia to exercise social control and social engineering (law as social control and social engineering) does not seem to be an essential issue. So far, legislation practice shows that criminal law is part of Indonesia's policy or legal politics. According to Barda Nawawi Arief, efforts to combat crime using criminal sanctions (rules) are the oldest method, which is as old as human civilization (Arief, 1998). However, it cannot deny that using criminal sanctions in laws and regulations is a powerful thing to make people obey.

Theoretically, crime prevention, using criminal law/penal is a policy process that goes through several stages, namely (1) The stage of determining the crime by the legislators or the formulation stage; (2) The stage of giving the sentence by the competent authority, or the application stage. The first stage is "giving criminal in abstract," while the second and third stages are called the "giving criminal in the concerto." The three sentencing stages are seen as a criminal law enforcement mechanism process (Muladi & Arief, 1992). One of the efforts to overcome crime is to use criminal law with sanctions in the form of criminals (Setiawan, 2013; Sugiarto & Taufik, 2019). It is not surprising that in every statutory policy, criminal sanctions. It seems that the legislators feel that they are not stable if they have not included sanctions in the form of criminal acts (Suheryadi, 2002).

Regarding the need for criminal and criminal law, Roeslan Saleh, as quoted by Barda Nawawi Arief, stated the following reasons (Arief, 1994):

- 1) Whether or not criminal law is necessary does not lie in the goals to be achieved, but in the question of how far to achieve that goal; it is permissible to use coercion. The problem isn't with the goals that need to be reached.
- 2) There are efforts to repair or maintain that have no meaning at all for the convicted person, and besides that, there must be a reaction to the violations of norms that he has committed and cannot be left alone;
- 3) The influence of criminal or criminal law is not solely aimed at the criminal but also to influence people who are not evil, namely citizens who obey the norms of society.

The need for criminal law lies in the issue of how far to achieve the objectives of the law. For example, suppose you look at one of the primary considerations for forming the excise law: optimizing efforts for state revenue from the excise sector. In addition efforts to affirm the boundaries of the excise object, it is also necessary to improve the administration system for excise taxes and increase law enforcement efforts as well as establish the development of employees in the context of good governance (good governance). So, in law enforcement, achieving these goals must be done carefully and on target (Lopa, 2001; Luthan, 1995).

In efforts to comply with administrative law norms, the function of criminal sanctions as a 'last remedy' if administrative sanctions and civil sanctions are no longer effective, so criminal sanctions, in this case, function as an 'Ultimum Remedium.' At first, it was thought that administrative crimes were breaking laws (*wet delicate*). Becomes an extraordinary crime (the extraordinary crime) that takes refuge in administrative regulations. In connection with the change in the *modus operandi* of administrative crimes, the current function of criminal sanctions is not only 'Ultimum Remedium.'

According to Muladi, steps that are shock therapy, for example, in the fields of taxation, the environment, copyright, and others, sometimes need to be carried out, especially those related to the perpetrators of criminal acts that have gone too far and caused huge losses (Muladi, 1995). Therefore, in enforcing criminal sanctions in the excise law, the function of the criminal sanctions must first be placed. Using criminal sanctions as a *Primum Remedium* based on primary considerations because the excise law can be imposed on all actions regardless of the act's size sometimes creates a dilemma for law enforcers in carrying out the orders of the excise law.

Law enforcers also feel the dilemma of enforcing criminal sanctions against excise crimes; based on the author's interview, sometimes law enforcers are confused about the imposition of criminal sanctions for certain acts, especially when the category is still small. Such as the sale of illegal cigarettes by small stalls or illegal cigarettes carried by passengers whose quantity is still small. So here, usually, law enforcers take action sanctions, namely the prevention or confiscation of these goods. In the use of criminal law in tackling administrative crimes, it is also necessary to pay attention to "limiting principles" in using correctional facilities (Criminal Law), as stated by Nigel Walker, namely (Arief, 1998):

- a) Do not use Criminal Law (HP) solely for retaliatory purposes;
- b) Do not use HP to punish acts that are not harmful/harmful;
- c) Do not use HP to achieve a goal that can reach more effectively by other, less expensive means;
- d) Do not use HP if the loss/danger arising from the crime is greater than the loss/danger from the act/criminal act itself;
- e) The prohibitions of HP should not be more dangerous than the act too;
- f) HP should not contain restrictions that do not have strong support from the public.

