

Juridical Analysis of Settlement of Criminal Excise Cases Using The Principles of Restorative Justice

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Keywords

*Case Resolution, Excise Crime,
Restorative Justice.*

ABSTRACT

The enforcement of criminal law in the Excise Law traditionally focuses on penalties. Still, since Law Number 7 of 2021, PPNS Customs and Excise investigators at the Cikarang Customs and Excise Office can now apply the principle of restorative justice in resolving criminal excise cases. This research, conducted through normative legal methods with a case approach, aims to clarify the concept and mechanism of implementing restorative justice in resolving excise criminal cases at the Cikarang Customs and Excise Office. Results from September 2023 reveal that the office has successfully implemented restorative justice 106 times, leading to asset recovery of Rp. 2,434,494,100. The benefits include a decrease in excise violations, with only a 1.9% recidivism rate. In conclusion, restorative justice has been effective, prioritising beneficial justice efforts and increasing state revenue while deterring repeat excise criminal acts.

INTRODUCTION

Violations and crimes in Indonesia are increasing from year to year. Indonesia is listed as the country with the highest crime rate. This is because the government still creates many loopholes for perpetrators of criminal acts, which cannot escape the public's attention. The perpetrators of these violations and crimes are the public, law enforcement, or government officials. They should be role models for the community in acting and carrying out their duties as government officials.

Criminal acts in the excise sector, such as the circulation of illegal excisable goods (BKC) or counterfeiting excise stamps, are not too much of a concern in society because, in general, the public is more interested in big problems or significant cases such as crime, terrorism, corruption, and so on (NASIONAL, 2023). Referring to the definition of excise, excise is a state levy imposed on certain goods that have specific properties and characteristics, namely: their consumption needs to be controlled, their circulation needs to be monitored, their use can hurt society or the environment, or their use requires the imposition of state levies, For justice and balance (Helmi, 2015). Furthermore, in the Big Indonesian Dictionary, an excise stamp is a paper ribbon with the price written on it, affixed to cigarette packs and so on, which in this case is issued by the Directorate General of Customs and Excise which is proof of payment of excise duty on the sale of certain goods such as clove cigarettes and cigarette (Chandra & Gufraeni, 2011).

Violations in the excise sector, as regulated in Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995, include administrative and criminal violations, often referred to as excise crimes. Actions classified as administrative or criminal offenses are regulated in the Excise Law, and the application or imposition of sanctions on perpetrators is also straightforward (Nations, 2002). Sanctions imposed for excise administrative violations can be administrative fines, while criminal offenses are subject to sanctions in the form of penalties and imprisonment (Flora, 2018).

Resolving a violation in the administration of Customs and Excise supervision is called case handling, whether an administrative or criminal violation. Provisions relating to violations and the application of organizational and criminal sanctions are necessary to provide a deterrent effect to individual perpetrators and society at large (Arief, 1996).

Seeing the importance of state revenues from the excise revenue sector to drive the economy, as a strong effort in enforcing the Excise Law, criminal sanctions provide maximum coercive power for people subject to excise duty (Saroinsong, 2020). However, the criminal provisions contained in the Excise Law are the last resort used to enforce compliance when administrative sanctions no longer work optimally (Hobson & Payne, 2022; Marder, 2022).

In handling excise cases, the principle "everyone is equal before the law" (*equality before the law*) must be upheld by every officer, especially Civil Servant Investigators (PPNS) within the Directorate General of Customs and Excise (DJBC) who are given investigative authority as regulated in Article 6 of Law Number 8 of 1981 concerning Criminal Procedure Law as a formal legal provision of the Criminal Code. If the law is not enforced, it will have no meaning in people's lives. Such legal regulations will die by themselves. However, it cannot be denied that in handling daily cases, violations in the excise sector are often found, especially criminal excise violations, which require officers to take attitudes or policies that sometimes ignore the provisions of laws and regulations and prioritize a sense of justice and humanity (Budiatri & WIRATRAMAN, 2022; Sharpless et al., 2022; Usman, 2015).

