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Phone: +62711-580063 Fax: +62711-581179
E-mail: sriwijayalawreview@unsri.ac.id| sriwijayalawreview@gmail.com
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Illicit Cigarette Trade in Indonesia: Trends and Analysis from the Recent Judgments

I Gede Widhiana Suarda,^{a*} Evan Hamman,^b Bayu Dwi Anggono,^a Fendi Setyawan,^a Moch. Marsa Taufiqurrohman,^c and Zaki Priambudi^a

^a Faculty of Law, University of Jember, Indonesia. Corresponding author I Gede Widhiana Suarda, email: igedewidhiana.suarda@unej.ac.id

^b Faculty of Law, Queensland University of Technology (QUT), Australia.

^c Faculty of Law, Universitas Padjadjaran, Indonesia

Article	Abstract
<p>Keywords: Cigarette Excise Tax; Illicit Cigarette Trade; Indonesian Excise Law; Indonesian Criminal Law; Tobacco Control Policy.</p> <p>Article History Received: Feb 28, 2023; Reviewed: Jan 9, 2024; Accepted: Jan 30, 2024; Published: Jan 31, 2024.</p> <p>DOI: 10.28946/slrev.Vol8.Iss1.2726.pp38-59</p>	<p>The illicit cigarette trade has begun to receive scholarly attention globally. Empirical studies on the illicit cigarette trade are available in the context of Indonesia. However, the Indonesian judicial system lacks a focus on treating illegal practices. To fill the gap, we examine Indonesian court decisions involving the illicit cigarette trade between 2010 and 2019. We provide an overview of the enforcement of Indonesia's Excise Law 2007 relating to offences related to the illicit cigarette trade. By using a systematic quantitative literature review, we collected data on Indonesian court decisions and found the following: (1) convictions for the practice of illicit trade in cigarettes were relatively steady, with a total number from one to six court decisions annually; (2) certain offences from Indonesia Excise Law 2007 have not been found in the convictions, suggesting their underutilisation in terms of monitoring and enforcement effort; (3) the primary motivation of illicit cigarette traders as reported through the judicial system is the economic benefit or "profit" available to the enterprise; and (4) the sentencing decisions are dominated by the application of the "cumulative principle" with fines and imprisonment applied at the same time. The finding on the average length of imprisonment for illicit cigarettes, which was around 18 months, shows that this crime has low risk compared with the punishment for illicit trade in drugs and narcotics in Indonesia.</p>

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INTRODUCTION

The illicit tobacco trade is a global phenomenon with a long history and has begun to receive scholarly attention.¹ However, this crime is poorly understood criminal activity,² because

¹ Georgios A. Antonopoulos and Klaus von Lampe, "Where There's Smoke, There's Money: An Introduction to the Special Issue on The Illicit Tobacco Market," *Trends in Organised Crime* 19, no. 3–4 (2016): 211–17,

studies on the illicit tobacco trade are underdeveloped and tend to focus on specific contexts such as Western Europe and the United States.³ Hence, research on the illicit tobacco market in some other contexts, such as in Greece⁴ and Sweden⁵, is scarce. In Indonesia, it shows the same reservations.

In Indonesia, while there is little research on this phenomenon,⁶ a focus of study on the illicit cigarette trade is based on investigating the court decisions that need improvement. To fill that gap, the current study investigates the domestic illicit cigarette trade through Indonesian court decisions on cigarette excise tax cases. Accordingly, this article contributes to extending the literature on the illicit tobacco trade with tobacco-control policies (TCPs).

Statistical data from the Ministry of Agriculture of the Republic of Indonesia has shown that tobacco is growing in 15 provinces in Indonesia.⁷ For local Indonesian farmers, growing tobacco is a valuable land use option as its selling price is often higher relative to other crops, such as corn or beans.⁸ The number of tobacco companies involved in cigarette production has risen in recent years, placing Indonesia as the fifth largest producer and fifth largest consumer of cigarettes worldwide.⁹ At the international level, however, the production of tobacco products is declining because of the global tobacco-control movement initiated by the World Health Organization (WHO) and developed countries.¹⁰

In recognition of the public health issues and problems of non-communicable diseases caused by smoking habits, member states of the WHO signed the Framework Convention on Tobacco Control (FCTC) in 2003, entering into force in 2005. The objective of the FCTC is to decrease “the death toll from cigarette consumption”.¹¹ The signing of the FCTC became a pivotal moment in a global initiative for tobacco control policy. At the time of writing, 181

<https://doi.org/10.1007/s12117-016-9293-0>; David Décary-Hétu, Vincent Mousseau, and Ikrame Rguioi, “The Shift to Online Tobacco Trafficking,” 2018, <https://doi.org/10.5281/ZENODO.1467842>.

² William V. Pelfrey, “Cigarette Trafficking, Smurfing, and Volume Buying: Policy, Investigation, and Methodology Recommendations From a Case Study,” *Criminal Justice Policy Review* 26, no. 7 (2015): 713–26, <https://doi.org/10.1177/0887403414540518>.

³ Antonopoulos and von Lampe, “Where There’s Smoke, There’s Money.”

⁴ Georgios A. Antonopoulos, “The Greek Connection(s): The Social Organization of the Cigarette-Smuggling Business in Greece,” *European Journal of Criminology* 5, no. 3 (2008): 263–88, <https://doi.org/10.1177/1477370808090832>.

⁵ Johanna Skinnari and Lars Korsell, “The Illicit Tobacco Market in Sweden – from Smuggling to Warehousing,” *Trends in Organised Crime* 19, no. 3 (December 1, 2016): 273–99, <https://doi.org/10.1007/s12117-016-9275-2>.

⁶ Abdillah Ahsan et al., “Illicit Cigarette Consumption and Government Revenue Loss in Indonesia,” *Globalization and Health* 10, no. 1 (November 19, 2014): 75, <https://doi.org/10.1186/s12992-014-0075-7>; Antik Suprihanti et al., “The Impact of Cigarette Excise Tax Policy on Tobacco Market and Clove Market in Indonesia,” *International Journal of Economics and Financial Issues* 8, no. 6 (2018): 54–60.

⁷ Ministry of Agriculture, *Tree Crop Estate Statistics of Indonesia 2017-2019* (Jakarta: Ministry of Agriculture Republic of Indonesia, 2018).

⁸ Suprihanti et al., “The Impact of Cigarette Excise Tax Policy on Tobacco Market and Clove Market in Indonesia.”

⁹ Andrew Rosser, “Contesting Tobacco-Control Policy in Indonesia,” *Critical Asian Studies* 47, no. 1 (2015): 69–93, <https://doi.org/10.1080/14672715.2015.997083>.

¹⁰ Sarah Barber and Abdillah Ahsan, “The Tobacco Excise System in Indonesia: Hindering Effective Tobacco Control for Health,” *Journal of Public Health Policy* 30, no. 2 (July 2009): 208–25, <https://doi.org/10.1057/jphp.2009.12>.

¹¹ Roger Bate, Cody Kallen, and Aparna Mathur, “The Perverse Effect of Sin Taxes: The Rise of Illicit White Cigarettes,” *Applied Economics* 52, no. 8 (2020): 789–805, <https://doi.org/10.1080/00036846.2019.1646403>.

countries had ratified, acceded to, or acclaimed the FCTC.¹² Hence, tobacco-control measures of the FCTC were adopted and are progressively being implemented by member states within their national jurisdictions.

Although tobacco control policy is a global trend, a few states still need to sign and adopt the FCTC, including, relevantly for this article, Indonesia. At the time of writing, the Indonesian Government had yet to provide an official report on whether the FCTC would be accessed. Barber and Ahsan considered that tobacco is supposed to contribute to the Indonesian economy.¹³ Similarly, others claimed that the Government's focus has been on the tobacco industry's revenues and employment sector.¹⁴ This is important as it suggests that the Indonesian Government's decision to consider accession to the FCTC is driven more by the contribution of tobacco to the economy than by the public health benefits available through stricter regulation. Rosser has noted that this remains a contested issue in Indonesia. On the one hand, the anti-tobacco movement gained tremendous support from civil society, especially from non-governmental organisations (NGOs) and health professional organisations, which have tried to push the Government to engage with the FCTC. The Ministry of Health also supports this position.¹⁵ On the other hand, tobacco farmers and producers disagree with the FCTC because their capital will be affected, and profits will decline.¹⁶ As a result, while the FCTC has yet to be accessed, the Indonesian authorities have issued laws and regulations that contain TCPs.