When Nigel Walker's opinion is taken into account, the use of criminal law in the excise law doesn't just use criminal law for retaliation. Instead, it uses criminal law with actions where it is still possible to punish. it is necessary to take into account several factors, as stated by Soerjono Soekanto, namely (Arief, 1994):

- a. The characteristics or nature of the boycott itself;
- b. The perception of community members in taking risks;
- c. The period of application of the negative sanctions;
- d. The features of the person affected by the embargo;

- e. Opportunities that are (as if) provided by a community culture;
- f. Characteristics of the behavior that need to be controlled or supervised by the negative sanctions;
- g. Community desire or social support for the behavior to be held.

According to this theory, punishment is because people have committed crimes. Criminal is an absolute consequence that must exist as retaliation to the person who committed the crime. So the fundamental justification lies in the existence of the crime itself. As stated by Johannes Andenaes that the primary purpose of punishment, according to basic theory, is to satisfy the demands of justice. At the same time, the beneficial influence is secondary. This demand for absolute justice can be seen in the opinion of Immanuel Kant in his book *Philosophy of Law*. More than that, the enforcement of criminal sanctions in the excise law is administrative law. It must also pay attention to the behavior characteristics that need to be controlled or supervised by the negative sanctions.

The theory of retaliation: The idea of retaliation says that punishment is for practical purposes, such as fixing criminals. There's no need to think about the benefits of criminal prosecution (Hamzah, 1993). On the subject of retaliation, J.E. Sahetapy stated: So, if the only goal is to get back at and scare the other person, it's not certain that this goal will be met, since the defendant may not make the other person feel guilty or sorry, or maybe the opposite. In my opinion, retaliating or frightening the perpetrator with a cruel crime violates the sense of justice (Muladi & Arief, 1992; Sahetapy, 2009). Based on the dilemma of enforcing criminal sanctions against excise crimes, the use of criminal sanctions for excise crimes must pay attention to several categories, namely:

- Based on the consideration of the magnitude of the loss to the State. The excise law is a group of administrative legislation regulating criminal provisions. In principle, the excise law regulates circulation, supervision, and restriction of the use of certain goods categorized as excisable goods, so these goods need to be burdened by the State for balance and justice. However, the facts found that this creates a dilemma for law enforcement in enforcing criminal sanctions in the excise law. Moreover, the goods caught are in small quantities, so the imposition of criminal sanctions can be a premium medium by measuring the size of the state losses.
- There is an element of absolute intentionality. The element of absolute intentionality can be one of the benchmarks for whether they can enforce an act the criminal sanctions or only with action sanctions. The fundamental aspect of intentionality can be carried out consciously, systematically, and in an organized manner.
- And is a repetition of actions. In this case, not only must it be seen if a judge's decision has permanent legal force, but it has been carried out as a judge's decision. By the relative theory put forward by Muladi and Barda Nawawi Arif, crime is not just to take revenge or retaliation against people who have committed a crime, but has specific reasonable goals (utilitarian theory). The objectives that can obtain here are related to uniformity in handling excise crimes to achieve legal certainty. Therefore, the use of action sanctions in administrative sanctions must be retaliation.

CONCLUSION

Based on what has been said above, here are the conclusions of the study Criminal sanctions in the excise law are cumulative and cumulative alternatives. The position of criminal sanctions is about the *Ultimum Remedium*, namely that criminal sanctions are a last resort if other sanctions, such as the administrative sanctions, cannot accommodate the act or what is better known as criminal law is the *Ultimate weapon*. Acts in the administrative sanctions are also different actions such as excise debt that is not paid on time or do not pay Excise until the maturity date of the delay; it is mandatory to pay the Excise owed. The dilemma of using criminal sanctions against excise crimes is that in certain circumstances, it is difficult for law enforcement to decide whether to raise the case to the investigation stage or not because the perpetrators are only minor players such as small shops or passenger luggage.

Law enforcement in criminal acts of Excise must pay attention to all aspects related to legal objectives and how to precede action or administrative sanctions. It is known that the excise law is part of a group of administrative rules in which criminal provisions. In this case, Customs and Excise law enforcement should create a unique team tasked with assessing which actions can be brought up to criminal proceedings and which activities are only subject to administrative or administrative sanctions. The existence of this team will affect uniformity in law enforcement.

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