The actions of officers, as mentioned above, are often carried out in handling cases of violations, which, if seen from their efforts, fulfill the elements or offenses of a criminal act in the excise sector. An example is the handling of cases involving excise criminal violations in the form of providing for sale or selling excisable tobacco products (BKC HT) in the form of cigarettes that are not attached with excise stamps as regulated in Article 54 of the Excise Law, which is found to be carried out by traders in stalls or kiosks. Or markets that sell illegal BKC HT, which are few (Candrika, 2021). The trader's actions have indeed fulfilled the elements or offenses as regulated in Article 54 of the Excise Law, but if you look at the condition of the shop, which is small and the quantity of goods is not large, sometimes there is a feeling of pity driven by humanity not to proceed criminally.

In these conditions, the perpetrator is usually not processed further criminally. Still, he is given a warning and guidance to avoid repeating his actions. His goods are made into State-Controlled Goods because the offender is unknown, as regulated in Article 66 of the Excise Law, where the goods will later be made into State-Owned Goods (BMN) and applied for BMN designation for destruction. In response, officers will inevitably prioritize humanity and justice even if they feel that their choice is incorrect. It is understandable because the existing conditions require officers to do so, compared to if the criminal process were to proceed accordingly, the justice system would continue to investigate, prosecute, and examine in court, which will ultimately refer to retributive justice, namely justice that is oriented towards retribution in the form of punishing and imprisoning the perpetrator (Ali, 2011).

The development of law in various aspects is very developed, especially in handling criminal cases, which are entering a new era, namely, seeing the law as utility, certainty, and justice. The application of law prioritizes the beneficial aspects of creating public order and the objectives of the law itself. This legal concept is better known as the concept of progressive law. Recently, this concept has also been used in the criminal aspect, namely restorative justice, which essentially restores/restores the condition of the perpetrator and victim to their original condition with specific provisions (Hasibuan et al., 2015; Pérez-Jorge et al., 2023; Waluyo, 2020). The concept of restorative Justice as an effort to recover the state losses as an alternative to criminal excise sanctions has begun to be accommodated in Law Number 7 of 2021 concerning Harmonization of Tax Regulations, which can be used as a basis by investigators in resolving criminal excise cases based on the principle's restorative justice (Alsukait et al., 2020; Darussalam et al., 2019; Munga et al., 2023; Sinta, 2022).

In an example of resolving an excise criminal act based on the principle of Restorative Justice, the incident began with enforcement activities in the excise sector against the distribution of illegal

Tobacco Products (BKC) in the area under the supervision of the Cikarang Customs and Excise Office (Simanungkalit, 2016). Action and deterrence were taken against Mr BS, who was involved in the illegal distribution of 6,960 cigarettes of excisable tobacco products, as recorded in the Proof of Action Letter (SPB) SBP-014/KBC.080502/2023 dated February 17, 2023.

In the context of case resolution, violators are given another option by Article 40B of Law Number 11 of 1995 concerning Excise, which was last amended by Law Number 7 of 2021. Violators can submit a Request for Case Settlement in the Form of Not Being Done in this option. Investigation. However, this must be accompanied by an admission of guilt, a commitment not to repeat the act, and a readiness to pay a fine in the form of an Administrative Sanction of 3 times the excise value that should be paid, namely Rp. 13,969,000, -.

Based on the concept, the writer will study and examine the extent to which the basis of restorative Justice is applied or used in handling excise criminal cases, as described above and how the mechanism for resolving excise criminal cases is based on principles of justice by taking the example of the case at the Cikarang Customs and Excise Office and its impact. On the other hand, other law enforcement agencies have implemented the concept of Restorative Justice (Azizah et al., 2023; Danielt, 2014). It is contained in regulations such as the Supreme Court through its judicial bodies, the Police and the Attorney General's Office. Even the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System clearly state the application of the concept of Restorative Justice (April et al., 2023). Basic Restorative Justice is one method of legal settlement considered adequate by several groups. Thus, this research uses the title: "Judicial Analysis of Settlement of Excise Criminal Cases Based on Principles Restorative Justice (Study at Cikarang Customs Office)."

METHODS

This research uses normative juridical legal research methods (legal analysis) because the focus is on statutory regulations as the object of study. Within the framework of this research, normative juridical legal methods are used to study the application of rules or norms in positive law, mainly formal legal authorities such as laws, regulations and literature that contain theoretical concepts which are then connected to problems. Application of the principles of Restorative Justice in handling and resolving criminal excise cases. As a document study, this research utilizes legal source materials such as legislation, court decisions or decrees, agreements, legal theories, and doctrines or opinions of legal experts. The normative legal study aims to provide juridical arguments when there is ambiguity, emptiness, and conflict in a norm. Apart from normative methods, this research also utilizes limited empirical juridical legal research methods, using primary data obtained in the field to analyze the handling and resolution of criminal excise cases at the Cikarang Customs and Excise Service and Intermediate Type Supervision Office, in addition to primary legal materials, secondary, and tertiary.