The introduction of TCPs may be associated with the emergence of other negative impacts on society or the economy. For example, the existing literature shows that implementing TCPs may cause unintended consequences that were previously unforeseen by regulators, for example, giving rise to new patterns or incidences of criminal behaviour.¹⁷ Although unintended consequences can be beneficial,¹⁸ on other occasions, their presence can be, on

¹² Steven J Hoffman et al., "Impact of the WHO Framework Convention on Tobacco Control on Global Cigarette Consumption: Quasi-Experimental Evaluations Using Interrupted Time Series Analysis and in-Sample Forecast Event Modelling," *The BMJ* 365 (June 19, 2019): 12287, <https://doi.org/10.1136/bmj.12287>.

¹³ Barber and Ahsan, "The Tobacco Excise System in Indonesia."

¹⁴ Anhari Achadi, Widyastuti Soerojo, and Sarah Barber, "The Relevance and Prospects of Advancing Tobacco Control in Indonesia," *Health Policy* 72, no. 3 (2005): 333–49; Gianna Gayle Herrera Amul and Tikki Pangestu Pang, "The State of Tobacco Control in ASEAN: Framing the Implementation of the FCTC from a Health Systems Perspective: The State of Tobacco Control in ASEAN," *Asia & the Pacific Policy Studies* 5, no. 1 (2018): 47–64, <https://doi.org/10.1002/app5.218>; Jeanne A. Pawitan, "Tobacco Control Policy in Indonesia," *Medical Journal of Indonesia* 19, no. 4 (November 1, 2010): 215, <https://doi.org/10.13181/mji.v19i4.551>.

¹⁵ Rosser, "Contesting Tobacco-Control Policy in Indonesia."

¹⁶ Raphael Lencucha and Jeffrey Drope, "How Does Tobacco Growing Impact Advancement in Demand Reduction Measures?," *Tobacco Prevention & Cessation* 7, no. February (February 1, 2021): 1–4, <https://doi.org/10.18332/tpc/132596>.

¹⁷ Diana J. Burgess, Steven S. Fu, and Michelle van Ryn, "Potential Unintended Consequences of Tobacco-Control Policies on Mothers Who Smoke," *American Journal of Preventive Medicine* 37, no. 2 (August 2009): S151–58, <https://doi.org/10.1016/j.amepre.2009.05.006>; Tingting Yao, Anita H. Lee, and Zhengzhong Mao, "Potential Unintended Consequences of Smoke-Free Policies in Public Places on Pregnant Women in China," *American Journal of Preventive Medicine* 37, no. 2 (August 1, 2009): S159–64, <https://doi.org/10.1016/j.amepre.2009.05.014>.

¹⁸ E. M. Campbell et al., "Types of Unintended Consequences Related to Computerised Provider Order Entry," *Journal of the American Medical Informatics Association* 13, no. 5 (2006): 547–56, <https://doi.org/10.1197/jamia.M2042>.

balance, unwelcome.¹⁹ While it is mainly used in the health discipline, the terminology of unintended consequences is also used in criminology. For instance, Morgan and Clarke have pointed out that opportunities for criminal behaviour might perversely be created by introducing new laws or prohibitions.²⁰ An example is the enactment of drug prohibition laws that can lead to other new criminal deviant behaviours, such as the exemptions incorporated into the design of the Montreal Protocol on Substances that Deplete the Ozone Layer, such as the exemptions for developing countries to produce ozone-depleting substances (ODS) and for the use of recycled ODS, were considered to have facilitated illegal trade in ODS. Alternatively, control factors could include map-checking systems for subsidy claims or the particular type of monitoring documents used.²¹ In this regard, new laws, regulations, or policies can be described as “criminogenic”,²² insofar as they establish a new pattern in criminal conduct or trigger an increased crime rate in related areas or industries. TCPs may also be described as insofar as they are implicated in contributing to deviant criminal behaviour. One unintended consequence of stricter cigarette taxes as part of the TCPs is that it may “significantly affect the market for illicit whites”.²³

The first part of this article describes Indonesia’s TCPs and how it was regulated in the laws and regulations. Then, the development and reported outcome of Indonesia’s excise tax policy on tobacco products are discussed in the second part. Finally, it discusses the result of the case study of Indonesian court decisions on the illicit cigarette trade concerning the number of convictions, the types, and the geographical area of the offences. The trend in sentencing and the causes of the offences are also presented in the last part of this article, particularly to investigate whether these crimes are caused by stricter cigarette excise tax policy.

RESEARCH METHODS

Four stages (figure 1) were applied to collect data on Indonesian court decisions on illicit trade in tobacco products. In stage one, the following search string was applied to the official database of the Indonesian Supreme Court: “cigarette excise” (*cukai rokok*) and “cigarette tax” (*pajak rokok*). From the search string of “cigarette excise” (*cukai rokok*) and “cigarette tax” (*pajak rokok*), several 52 and 27 court decisions were identified, respectively. The search string of “cigarette” (*rokok*), which is too broad or less relevant to the focus of the current study, was not applied to avoid replication. We did not restrict the results by year of decision to collect as many relevant court decisions as possible. However, the year of the decision can be identified at the end of the final screening process. Besides using the search string method, we also searched the available directory on the website, the “special crime” (*pidana khusus*) directory and found that 18201 court decisions resulted. To narrow it down, the search continued to the subset directory of “special crime” (*pidana khusus*), that is, “special crime of excise” (*pidana*

¹⁹ Meryl Bloomrosen et al., “Anticipating and Addressing the Unintended Consequences of Health IT and Policy: A Report from the AMIA 2009 Health Policy Meeting,” *Journal of the American Medical Informatics Association* 18, no. 1 (January 1, 2011): 82–90, <https://doi.org/10.1136/jamia.2010.007567>.

²⁰ Russell Morgan and Ronald V. Clarke, “Legislation and Unintended Consequences for Crime,” *European Journal on Criminal Policy and Research* 12, no. 3–4 (2007): 189–211, <https://doi.org/10.1007/s10610-006-9026-z>.

²¹ Morgan and Clarke.

²² Morgan and Clarke.

²³ Bate, Kallen, and Mathur, “The Perverse Effect of Sin Taxes.”

khusus cukai). In this subset directory, a total of six court decisions were provided. As a result, 85 court decisions have resulted in the database search. However, from 85 court decisions, only 69 court decisions could be accessed, while the rest of 16 could not.

Next, in stage two, we applied both inclusion and exclusion criteria to screen 69 accessed court decisions. We investigated the court decisions and whether they matched our eligibility criteria. At this stage, we excluded civil cases of tobacco taxes, questions of judicial review, corruption, and other unrelated excise tax offences (especially illegal alcohol excise cases). This resulted in the exclusion of 25 decisions. Stage three examined 44 court decisions, excluding seven based on duplication. Finally, in the last stage (stage four), 37 court decisions were included in the analysis. Those 37 identified court decisions ranged from 2010 to 2019 and were ultimately used for final analysis. To analyse those decisions, we manually examined trends in conviction rates, the offence provision, the location of the offence, the offender's motivation(s), and the result or punishment.

