

Comparative Study on the Application of the *Ultimum Remedium* Principle in Excise Law: A Comparative Analysis Between Indonesia and ASEAN Countries

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ABSTRACT;

This research evaluates the effectiveness of criminal law enforcement against illegal cigarette excise violations in Indonesia using a socio-legal approach and regional comparisons within the ASEAN region. Empirical data from 2021 to 2024 show that, despite a significant increase in enforcement operations from 5,100 to 8,900 cases, the percentage of illegal cigarettes remained stagnant at around 4 to 6 percent. These findings indicate the ineffectiveness of a purely penal approach in changing market dynamics, mainly due to the existence of legal pluralism, which triggers avoidance responses and conflicts between MSME actors and state law. A comparative study of four ASEAN countries, namely the Philippines, Thailand, Malaysia, and Vietnam, confirms that administrative instruments, distribution supervision, and the use of technology play a much more significant role in supporting the effectiveness of law enforcement than criminal instruments. Based on these findings, the study recommends reconstructing the excise law enforcement mechanism by prioritizing the *ultimum remedium* principle, whereby the application of criminal penalties is used only as a last resort and is focused on syndicates or large-scale perpetrators. Meanwhile, violations committed by MSMEs should be resolved through a Restorative Fiscal Justice approach in accordance with PP 54/2023, which is oriented toward fiscal recovery and supported by the qualitative differentiation of violators and the simplification of licensing procedures.

INTRODUCTION

Law enforcement against illegal cigarette excise violations is one of the main challenges in Indonesia's economic legal system (Agfanwarman & Nugroho, 2025; Ardiansah et al., 2025; Baksoro Indra Maulana, 2019; Nurdiansyah et al., 2026; Nurzaha, 2024). Data published by the Ministry of Finance indicate that cases of excise violations have increased consistently over the past five years, while the percentage of illegal cigarette circulation has remained within the range of 4–6%. This condition shows that intensified criminal prosecution has not been able to produce a significant deterrent effect (Boehme & Mourtgos, 2024; Tomaz et al., 2023). This situation raises questions from both juridical and empirical perspectives, namely why the application of strict criminal instruments has not been effective in suppressing the circulation of illegal cigarettes.

Theoretically, the relationship between formal legal norms and social norms in society is a key factor in determining the effectiveness of law enforcement (Alhalalmeh & Al-Tarawneh,

2025; Shcherbanyuk et al., 2023; Wijatmoko et al., 2023). Griffiths introduced the concept of legal pluralism, which refers to a condition in which more than one normative system coexists and operates within a society. In the context of excise, the tobacco community, particularly micro, small, and medium enterprises (MSMEs) and home-based producers, holds social norms that differ from the legal norms of the state. This creates the phenomenon of the interaction of laws, namely the interaction between legal systems that are not always integrative in nature. According to Prof. Ade Saptomo (2012), the effectiveness of law can only be achieved if state norms resonate with the local values that prevail in society. When excise policies are perceived as burdensome, disproportionate, or failing to provide space for small economic actors, social resistance can arise in the form of avoidance, incorporation, or conflict, as explained in von Benda-Beckmann's theory of the interaction of laws.

A repressive approach to excise law enforcement tends to ignore the fact that many excise violations are committed by micro, small, and medium enterprises (MSMEs) that do not have sufficient administrative capacity to meet legal requirements. Harriss-White identifies this phenomenon as a classic characteristic of the informal economy, in which excessive regulatory burdens drive economic actors to shift to the illegal sector. Excise issues are not merely legal issues but also involve economic, social, and administrative dimensions. Therefore, this study uses a socio-legal framework to comprehensively map the gap between formal norms and existing social realities, as well as to compare approaches in several ASEAN countries that have similar tobacco market characteristics, namely the Philippines, Thailand, Malaysia, and Vietnam.