RESULTS

Analysis of the Settlement of Tax Criminal Matters with Basics Restorative Justice

Application Restorative Justice In resolving excise criminal cases, it has been accommodated in Law of the Republic of Indonesia Number 7 of 2021 concerning Harmonization of Tax Regulations. However, no technical guidance regulations exist for its implementation at the PP or PMK level. Until now, in Indonesia, there are special rules governing the performance of Justice. In general, the resolution of criminal cases does not yet exist/have been established, although there are guidelines/positions. Justice This has been regulated expressly and in detail in several legal regulations. Legal rules regarding implementation Restorative Justice are:

- 1. Decree of the Director General of the General Judicial Body of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning Implementation Guidelines Restorative Justice in the General Court Environment**

Complete provisions related to these rules are explained in the attachment to the implementation guidelines for Justice in the general justice environment. The purpose of stipulating these technical instructions is to encourage optimization of the implementation of Supreme Court Regulations, Supreme Court Circulars and Decrees of the Chief Justice of the Supreme Court, which regulates the performance of Justice to reform the criminal justice system, which still carries a prison sentence.

The development of the criminal system no longer relies on the perpetrator. Still, it has led to the alignment of the interests of the victim's recovery and the accountability of the perpetrator of the crime. This guideline applies and must be followed by all district courts in Indonesia. This guideline is used in resolving cases through Restorative Justice in minor crimes, cases of children in conflict with the law (different), cases of women in conflict with the law (domestic violence) and narcotics cases and the guidelines explain in detail the legal basis and how to apply it. The general conditions for criminal cases that can be resolved using restorative justice at the stage of the examination process in court are minor criminal cases with criminal threats as regulated in articles 364, 373, 379, 384, 407 and Article 482 of the Criminal Code with a loss of no more than IDR. 2,500,000, -. In addition, according to this provision, recidivists are excluded from restorative justice.

2. Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice

This regulation explains that resolving criminal cases by prioritizing Restorative Justice, which emphasizes restoration to its original state and balancing the protection and interests of victims and perpetrators of criminal acts that are not oriented towards retribution, is a legal need for society and a mechanism that must be built in the exercise of prosecutorial authority. And reform of the criminal justice system.

3. Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

Perpol on handling criminal acts with restorative justice is a police step to address criminal acts by focusing on beneficial justice, justice, and the interests of victims and perpetrators of violations that do not focus on punishment. The application of restorative justice in resolving criminal cases is explained about the rules for applying the principles. Justice can be used in the investigation method and investigation of criminal acts by National Police Investigators (special conditions), which are carried out if they meet the material and formal requirements.

Researchers also assess that the efforts of investigators as facilitators of victims (state) with perpetrators continue to make maximum efforts to apply the principles of Restorative Justice. This includes dialogue/mediation with the perpetrators and providing early education to the community regarding rules/sanctions for excise violations as a preventive measure for the community not to commit these violations (which can cause potential losses to the state). Not necessarily immediately facing criminal proceedings, of course. This is a good move, considering the method of Restorative Justice. This effectively emphasizes the sense of justice for victims (state) and perpetrators and society in general so that it can be fulfilled.

Thus, according to the authors of the model restorative justice carried out by Cikarang Customs and Excise Office Investigators to resolve excise criminal cases by referring to Article 40B of Law Number 7 of 2021 concerning Harmonization of Tax Regulations is appropriate because the settlement mechanism through administrative sanctions in the form of fines is also deemed to be by the essence contained in Pancasila (which is the legal ideal of the Indonesian nation and state), namely deliberation for consensus or kinship and accordance with the characteristics of Indonesian national law, namely the inclusion of the principle of kinship.

When examined from a philosophical perspective, the existence of administrative sanctions in the form of fines contains the principle of implementing a "win-win" solution (win-win) and not ending

up in a “lose-lose” situation (lost-lost) or” win-lose” (win-lost) as desired by the judiciary by achieving formal justice through the litigation process (law enforcement process). Examined from a sociological perspective, this aspect is oriented towards the cultural roots of Indonesian society, which is oriented towards family cultural values, prioritizing the principle of deliberation/consensus to resolve disputes in a social system.