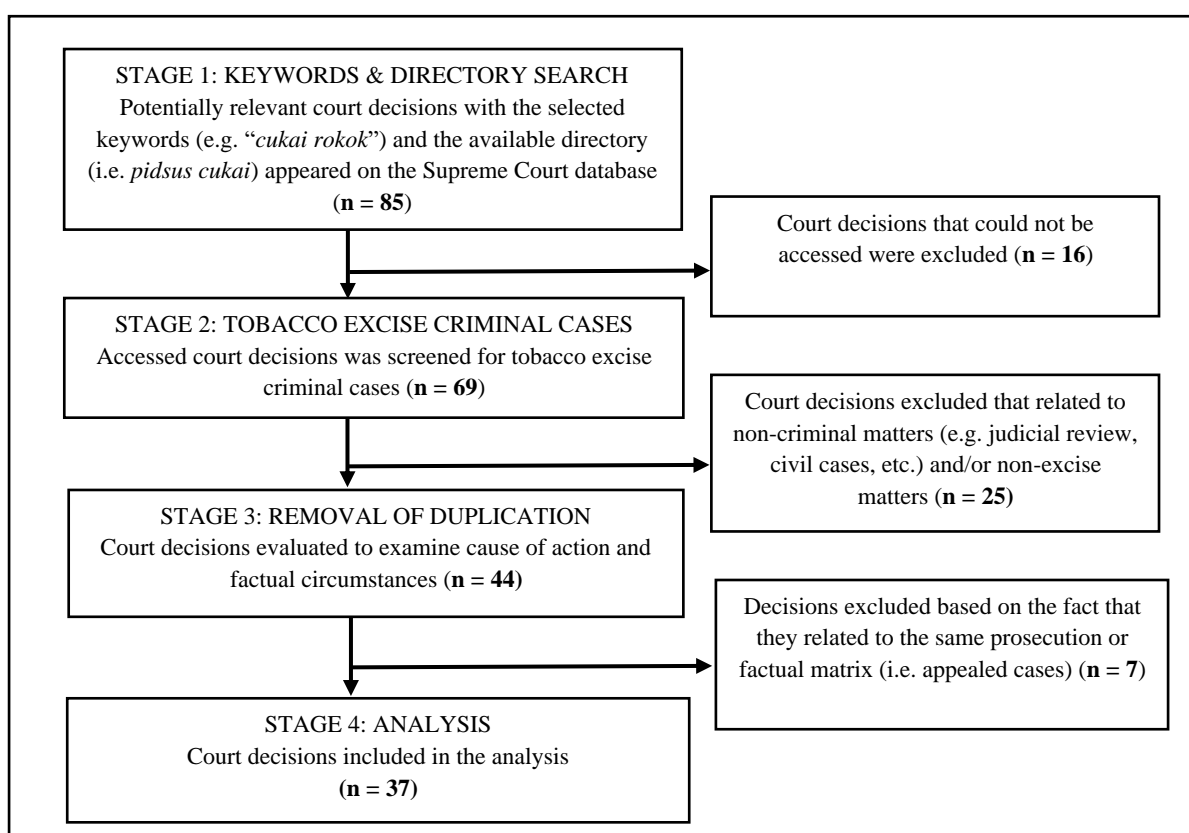


Figure 1: Four-stage methodological approach to data collection and analysis

Source: Analysed from the primary source

The methods we used to research the illicit tobacco trade in the Indonesian justice system have limitations. Joossens and Raw have warned that examining the illicit cigarette trade is methodologically challenging for many reasons, such as the unavailability of recorded data and the lack of published data from the authority for security reasons. Our study had two further limitations.²⁴

²⁴ Luk Joossens and Martin Raw, "From Cigarette Smuggling to Illicit Tobacco Trade: Table 1," *Tobacco Control* 21, no. 2 (March 2012): 230–34, <https://doi.org/10.1136/tobaccocontrol-2011-050205>.

First, although the prosecution data we collected was from the official and credible database of the Indonesian Supreme Court, it likely needs to reflect the exact number of illicit cigarette trade cases prosecuted in Indonesia. There are likely to be (perhaps several) court decisions that still need to be manually uploaded to the database due to several technical or resourcing issues. Second, this study's illicit tobacco trade cases are limited to court-recorded convictions. In contrast, many cases may have yet to be investigated, prosecuted, or even wholly uncovered in the first place. Nevertheless, this study's focus is not solely on the number of cases but rather on what those cases reveal about the application of the prosecution of illicit cigarette trade more generally.

ANALYSIS AND DISCUSSION

Evolution of Indonesia's Tobacco Control Policies (TCPs)

The Indonesian Government has made efforts to control certain aspects of tobacco use. These can be found in laws, government regulations, ministerial regulations, and local government regulations, for example, Law Number 36 of 2009 on Health, Government Regulation Number 109 of 2012 on Materials that Contain Addictive Substances in Tobacco Products in the Interests of Health, and the Minister of Finance Regulation Number 146 of 2017 on Tobacco Excise Tax.²⁵ At the local level, tobacco control laws, mainly related to adopting smoke-free areas, are regulated within provincial and district regulations. According to Septiono,²⁶ by 2015, 17 provinces and 143 districts had issued regulations concerning smoke-free areas (*Kawasan Tanpa Rokok*).

Much of the Indonesian Government's approach to TCP has been a product of the "Reformation Era" that ruled Indonesia post-Suharto since 1998. This regime allowed the public to push the Government to introduce tobacco control measures, which had yet to occur during Suharto's thirty-two-year rule. That is to say that TCPs have not been a concern of Suharto's Government under the "New Order".²⁷ As noted by Reynolds,²⁸ the Minister of Health under Suharto's cabinet "had no intention of trying to regulate smoking through legislation." Nevertheless, some efforts were made to regulate tobacco products, such as banning cigarette advertisements in the electronic media by the Minister of Information and introducing Smoke-Free Areas by the Minister of Health. However, the implementation of these regulations has remained weak.²⁹

Every Indonesian President post-Suharto has issued government regulations concerning tobacco control, except Jokowi's Government. Before 2012, Indonesia issued tobacco control regulations in 1999 by passing government regulation or *Peraturan Pemerintah* (PP) that is PP 81/1999 on Pacification of Cigarettes for Health (*Pengamanan Rokok bagi Kesehatan*), signed

²⁵ Achadi, Soerojo, and Barber, "The Relevance and Prospects of Advancing Tobacco Control in Indonesia"; Rosser, "Contesting Tobacco-Control Policy in Indonesia."

²⁶ Wahyu Septiono et al., "Progress of Smoke-Free Policy Adoption at District Level in Indonesia: A Policy Diffusion Study," *International Journal of Drug Policy* 71 (2019): 93–102, <https://doi.org/10.1016/j.drugpo.2019.06.015>.

²⁷ Jayus, Muhammad Bahrul Ulum, Moch. Marsa Taufiqurrohmah. "Examining Recall of the House Member: How Does It Impact on Eradicating Corruption in Indonesia?." *Lentera Hukum* 7, no. 1 (2020): 101.

²⁸ C. Reynolds, "Tobacco Advertising in Indonesia: The Defining Characteristics for Success," *Tobacco Control* 8, no. 1 (1999): 85–88, <https://doi.org/10.1136/tc.8.1.85>.

²⁹ Rosser, "Contesting Tobacco-Control Policy in Indonesia."

by President Habibie. Habibie's PP content regulates cigarette control in public places, workplaces, and public transportation. Historically, this regulation was the first of Indonesia's TCP and then succeeded in 2000 by the Wahid's Government by issuing PP 38/2000, which focused on the control and safety of cigarettes for health, and in 2003, the Megawati's Government issued PP 19/2003 that regulate control of cigarette advertising and promotion. This regulation was intended explicitly to relate to health efforts, with one of the efforts referred to being the safety of addictive substances contained in cigarettes.³⁰ In 2012, under President Yudhoyono, the Indonesian Government issued PP 109/2012 on Materials that Contain Addictive Substances in Tobacco Products in the Interests of Health and revoked all previous tobacco control regulations. This PP regulated significant changes compared to the previous PP, which tightened sales regulations, prohibiting sales to pregnant women and children under 18 years of age and vending machines. In addition, there are standard provisions in advertising regarding images and health warnings for cigarette manufacturers. There was also an affirmation of norms in the definition of a "No Smoking Area" (*Kawasan Tanpa Rokok*). Figure 2 shows this changing regime over time.

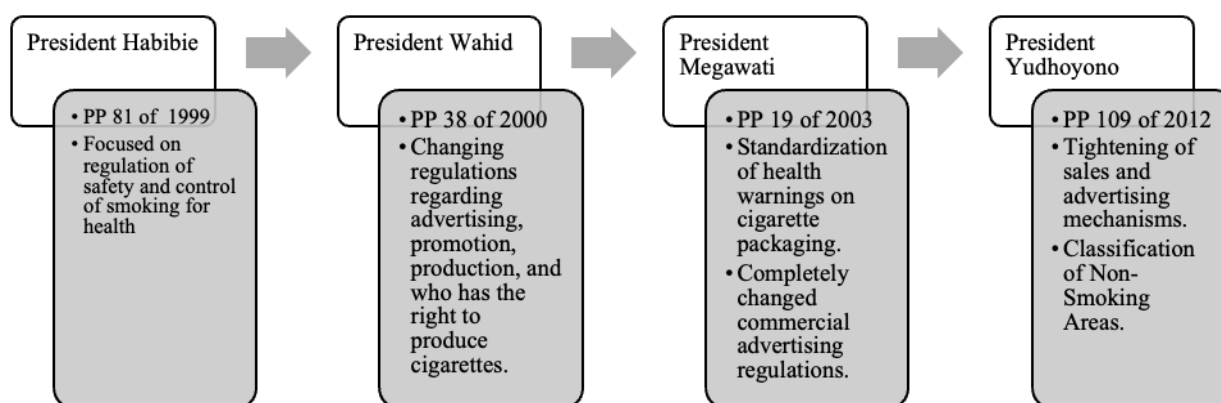


Figure 2: Indonesian president post-Suharto and its tobacco control regulations

Source: Analysed from the primary source.