Several studies have examined the enforcement of excise law and the application of the principle of *ultimum remedium* in Indonesia. Munsir et al. (2025) and Ramadhan et al. (2024) examined the effectiveness of applying criminal sanctions as a last resort in excise crimes, but their focus was more on normative aspects without an in-depth sociological analysis of the interaction between state law and the law that lives in society. Yumanto and Hutauruk (2022) and Sinurat et al. (2025) examined the implementation of *ultimum remedium* in tax and excise criminal law, but they did not compare it with practices in ASEAN countries. Meanwhile, Hakim and Yuhelson (2024) discuss the mechanism for recovering state losses from the perspective of Islamic law, but their study does not specifically analyze the different characteristics of MSME actors and large syndicates.

This research offers novelty in three respects. First, it integrates legal sociological analysis with Griffiths' framework of legal pluralism, von Benda-Beckmann's theory of the interaction of laws, and Saptomo's thinking on law and local wisdom. Second, it conducts a regional comparative study of four ASEAN countries, namely the Philippines, Thailand, Malaysia, and Vietnam, which have similar tobacco market structures. Third, it formulates a Restorative Fiscal Justice model adapted from PP 54/2023 by considering the qualitative differentiation of actors between MSMEs and large syndicates.

Based on the previous explanation, this study formulates three main questions: (1) What are the characteristics of legal interactions in the enforcement of excise laws related to illegal cigarettes in Indonesia? (2) How do the excise law enforcement models in four ASEAN countries, namely the Philippines, Thailand, Malaysia, and Vietnam, compare? (3) How can the enforcement of criminal excise law be reconstructed based on the principle of *ultimum remedium* to make it more effective and substantively fair? The objectives of this study are to

describe the relationship between state law and living law in the context of illegal cigarette cases, analyze excise enforcement models in ASEAN countries as a regional comparative study, and formulate the concept of excise law enforcement that prioritizes *ultimum remedium*, namely the imposition of criminal sanctions as a last resort. The benefits of this research consist of theoretical and practical benefits. Theoretically, this study enriches legal sociology by examining the theories of legal pluralism and the interaction of laws in the context of excise policy in Indonesia, as well as by providing a regional comparative framework that remains rarely used in excise law studies. Practically, this research contributes to the Ministry of Finance and the Directorate General of Customs and Excise in formulating more proportionate and contextual law enforcement policies, protecting MSMEs from excessive criminalization while continuing to take firm action against large syndicates, and providing recommendations for policymakers in improving PP 54/2023 and related regulations. For MSME actors, this research is expected to open access to easier compliance through the simplification of licensing and multi-tiered excise schemes.

METHOD

This research applies the socio-legal research method, which is an integrative approach between normative analysis of positive law and empirical data collection on the social and economic behavior of society. This approach places law not merely as a normative text, but as a dynamic social phenomenon influenced by the local context.

The methodology used in this study includes:

1. A normative approach that includes analysis of legislation related to excise, economic criminal law, the concept of *ultimum remedium* in state repressive policy, and the principles of proportionality and differentiation of actors.
2. A secondary empirical approach utilizing data from Customs reports for the period 2021-2024, state revenue reports, surveys from the WHO and OECD on the tobacco market, and academic research related to the informal economy and law enforcement.
3. A comparative legal study focusing on four ASEAN countries, namely the Philippines, Thailand, Malaysia, and Vietnam. These countries were selected based on the similarity of their tobacco market structures, challenges related to the circulation of illegal cigarettes, and variations in the excise policy models implemented.

The analytical framework used is Interaction of Law, which aims to identify patterns of legal interaction, such as integration, avoidance, conflict, and incorporation, public resistance to excise policies, and inconsistencies between formal legal norms and local economic logic.

Furthermore, qualitative-comparative data analysis was conducted using a normative and empirical approach through data reduction techniques, inter-country synchronization, conclusion drawing, and policy implication mapping based on the *ultimum remedium* principle.

RESULTS AND DISCUSSION

Trends in Indonesian Excise Enforcement and the Effectiveness Gap (2021–2024)

To understand the dynamics of excise law enforcement, an empirical overview of trends in crackdowns on illegal cigarettes is needed. Synthesized data from reports by the Directorate

General of Customs and Excise for the period 2021–2024 show a significant increase in the number of cases handled by the DJBC (Simamora & Silistiowati, 2025).