Customs and Excise PPNS investigators also have the authority to offer parties in dispute/conflict to resolve their cases peacefully/amicably through the principle of restorative justice. This is based on the role of investigators in exercising discretion based on the principles of criminal law, namely the principle of proportionality and the principle of subsidiarity, namely the authority they have to carry out case selection, which will continue at the following stages in the criminal justice system. The power to select criminal cases based on the principle of proportionality requires that investigators are not permitted to use harsh measures if lighter steps are sufficient to resolve the problem. Meanwhile, the focus of subsidiarity is linked to criminal sanctions by avoiding heavier sanctions if softer sanctions are adequate as a response to a criminal act.

Sudarto developed the principles of proportionality and subsidiarity by paying attention to the following things: (1) the quality of cases, namely cases that have little substance, meaning cases that are categorized as not containing sub-social elements; (2) Consideration of the efficiency and effectiveness of the investigator's duties, compared to whether the cases are continued to the prosecutor's office and which will end up in court; (3) time factor (cash justice) the resolution of some issues and in certain circumstances, which will be felt and have a better effect for the parties.

According to the author, restorative justice mechanisms can be implemented if they fulfill several basic requirements for solid legal considerations. First, the suspect must be a new criminal, a first-time offender, or not a repeat criminal (recidivist). Second, the suspect is expected to admit to his crime. Third, the suspect must show remorse and promise not to repeat his actions. Fourth, the suspect's motive for committing criminal acts was to fulfill daily needs with insignificant state losses. Fifth, the suspect must submit a request for case resolution in the form of no investigation to the Head of the Cikarang Customs and Excise Office. Finally, the suspect must pay administrative sanctions as a fine of 3 (three) times the excise value that should have been paid. By fulfilling these criteria, the author believes implementing restorative justice mechanisms can be an appropriate alternative for handling specific cases.

The author would like to encourage restorative justice in resolving criminal excise cases at the Cikarang Customs and Excise Office. As for “pushing” restorative justice, This is based on the consideration that excise crimes are economic crimes that damage the state's financial system, so it would be more optimal if the solution were to recover state financial losses. So that the payment of several administrative sanctions in the form of fines becomes necessary, it is no longer a form of punishment that its implementation can replace.

Furthermore, the author also emphasizes the effectiveness of resolving excise criminal cases based on principles of justice at the Cikarang Customs and Excise Office, which is a new law enforcement system whose implementation cannot be separated from factors that influence and become a benchmark for the effectiveness of the performance of law enforcement efforts. According to Soerjono Soekanto, 5 (five) factors influence law enforcement: the legal factors themselves, law enforcement factors, facilities and infrastructure factors, community factors, and cultural factors. The following are the realities of factors that influence law enforcement, including the following:

1. Own Legal Factors

The Cikarang Customs and Excise Office handles criminal excise cases based on principles of restorative justice and has implemented it by Law Number 7 of 2021 concerning Harmonization of Tax Regulations. However, in its implementation, there are obstacles in the form of the absence of regulations governing the process of determining/primary considerations which require

investigators to apply/not apply the principles of justice in an excise criminal case and related guidelines/instructions for its implementation, so that it can create various interpretations seen from the legal factors themselves, this does not have clarity regarding legal **certainty**. This lack of clarity regarding the criteria/requirements for a criminal excise case can be applied to principle restorative justice, which, according to the investigator's consideration, with the approval of the Head of the Cikarang Customs and Excise Office, may not continue/conduct the investigation based on the principle restorative justice. According to Mr. Dodi Pribadi, the absence of regulations in the form of implementation instructions could lead to multiple interpretations, giving rise to doubts for investigators in the application of restorative justice to criminal acts, especially to excise crimes. So, implementation may only be limited to adhering to the conditions regulated in Article 40B of Law Number 7 of 2021 and the conscience of an investigator.