Figure 2 indicates that although Indonesia has yet to sign and access the FCTC regime, the Government has introduced TCPs at the domestic level since 1999. Indonesia's TCPs are dispersed across several laws and regulations, either at the national or local level and contain certain elements of tobacco control that are not strictly in compliance with the FCTC.³¹ As noted in the introduction, there has been an ongoing debate between the tobacco companies and tobacco control advocates on whether the FCTC should be adopted. However, "further progress in Indonesia's tobacco-control policies will be contingent upon an ongoing process of struggle," as argued by Rosser.³²

Indonesia's Excise Tax Policy on Tobacco Products

Before 1995, Indonesia applied a colonial law relating to tobacco excise tax (*Tabacsaccijn Ordonnantie Stbl. 1932 Number 517*), which underwent several reforms following the nation's independence in 1945. By 1995, a new excise tax law was introduced through Law Number

³⁰ Achadi, Soerojo, and Barber, "The Relevance and Prospects of Advancing Tobacco Control in Indonesia."

³¹ Achadi, Soerojo, and Barber.

³² Rosser, "Contesting Tobacco-Control Policy in Indonesia."

11/1995 and was amended in 2007 through Law Number 39/2007. The application of excise tax for tobacco products in Indonesia is regulated under the Minister of Finance regulation.³³ In addition, the Minister of Finance has issued regulations (*Peraturan Menteri Keuangan* or PMK) concerning the tobacco excise tax, which in turn have been further evaluated, amended, and, in some cases, revoked. The current regulation of cigarette excise tax in Indonesia is based on PMK Number 192 of 2021, as amended in 2022 by PMK No. 109. The 2022 amendment has detailed another group of tobacco products, namely the *Kelembak Kemenyan* Cigarettes, into Category I and Category II. The above classification is accompanied by production restrictions (Group I, > 4 million sticks & Group II, = < 4 million sticks), previously without production restrictions. This classification was followed by an increase in the excise rate from the previous Rp. 25.00 per stick to Rp. 440.00 for Category I and Rp. 25.00 for Category II.

Indonesia has a relatively complex excise tax system for tobacco products,³⁴ in which different tax rates are applied to “the cigarette type, the size of the production facility, the method of manufacture, and the retail price”.³⁵ Hence, excise tax rates of kretek producers, smaller producers, hand-rolled kretek of either type and cheaper final products are lower than that of white cigarette producers, large producers, producers of machine-made cigarettes of either type and more expensive products.³⁶ Following the global trend of introducing stricter tobacco taxes, Indonesia increased its tax share on consumer prices.³⁷

The WHO recommended that member states increase tobacco taxes up to 70% of the retail price to help achieve tobacco control.³⁸ The literature has shown that, in many cases, stricter tobacco taxes discourage tobacco consumption as well as reduce smoking.³⁹ This has had the flow-on effect of reducing the number of deaths from lung cancer,⁴⁰ improving public health,⁴¹ and raising government revenues.⁴² Of note, in the long term, the goal of increasing tobacco taxes is to achieve “the realisation of a world free from tobacco smoking,” regardless of its critics.⁴³

In Indonesia, the question is how the impacts of increasing cigarette tax and cigarette tax system are applied. Based on earlier studies on the reported outcome of Indonesia’s cigarette

³³ Article 5, paragraph 5 Law Number 39 of 2007.

³⁴ World Bank Group, *The Economics of Tobacco Taxation and Employment in Indonesia* (Washington DC: World Bank, 2018), <https://doi.org/10.1596/29814>.

³⁵ Ahsan et al., “Illicit Cigarette Consumption and Government Revenue Loss in Indonesia.”

³⁶ Ahsan et al.

³⁷ Ahsan et al.

³⁸ Ahsan et al.; World Bank Group, *The Economics of Tobacco Taxation and Employment in Indonesia*.

³⁹ Joossens and Raw, “From Cigarette Smuggling to Illicit Tobacco Trade”; Pelfrey, “Cigarette Trafficking, Smurfing, and Volume Buying”; James E. Prieger and Jonathan Kulick, “Cigarette Taxes and Illicit Trade in Europe,” *Economic Inquiry* 56, no. 3 (2018): 1706–23, <https://doi.org/10.1111/ecin.12564>.

⁴⁰ Prabhath Jha, “Death and Taxes: Epidemiological and Economic Evidence on Smoking,” *Global Heart* 7, no. 2 (2012): 139, <https://doi.org/10.1016/j.ghheart.2012.05.004>.

⁴¹ Pelfrey, “Cigarette Trafficking, Smurfing, and Volume Buying.”

⁴² Roberto Magno Iglesias, “Increasing Excise Taxes in the Presence of an Illegal Cigarette Market: The 2011 Brazil Tobacco Tax Reform,” *Revista Panamericana de Salud Pública* 40 (October 2016): 243–49; Prieger and Kulick, “CIGARETTE TAXES AND ILLICIT TRADE IN EUROPE.”

⁴³ Graham Moon et al., “The Tobacco Endgame: The Neglected Role of Place and Environment,” *Health & Place* 53 (September 1, 2018): 271–78, <https://doi.org/10.1016/j.healthplace.2018.06.012>.

tax policy,⁴⁴ the “impacts” of such a policy may be divided into three themes: (1) positive, (2) negative, and (3) neutral. Depending on its correlation with the goal of the FCTC. The first theme emerges from indicators such as the slight fall in cigarette production and consumption, a decrease in cigarette affordability, and a slight fall in the demand and supply of tobacco leaves and cloves. These outcomes correlate positively with the overarching goals of the FCTC - to reduce the use of. In contrast, the second theme has a negative correlation with the FCTC’s goal, such as the availability of lower priced cigarettes, substitution for cheaper products (which may not have significant health impacts, has little impact on smoking reduction) tax evasion, and ultimately fueling the illicit tobacco market in Indonesia.

The last theme - neutral impacts - means that the outcome is neither positive nor negative in terms of aligning with the goals of the FCTC. Neutral impacts are not directly related to tobacco control issues, but the emergence may still result from Indonesia’s cigarette tax policies. They could present either a positive or adverse impact. Previous studies have reported that positive impacts may be the increased profit margin for tobacco companies and the resultant price of tobacco leaves and cloves, resulting in an incentive for farmers.⁴⁵ On the other hand, creating complicated administrative requirements is an example of an adverse impact of Indonesia’s cigarette tax policy.⁴⁶

Trends in Conviction

As noted above, the Indonesian courts prosecuted thirty-seven illicit cigarette trade cases between 2010 and 2019, and the convictions were relatively steady, with a total number of court decisions ranging from one to six annually. Hence, the conviction rate is approximately four convictions each year.

According to the Directorate General of Customs and Excise (DGCE), the total number of investigations on the illicit trade of excisable goods in 2018 alone was 118 cases, including both illicit trade in cigarettes and alcohol.⁴⁷ Since the exact number among those types of trade has yet to be provided, the number of convicted cases found in this study cannot be compared straightforwardly with the number of investigations conducted by the DCGE in 2018. However, if it is assumed that half of them are the illicit cigarette trade, the comparison between the conviction rate and the investigation number in 2018 indicates a wide discrepancy. This finding, while preliminary, suggests that further studies are needed in the area of enforcement,⁴⁸ such as challenges faced by the DGCE in gathering evidence and challenges faced by the prosecutor in charging the offenders of the illicit tobacco trade.

⁴⁴ Ahsan et al., “Illicit Cigarette Consumption and Government Revenue Loss in Indonesia”; Abdillah Ahsan, “Tackling Illicit Cigarettes,” in *Confronting Illicit Tobacco Trade: A Global Review of Country Experiences* (World Bank Group, 2019), 439–67; Barber and Ahsan, “The Tobacco Excise System in Indonesia”; Suprihanti et al., “The Impact of Cigarette Excise Tax Policy on Tobacco Market and Clove Market in Indonesia”; World Bank Group, *The Economics of Tobacco Taxation and Employment in Indonesia*.

⁴⁵ Suprihanti et al., “The Impact of Cigarette Excise Tax Policy on Tobacco Market and Clove Market in Indonesia.”