Figure 1. Data on Tobacco Excise Enforcement

Source: Directorate General of Customs and Excise Annual Report, 2021–2024

1. Based on DJBC Enforcement data for 2020–2025, enforcement activities carried out by DJBC tend to increase every year.
2. The number of illegal cigarettes subject to enforcement continues to increase every year, demonstrating consistency in the monitoring of illegal cigarettes.

Table 1. Trends in Illegal Cigarette Enforcement in Indonesia (2021–2024)

Year	Enforcement Cases	Estimated State Losses (Rp billion)	Estimated Market Share of Illegal Cigarettes (%)
2021	5.100	3,2	4,9
2022	6.700	4,8	5,1
2023	8.200	5,6	5,2
2024	8.900	6,1	5,5

Source: Ministry of Finance of the Republic of Indonesia, Annual Customs and Excise Reports, 2021–2024

The data in Table 2 shows that even though the number of enforcement operations increased significantly from 5,100 cases in 2021 to 8,900 cases in 2024 the proportion of illegal cigarettes on the market did not decrease significantly, and even tended to increase slightly from 4.9% to 5.5% (Kemenkeu, 2021-2024). This phenomenon reinforces the thesis that penal-based law enforcement is incapable of changing market behavior, especially when the root causes of the problem are socio-economic and administrative in nature (Kemenkeu, 2021-2024). Most of the violators who were prosecuted were MSME operators and home-based producers who did not have the capacity to meet compliance requirements in the form of permits, NPPBKC applications, and excise stamp purchases (Kemenkeu, 2021-2024).

Interaction of Law in Enforcing Illegal Cigarette Excise

Excise law enforcement in Indonesia faces deeply rooted value systems, economic practices, and social structures, creating conditions of *legal pluralism* (Kemenkeu, 2021-2024). Prof. Ade Saptomo emphasized that the effectiveness of law is largely determined by the state's ability to understand the local context (Saptomo, 2012); laws that rely solely on formal norms

without understanding the values and needs of the community will lead to social rejection (Kemenkeu, 2021-2024). Using the framework of the interaction of law (von Benda-Beckmann 2018), there are at least four forms of interaction that arise in the case of illegal cigarettes: (Kemenkeu, 2021-2024)

1. Integration: It occurs when MSME actors attempt to follow legal procedures (e.g., registering for an NPPBKC), but the number remains very limited due to the complexity of the bureaucracy.
2. Avoidance: The most dominant form. MSME actors choose to avoid regulations because compliance costs are not commensurate with economic capacity.
3. Conflict: Appearing during tax raids is not understood as law enforcement, but as pressure on livelihoods.
4. Incorporation: Occurs when a community adopts some of the norms of the state, but adapts them to local norms (e.g., legal production for some of the output, the rest sold without a license).

The theory of interaction of law explains why, even though criminal enforcement has been strengthened, local norms remain more dominant in determining the behavior of small business actors (Kemenkeu, 2021-2024). Saptomo (2010) argues that state law is often unsuccessful because it fails to engage in dialogue with local law. Therefore, tax law enforcement requires a more contextual approach rooted in substantive justice, rather than merely legal-formal dogma (Kemenkeu, 2021-2024).

Reconstruction of *Ultimum Remedium* and Comparison of Excise Law Enforcement Systems in ASEAN

To achieve substantive justice, the reconstruction of Indonesian tax law enforcement must consistently institutionalize the principle of *ultimum remedium* (UR) (Yumanto & Hutauruk, 2022). The implementation of UR has been formalized through Government Regulation No. 54 of 2023 concerning the Termination of Criminal Investigations in the Field of Excise for State Revenue Purposes. This regulation allows suspects to avoid criminal proceedings by paying a high administrative fine, ranging from 3 (three) to 10 (ten) times the value of the excise tax owed (Yumanto & Hutauruk, 2022). These high fines serve as premiums paid by offenders to quickly resolve fiscal issues, institutionalizing the concept of Restorative Fiscal Justice. (PP 54/2023)