2. Law Enforcement Factors

Law enforcement officials are groups whose role is to implement the law itself, including law enforcement and peace maintenance. One of the keys to successful law enforcement is that the mentality or personality of law enforcers plays an essential role in ensuring that law enforcement in society can run optimally. Therefore, the success or failure of implementing law enforcement is greatly influenced by the quality of law enforcement in implementing existing provisions to realize substantial justice by considering the norms that apply in society. PPNS Customs and Excise investigators who act as investigators at the Cikarang Customs and Excise Office in implementing the principles of restorative justice have demonstrated an attitude of moral integrity with excellent personality and law enforcement mentality in handling excise criminal cases using a beneficial justice approach. This can be seen from the knowledge and understanding of investigators regarding the concept of restorative justice so that they can play an active role in seeking to resolve cases through restorative justice based on having full authority in considering excise criminal cases by taking the initiative in proposing and offering the perpetrators alternative solutions to excise criminal cases.

3. Facilities and Infrastructure Factors

Good law enforcement factors must be balanced with adequate facilities and infrastructure so that law enforcement can be achieved well and maximally because, with these supporting factors, law enforcement efforts will be more extensive and effective. Facilities or infrastructure for law enforcement at the Cikarang Customs and Excise Office that support the implementation of restorative justice by conducting examinations and dialogue with perpetrators in a particular room at the Cikarang Customs and Excise Office, which is used for alternative mediation processes for resolving excise criminal cases, so that they can support the process. Resolution of excise cases and several investigators with the skills and abilities to implement restorative justice based on knowledge obtained from socialization and P2KP regarding restorative justice.

4. Community Factors

Society is the environment where the law applies and is applied. The public must always be aware of the limits of their rights and obligations and know the legal steps to protect their interests. The community in question includes perpetrators of excise crimes and their families. Important factors that can support the successful implementation of case resolution restorative justice at the Cikarang Customs and Excise Office, namely the willingness/responsibility of the perpetrator to compensate the victim (the State) for losses to restore the situation to what it was before the excise crime occurred. Proven by achieving a peace agreement between the perpetrator and the victim (the State), the perpetrator submitted a letter requesting a settlement of the case without an investigation being carried out as the primary condition for the excise criminal case to be resolved amicably. Restorative justice. Public awareness of the law is generally high, resulting in the public complying with statutory provisions. Therefore, understanding and legal compliance with the

involvement of litigants who have an open mind toward legal reform can create a true sense of justice.

5. Cultural Factors

In implementing the settlement of tax criminal cases based on restorative justice, society outside the litigants reflects cultural values with a high contribution. The people of Bekasi Regency always support the resolution of criminal excise cases through family channels with deliberation and consensus that runs well and without obstacles. According to Mr. Dodi Pribadi, this can be seen from the community's positive response in every socialization and counselling activity related to excise provisions carried out by the Customs and Excise Office. Cikarang Excise by providing positive suggestions regarding applying the principles of restorative justice. This is related to the value of order and peace in society. The occurrence of excise crimes has a direct or indirect negative impact on public peace and order. Therefore, the general needs to be willingly involved in efforts to resolve criminal excise cases based on principles of restorative justice as a party who also needs to be restored for the consequences of excise criminal acts, which can indirectly eliminate negative stigma or labelling towards perpetrators in the community and forming an understanding of the community's cultural values that not all excise criminal cases must be resolved through the courts.

CONCLUSION

Based on the results of previous research and discussions, it can be concluded that the application of the principles of restorative justice in resolving criminal excise cases at the Cikarang Customs and Excise Office has gone well. Investigators emphasize recovery efforts in handling criminal excise cases, referring to Law Number 7 of 2021 concerning the Harmonization of Tax Regulations. This application adopts criteria from the rules of other law enforcement officials that are relevant to law enforcement, considering sociological aspects, circumstances, and the inner attitude of the perpetrator. The stages of case handling include receiving the case, preliminary research, determining the handling scheme, and researching suspected violations or investigations. This process ends with submitting a Request for Case Settlement in the Form of No Investigation from the perpetrator, which the Head of the Cikarang Customs and Excise Office approves. The impact or benefits of implementing the principles of restorative justice include additional state revenue of IDR. 2,434,494,100, - and potentially saved state revenue. The total asset recovery from the case settlement proves this. In addition, there was a decrease in the number of excise violations. At the same time, the deterrent effect was reflected in the percentage of repeat excise violations by the same perpetrators (recidivists), which was only 1.9%.

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International Journal of Social Service and Research (IJSSR)

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