⁴⁶ Suprihanti et al.

⁴⁷ Direktorat Jenderal Bea dan Cukai, “Laporan Kinerja Direktorat Jenderal Bea dan Cukai” (Jakarta, 2018).

⁴⁸ Taufiqurrohman, Moch Marsa, et al. “The Use of Necessitas Non Habet Legem and Wederspanningheid in Law Enforcement for Covid-19 Vaccination in Indonesia.” *Jurnal Penelitian Hukum De Jure* 21, no. 4 (2021): 19.

In addition, the DGCE is officially responsible for investigating illegal activities in excisable goods before the prosecution stage. The DGCE is an investigatory agency for enforcing the trade of illicit excisable goods, including illicit cigarettes. Its role is “to make sure that all stakeholders follow all regulations on the excise tax”.⁴⁹ Based on Article 34 Law No. 39 of 2007, the DGCE may request assistance from the Indonesian police and army if required. Besides enforcing criminal law provisions, administrative enforcement provisions can also be taken by the DGCE, for example, taking control of or demolishing manufactured cigarette machinery, freezing the license of the companies, and rejecting requests for excise stamps.

Use of Specific Offences under Indonesia’s Excise Law

As noted above, the illicit tobacco trade has been criminalised by the introduction of Indonesia Excise Law Number 11 of 1995 and its amendment, Law No. 39 of 2007. Based on these laws, several illicit trades in excise tax offences have been subject to the criminal justice system. Sentences can involve imprisonment, the payment of fines (or both) depending on the offense they committed. A total of seven possible criminal activities could be imposed criminal sanctions, as summarised in Table 1.

Table 1: Criminalisation and Punishment in Indonesia Excise Law 2007

Article	Offending Conduct/Offence	Punishment			
		Fines		Imprisonment	
		Min.	Max.	Min.	Max.
50	Running an unlicensed factory or storage facility or importing cigarettes evades the excise tax payment.	Two times the amount of excise duty payable	Ten times the amount of duty payable	One year	Five years
52	Unreported of removing cigarettes from the factory or storage facility to evade the excise tax payment. This provision is applied to a manufacturer or warehouse proprietor.	Two times the amount of excise duty payable	Ten times the amount of duty payable	One year	Five years
53	Presenting or handing over fake or falsified books, records, and/or documents, or financial statements, books, records, and documents as proof of bookkeeping, and other documentation related to business activities, including electronic data and letters about excise-related activities, on which an inspection is carried out. This provision is applied mainly to a manufacturer, warehouse proprietor, importer of excisable goods, distributor, retailer, or user of excisable goods granted exemption of excise duty.	Rp. 75.000.000 (seventy-five million rupiahs)	Rp. 750.000.000 (seventh hundred and fifty million rupiah)	One year	Six years
54	Offering, delivering, selling, or providing cigarettes not packaged for retail sale or to which an excise stamp has not been affixed.	Two times the amount of excise duty payable	Ten times the amount of duty payable	One year	Five years
55	Producing fake excise stamps; buying, storing, using, selling, offering, handing	Ten times the amount	20 times the amount	One year	Eight years

⁴⁹ Abdillah Ahsan, “Tackling Illicit Cigarettes.”

	over, providing for sale, or importing fake excise stamps; or using, selling, offering, trading, providing for selling, or importing used excise stamps.	of excise duty payable	of duty payable		
56	Hoarding, storing, owning, selling, exchanging, gaining, or providing excisable cigarettes that he/she knows or should suspect to originate from an act of crime.	Two times the amount of excise duty payable	Ten times the amount of duty payable	One year	Five years
58	Offering, selling, handing over excise stamps to unauthorised persons; or buying, receiving, or using excise stamps for which they are not entitled.	Two times the amount of excise duty payable	Ten times the amount of duty payable	One year	Five years

Source: Analysed from the primary source

Enforcing Indonesia’s Excise Laws 1995 and 2007 through the Court reveals that not all offences have been prosecuted, resulting in a conviction. As presented in the appendix, from the seven types of offences in illicit cigarette trade stated in the laws, five had been prosecuted and convicted in 37 cases between 2010 and 2019. However, this result should be interpreted with some caution. The other two offences (unreported distribution and providing fake reports, Articles 52 and 53) may still have occurred. As reported in the literature,⁵⁰ offenders may conceal their criminal activities in the presence of officials due to the shared nature of illegal behaviour.

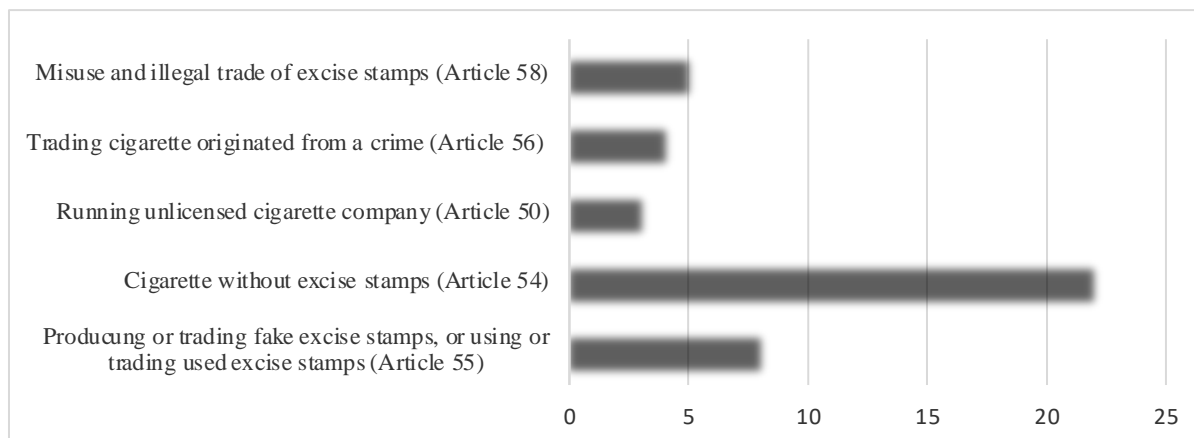


Figure 3: Types of illicit cigarette trade convicted by the Indonesian Court (2010-2019)

Source: Analysed from the primary source

Figure 3 provides the number of convictions by the types of illicit cigarette trade. The higher number in the analysis can be explained by the Defendant being charged with more than one provision in some decisions, as presented in the appendix. The highest number of offences is trading cigarettes without an excise stamp (Article 54), with a total number of 22 convictions, followed by producing or trading fake excise stamps or trading or using used excise stamps (Article 55), with a total of 8 convictions. Furthermore, the conviction for illegal trading of excise stamps (Article 58), trading cigarettes originating from a crime (Article 56) and operating an unlicensed cigarette company (Article 50) have a total number of four, three,

⁵⁰ Tessa E. Langley et al., “Confronting Illicit Tobacco Trade: A Global Review of Country Experiences: United Kingdom: Tackling Illicit Tobacco,” 2019.

and one, respectively. The most striking result from the data is the significant number of cases of cigarettes without excise stamps. This result is consistent with those of other studies and suggests that 2018 cigarettes without excise stamps dominated the illicit cigarette trade, about 52.6%.⁵¹

A point about definitions may also be made. The DGCE defines the illicit cigarette trade narrowly in that it divides illegal domestic cigarettes into five types with a focus on cigarette production, namely: (1) cigarettes without an excise stamp, (2) cigarettes with a fake excise stamp, (3) cigarettes with a used excise stamp, (4) cigarettes with an excise stamp with the wrong business excise identification number, and (5) cigarettes with an excise stamp with the wrong designation.⁵² This division means that the definition of illicit cigarette trading is narrower than the WHO's definition under the FCTC, and, subsequently, so too are the convictions of excise tax violations we found through the Indonesian court decisions. The DGCE's division could be broadened as the FCTC intensifies the enforcement of uncovered illicit trade in cigarettes, including the production of fake excise stamps and the spread of illegal manufactures.

Location of Offences and Prosecutorial Activity

Turning to where the 37 offences were committed, our data showed that Kudus Regency had the highest number of cases for illicit cigarette trade in Indonesia, with a total of 11 cases, followed by Bangil and Sidoarjo Regencies, with both a total of 5 cases. Further, Jepara Regency had several 3 cases, and the rest had below 3 cases. In terms of the province, court decision data revealed that Central Java and East Java dominated the location of illicit cigarette trade cases compared with other provinces in Indonesia, as shown in Figure 4.