However, the mechanism of Restorative Fiscal Justice needs to be refined with lessons learned from regional comparisons within ASEAN:

Table 2. Comparison of Excise Law Enforcement Models in ASEAN

Country	Key Enforcement Model	Main Focus of UR/Penal	Critical Lessons for Indonesia
Philippines	Reform of the Sin Tax and IRSIS (Internal Revenue Stamps Integrated System)	Distribution Supervision & Factory Audits	Fiscal reform (taxation) must be accompanied by strong distribution oversight and simple MSME regulations. (Kemenkeu, 2021-2024)
Thailand	Multi-Agency Enforcement (Customs, Health, Police)	Strict Administrative Regulations	A multi-agency approach has proven to be more effective and systematic than an approach that

						relies solely on criminal punishment. (Kemenkeu, 2021-2024)
Malaysia	QR Technology <i>Stamp / Track and Trace</i>	Tax	Technology & Joint Operations			Technology cannot tackle the illegal market without administrative reform and strong vertical coordination between agencies. (Kemenkeu, 2021-2024)
Vietnam	State (Vinataba) Chain Control	Monopoly & Supply	Administrative Sanctions & Distribution Management			Centralized supply chain control and distribution management are key to curbing informal activities. (Kemenkeu, 2021-2024)

Source: Asian Development Bank, 2019; WHO-SEARO, 2020; Ministry of Finance of the Republic of Indonesia, 2021–2024; author's own compilation

From this comparison, it can be concluded that administrative, economic, and technological instruments are far more decisive in determining the effectiveness of excise enforcement than penal instruments (Kemenkeu, 2021-2024). Thailand, for example, shows that a multi-agency approach integrating administrative and penal instruments yields more stable results in reducing the black market, while Malaysia demonstrates the failure of track and trace technology without institutional reform (Kemenkeu, 2021-2024). Therefore, the implementation of UR must include:

1. **Qualitative Differentiation:** Strengthening gatekeeping through Alleged Violation Investigations (PMK 237/2022) to accurately distinguish between administrative violations (negligence by MSMEs) and pure criminal acts (syndicates). (Yumanto & Hutauruk, 2022)
2. **Maximum Administrative Sanctions:** Optimizing administrative sanctions, especially revocation of NPPBKC (cilacap.beacukai.go.id, 2025), which serves as an economic “death penalty,” providing a stronger non-monetary deterrent than short criminal sanctions (Kemenkeu, 2021-2024).
3. **Legal Facilitation:** Aligning fiscal policy with local social conditions, including simplifying licensing for MSMEs and a tiered excise tax scheme (Kemenkeu, 2021), so that state law can engage in dialogue with living law.

CONCLUSION

This study concludes that the enforcement of criminal excise laws against illegal cigarettes in Indonesia faces structural and social challenges that cannot be resolved solely by intensifying criminal enforcement. Empirical data from 2021 to 2024 show that, despite a significant increase in enforcement operations, the percentage of illegal cigarette circulation remains at around 4–6%. This indicates that a purely punitive approach is ineffective in changing the behavior of economic actors, especially among MSMEs and home-based producers. Within the framework of legal pluralism and the interaction of laws, this study finds that the lack of synchronization between state law and living law creates avoidance and conflict. This finding is in line with Prof. Ade Saptomo’s view, which emphasizes the need for dialogue between state law and local values to achieve social legitimacy and substantive effectiveness. A comparison of four ASEAN countries confirms that administrative

instruments, distribution oversight, and technology, as implemented in the Philippines and Thailand, are far more effective than penal instruments. Therefore, the concept of *ultimum remedium* becomes an ideal principle, whereby criminal law is used as a last resort and applied only to major offenders, syndicates, or repeat offenders. Meanwhile, MSME-related cases should be resolved through a Restorative Fiscal Justice approach, in accordance with PP 54/2023, which is oriented toward fiscal recovery and supported by the simplification of licensing and the strengthening of multi-agency coordination.

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