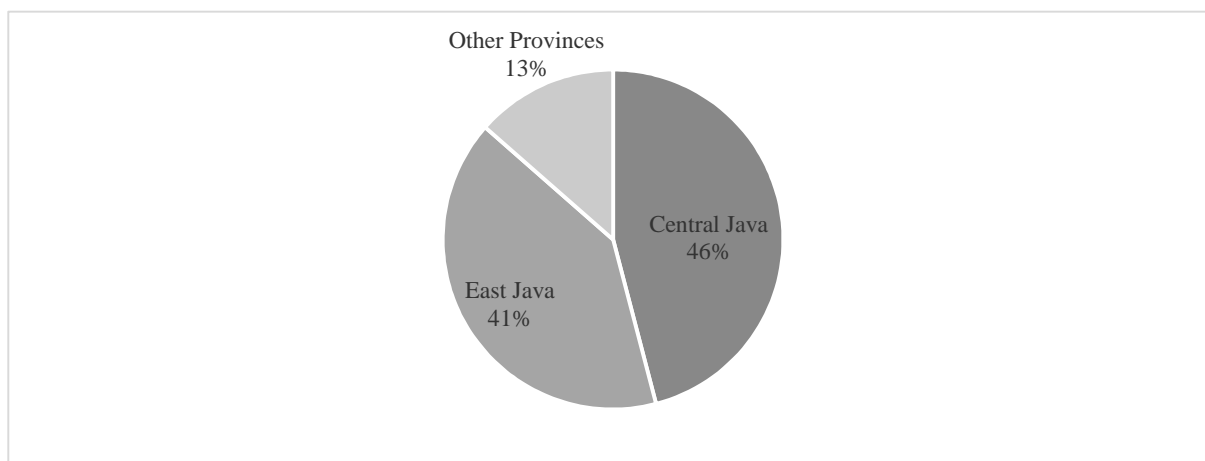


Figure 4: *The location trade-off finalised court prosecutions for excise offences in Indonesia*
Source: Analysed from the primary source

Forty-six per cent of illicit cigarette trade occurred in Central Java, and forty-one per cent occurred in East Java. At the same time, other provinces (Jakarta, East Nusa Tenggara, West Sumatera, Riau, Bangka-Belitung) have below fifteen per cent. It should be noted that this does not demonstrate the entirety of illicit activity surrounding tobacco excise issues, as there is a

⁵¹ Abdillah Ahsan, "Tackling Illicit Cigarettes."

⁵² Abdillah Ahsan.

wide gap in the number of cases under investigation by the DGCE. However, these findings only provide preliminary data on the location of the illicit cigarette trade. In the Indonesian context, there has yet to be any previous research that explains the classification of illicit cigarette trade based on location.

Concerning the location of cigarette factories, the number of tobacco factories appears high in Central Java and East Java, with a total number of 97 and 140 factories, respectively (see figure 5). At the same time, other provinces have only a total number of 13 based on data from the Ministry of Industry in 2008.⁵³ The high number of tobacco factories in Central Java and East Java seems consistent by 2019, as explained by Ahsan.⁵⁴

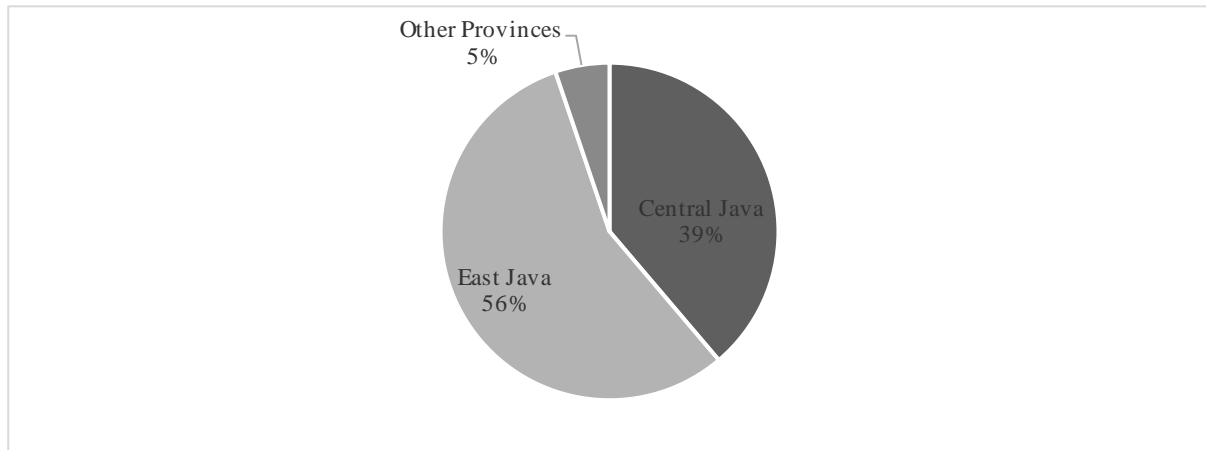


Figure 5: The location of cigarette factories in Indonesia (in percentage)

Source: Rachmat and Aldillah, Agribisnis Tembakau di Indonesia: Kontroversi dan Prospek, 2010.

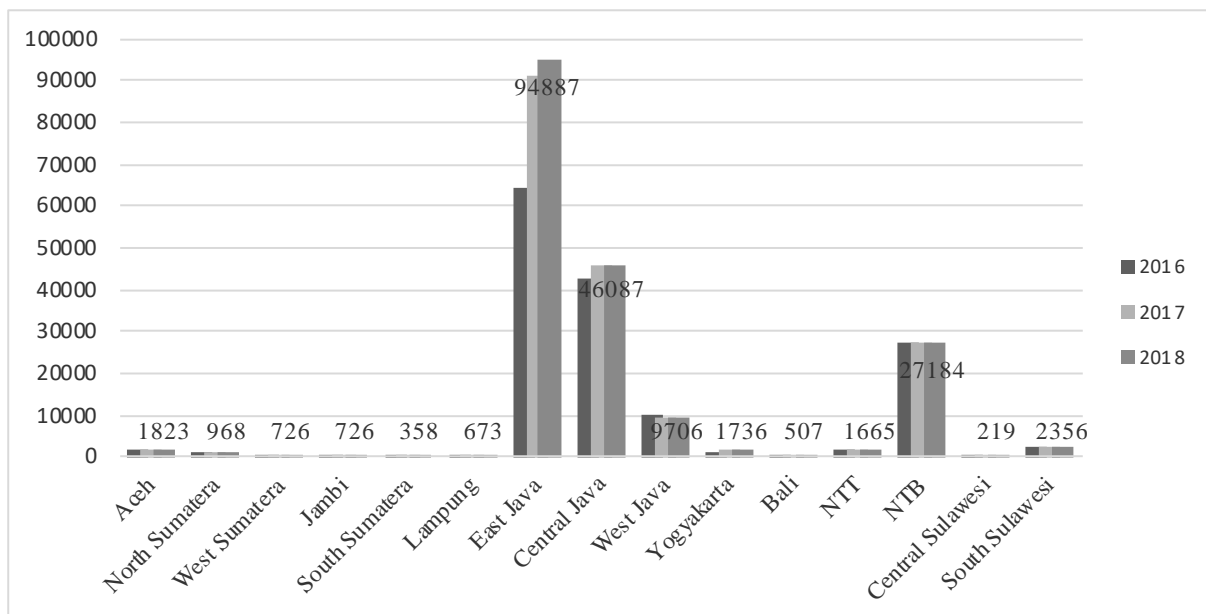


Figure 6: Planted Area of Tobacco by Province, 2016-2018

Source: Directorate General of Estate Crops, the Ministry of Agriculture, 2017.

⁵³ Muchjidin Rachmat and Rizma Aldillah, “Agribisnis Tembakau Di Indonesia : Kontroversi Dan Prospek,” *Forum Penelitian Agro Ekonomi* 28, no. 1 (2016), <https://doi.org/10.21082/fae.v28n1.2010.69-80>.

⁵⁴ Abdillah Ahsan, “Tackling Illicit Cigarettes.”

Figure 6 shows the percentage of cigarette factories in Indonesia that were mainly located in East Java and Central Java, with nearly forty per cent in Central Java and more than fifty per cent in East Java, as compared to Figure 5. Only five per cent of the rest of the cigarette factories were located in other provinces. This result indicates a positive correlation between the high number of tobacco factories and the high crime rate of illicit cigarettes in those two provinces based on data in this study.

Interestingly, the high cases in Central Java and East Java also correlated with the high number of planted tobacco areas in those provinces. The Ministry of Agriculture data show that the tobacco planted area in these two provinces was significantly higher between 2016 and 2018 compared with other provinces, as shown in Figure 6. Although NTB also had many planted areas in 2008 alone, the other 12 provinces have fewer than 10.000 ha planted areas. It is possible to hypothesise that illicit cigarette trade is less likely in provinces with low-planted tobacco areas. However, further work is required to determine the correlation between the high number of illicit cigarette trade and planted areas of tobacco.

Trends in Sentencing Offenders

In the final part of the analysis, we investigate the sentencing trends for illicit cigarette trade offenders. Based on data from Indonesian court decisions, the sentencing decisions are dominated by the cumulative principle, in which fines and imprisonment are applied together. From 37 court decisions, the number of cumulative sentences is 31 of court decisions. This is a consequence of using the cumulative-alternative principle, indicated by the words “and/or” in formulating criminal sanctions within the articles. In this regard, fines and imprisonment can be applied to the illicit cigarette trade offenders found guilty in Court. Meanwhile, six court decisions followed the alternative principle that a single penalty of fines or imprisonment is applied in which only four court decisions applied fines, and only two court decisions applied imprisonment (see figure 7).

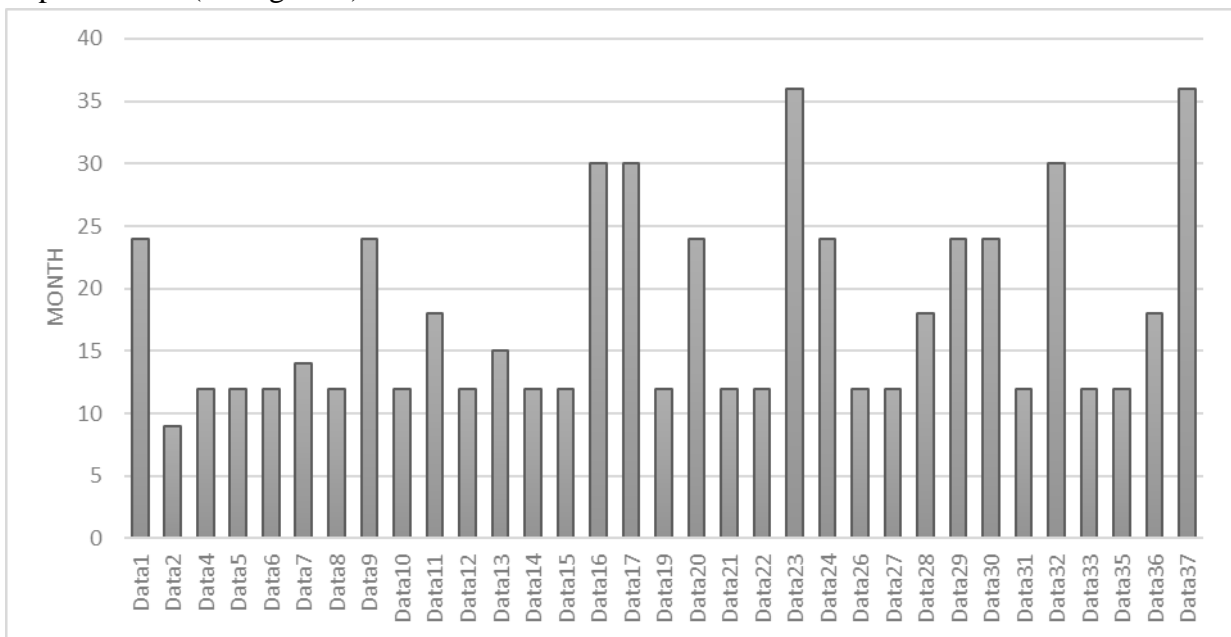


Figure 7: *The variation in the length of imprisonment in illicit cigarette trade cases*
Source: Analysed from the primary source

In terms of imprisonment, although the offenders of illicit cigarette trade may face a maximum of 8 years of imprisonment as stated in Article 55 of Indonesia excise laws, the court decisions data revealed that the highest imprisonment imposed by the courts was three years (or 36 months) found in two cases; one was charged with Article 55, and another one was with Article 54. Of the total of 37 decisions, 33 have imposed imprisonment, with the length varying from 9 months to 36 months, as presented in Figure 7.

Based on the court decision data, the average length of imprisonment is around 18 months or one and a half years. Compared with the punishment of illicit trade in drugs and narcotics in Indonesia, this result suggests that the risk of trading illicit cigarettes is much lower than trading illicit drugs. For instance, the sentence imposed on Schapelle Corby was 20 years of imprisonment for smuggling 4.1 kgs of marijuana into Indonesia.⁵⁵ These results further suggest that the illicit cigarette trade has low risk but is immensely profitable, which matches those observed in earlier studies.⁵⁶ In the context of Sweden, for example, Skinnari and Korsell have reported a study participant who stated: “Having 2 million cigarettes means that SEK 1 million (approx. €108,000) ends up in your coffers, all at the risk of getting two years in prison. Try the same with amphetamine, and we are talking about 12 years behind bars”.⁵⁷ Therefore, it is possible that criminal drugs shift into the illegal cigarette market, an essential issue for further research.

In the prosecution process, the Public Prosecutor refers to the Prosecution Guidelines as stipulated in the Circular Letter of the Attorney General No. SE-001/J.A/4/1995 concerning the Criminal Prosecution Guidelines (SE JA 001/1995). Broadly speaking, SE JA 001/1995 encapsulates three factors that must be considered in handling specific criminal acts, namely: (i) the actions of the Defendant, (ii) the personal circumstances of the Defendant, and (iii) the impact of the Defendant’s actions, particularly regarding state losses. Based on several court decisions, the Public Prosecutor tends to prioritise the recovery of state losses through the imposition of fines rather than imprisoning the Defendant. This argument is consistent with Court Decision Number 144/Pid.B/2012/PN.Dmk jo. Court Decision Number 316/Pid/2012/PT.Smg, Court Decision 557/PID.Sus/2014/PN.Sda, and Court Decision Number 235/Pid.Sus/2018/PN Jpa. In its decision, the Court also tends to approve the prosecutor’s indictment that focuses on recovering state losses. Articles 54 and 55 of Indonesia Excise Law are often referenced in prosecuting perpetrators, especially regarding the method of calculating fines for various excise duties. Additionally, the actor’s role is also considered in determining the indictment. Intellectual actors are often graded with higher culpability compared to other actors, such as intermediaries and accomplices.

Regarding fines, the court decision data revealed that the highest fine imposed was Rp. 3,822,837,000, while the lowest was Rp. 1,600,000. This is interesting data due to the wide gap in the number of fines. Of the total of 37 court decisions, there were 35 decisions imposing fines with the length varies (See appendix). Responding to a wide gap in sentencing,

⁵⁵ Anthony Lambert, “Mediating Crime, Mediating Culture: Nationality, Femininity, Corporeality and Territory in the Schapelle Corby Drugs Case,” *Crime, Media, Culture: An International Journal* 4, no. 2 (2008): 237–55, <https://doi.org/10.1177/1741659008092330>.

⁵⁶ Pelfrey, “Cigarette Trafficking, Smurfing, and Volume Buying”; Skinnari and Korsell, “The Illicit Tobacco Market in Sweden – from Smuggling to Warehousing.”

⁵⁷ Skinnari and Korsell, “The Illicit Tobacco Market in Sweden – from Smuggling to Warehousing.”

Zdenkowski stated that an issue of disparity in sentencing had caused controversy.⁵⁸ In Indonesia, the existence of the principle of judicial discretionary power significantly contributes to the disparity in criminal sentencing decisions, especially with the formulation of the minimum-maximum criminal threat norms in Indonesia's Excise Law. The principle of judicial discretionary power is enshrined in Article 1 of the Indonesian Law Number 48 of 2009 on Judicial Authority Law, which is further emphasised by Article 197 of the Indonesian Law Number 8 of 1981 on the Criminal Procedure Code. In essence, it states that judges have the full authority to interpret the facts that emerge in the trial and then formulate these interpretations into verdicts under the applicable law framework.⁵⁹

On the other hand, Smith and Natalie argued that disparity in sentencing could not be avoided for some reasons, such as "the gravity of the offence, the prior record of the offender, the range of penalties available by law,⁶⁰ parity with other recent decisions and harm to the victim".⁶¹ In a recent study, the disparity in the sentencing of fines is a consequence of the formulation of fines in Indonesia's Excise Law.⁶² Adopting Naibaho's argument, two reasons explain why the formulation of fines in Indonesia's Excise Law causes sentencing disparity of fines.⁶³ First is applying an indeterminate system sentence, which states the minimum and maximum fines. Second, the fixed number of fines needs to be stated, but it depends on the cases of the amount of excise duty that should be payable. Articles on excise tax crime of tobacco products stated that the fines that could be applied are a minimum of 2 times the amount of excise duty payable and a maximum of 10 times the amount of excise duty payable, except Article 53 Indonesia excise laws. The fines range stated in Article 53 is between a minimum of 75 million rupiahs and a maximum of 750 million rupiahs. Even though it stated the fixed number of fines, disparity in sentencing of fines may still appear in the court decision since the amount of the gap is also high.

Lastly, the ideology of punishment in Indonesia's excise laws and its implementation through court decisions in applying fines emphasises "retribution" because it is a backwards-looking offence where the number of fines depends on the amount of excise duty payable. The ideology of retribution can also be seen in formulating and implementing imprisonment using the minimum and maximum length of imprisonment.⁶⁴ This approach is an old approach to punishment. The new approach emphasises a balance between objective and subjective aspects, as regulated in the New Criminal Code of Indonesia (Law Number 1 of 2023). Indonesia's New Criminal Code has emphasised punishment's rehabilitation, reparation, and restoration aspects.

⁵⁸ George Zdenkowski, "Limiting Sentencing Discretion: Has There Been a Paradigm Shift?," *Current Issues in Criminal Justice* 12, no. 1 (2000): 58–78.

⁵⁹ Nimerodi Gulo, "Disparitas Dalam Penjatuhan Pidana," *Masalah-Masalah Hukum* 47, no. 3 (July 30, 2018): 225, <https://doi.org/10.14710/mmh.47.3.2018.215-227>.

⁶⁰ Taufiqurrohman, Moch Marsa. "Adopting Osman Warning In Indonesia: An Effort To Protect Potential Victims Of Crime Target." *Jurnal Hukum Dan Peradilan* 11, no. 3 (2022): 477.

⁶¹ Philip Daniel Smith and Kristin Natalie, *Understanding Criminal Justice: Sociological Perspectives* (London: Sage Publications Ltd, 2005).

⁶² Widyantoro, Agus, Moch Marsa Taufiqurrohman, and Xavier Nugraha. "The Francovich Principle as the Basis of State Responsibility for Laborers Loss Due to Company Bankruptcy." *Yustisia* 12, no. 3 (2023): 219.

⁶³ Nathalina Naibaho et al., "Criministrative Law: Development and Challenges in Indonesia," *Indonesia Law Review* 11, no. 1 (2021): 1–14.

⁶⁴ Ahmad Sofian, *Ajaran Kausalitas Hukum Pidana* (Jakarta: Kencana Prenada Media Group, 2018).

The restorative justice method is an approach to this problem. Restorative justice can be an alternative approach to resolving criminal acts.⁶⁵ Restorative justice is a form of justice that emphasises repairing the harm caused by or related to the crime. This model of justice emphasises “restoration.” Restorative justice is an approach that emphasises healing and reconciliation over punishment and separation. It shifts the conventional justice paradigm, often punitive, towards an approach more oriented towards repairing the damage done.⁶⁶ Restoration is at the core principle of restorative justice.

Restorative justice does not mean eliminating offender accountability. This concept emphasises the full accountability of the perpetrator for their actions.⁶⁷ However, this accountability is not solely in the form of punishment but rather a responsibility towards restoration. Restoration also involves efforts to provide reparation or restitution. That can take the form of material compensation to remedy the harm caused. Compared with the data on disparity in fines (See appendix), the principle of recovery in restorative justice can be the best answer. That is none other than to recover the loss of the state for the excise violation of the illicit cigarette trade.

Several restorative justice criteria are scattered in various settings in each criminal justice system in Indonesia, both at the Indonesian Police,⁶⁸ Indonesian Prosecutor’s Office,⁶⁹ and the Indonesian Supreme Court.⁷⁰ This research takes the middle point regarding Restorative Justice criteria in this illicit cigarette trade case from the available arrangements. This research considers that suitable criteria include: (1) the suspect has committed a crime for the first time; (2) a criminal offence is only punishable by a fine or imprisonment of not more than five years; (3) the crime is committed with the value of the evidence or the value of the loss caused as a result of the crime of not more than Rp. 2,500,000.00 can be an alternative solution to applying conventional punishment to cigarette-related crimes.

CONCLUSION

The present study investigates court decisions relating to the illicit cigarette trade in Indonesia, focusing on cigarette excise tax offences. It has been found that from 2010 to 2019, cigarettes without excise tax stamps had the highest number of cases in the courts. Many of those offences were committed with the illegal production, distribution, marketing, and selling of cigarettes. The highest number of illicit cigarette trades evident from our data were found in East Java and Central Java. This has a correlation with the number of cigarette manufacturers and planted tobacco areas in those provinces. However, the distribution and market of illicit

⁶⁵ Howard Zehr, “Restorative Justice and the Gandhian Tradition,” *International Journal on Responsibility* 1, no. 2 (2018): 2.

⁶⁶ Suarda, I Gede Widhiana, Moch. Marsa Taufiqurrohman, Zaki Priambudi. “Limiting the Legality of Determining Suspects in Indonesia Pre-Trial System.” *Indonesia Law Review* 11, no. 2 (2021): 137.

⁶⁷ Setiawan, Peter Jeremiah, Xavier Nugraha, and Moch Marsa Taufiqurrohman. “Penggunaan Daluwarsa sebagai Dasar Gugatan Praperadilan di Indonesia: Antara Formil atau Materiil.” *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 3, no. 2 (2020): 145.

⁶⁸ Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning Handling Criminal Offences Based on Restorative Justice (Perkapolri 8/2021).

⁶⁹ Regulation of the Attorney General Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Perjagung 15/2020).

⁷⁰ Decree of the Director General of Public Justice of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 of 2020 (Decree of the Director General of Public Justice of the Supreme Court of 2020).

cigarettes suggest that illegal products were also likely to have been distributed to other provinces. Regarding the mode of transportation, the court decisions indicate that cigarettes have been transported illegally out of East Java and Central Java provinces, either delivered by truck or partial delivery by bus and express courier services. Furthermore, this study has indicated that the offenders involved in the domestic illicit cigarette trade in Indonesia are encouraged to do so based on profit. Economic motivation is based on price disparities, such that illicit cigarette purchasers, traders and manufacturers exist in their market. The correlation between higher taxes and illicit cigarette trade further indicates that an increased excise tax may not reduce black-market behaviour. Indeed, it may result in the opposite effect. Lastly, concerning sentencing, our study shows the application of the cumulative principle, in which fines and imprisonment are applied together. Based on our data, the average length of imprisonment is around 18 months or one and a half years, while the number of fines shows a wide gap in the court decisions between Rp. 3,822,837,000 and Rp. 1,600,000.

The restorative justice method emerges as a compelling alternative in addressing the issue of illicit cigarette trade. Rooted in the principle of restoration, this approach prioritises healing and reconciliation, steering away from conventional punitive measures. While holding perpetrators fully accountable for their actions, restorative justice emphasises responsibility toward restoration rather than mere punishment. This accountability includes efforts for reparation and restitution, offering material compensation to remedy the harm caused. The research identifies critical criteria for applying restorative justice in cases of illicit cigarette trade, considering factors such as the suspect's criminal history, the severity of the offence, and the financial implications. Adopting a restorative justice framework allows one to address the complexities of excise violations more nuancedly, focusing on repairing the damage done while still maintaining accountability. This alternative approach aligns with the broader shift in paradigms from punitive justice to a more holistic and reparative model, presenting a viable solution in the context of cigarette-related crimes in Indonesia.

Overall, besides adding to a growing body of literature on the illicit tobacco trade in Indonesia and Southeast Asia, our study contributes to the debate concerning the impact of excise taxes and the domestic illicit tobacco trade. It does so by focusing on Indonesian court decisions which have hitherto yet to be explored comprehensively. Since our study was based on legal desktop analysis, further empirical (qualitative or quantitative) research is needed to help explain offender motivation as well as other regulatory enforcement challenges in responding to the domestic illicit cigarette trade in Indonesia.

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CONFLICT OF INTEREST

The authors declare that we have no competing interests.

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