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The Effectiveness of *Ultimum Remedium* in Excise Crimes: Regulatory Analysis and Public Policy Implications

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Abstract: The principle of *ultimum remedium* in criminal law positions criminal sanctions as the last resort, especially in handling administrative violations in the excise sector. This research aims to describe a effectiveness of this principle in the termination of investigations of excise crimes in Indonesia, focusing on recent regulations such as Minister of Finance Regulation No. 82/2024 and the Law on the Harmonization of Tax Regulations (UU HPP), which mandates this approach through Article 64 paragraph (9) of the Excise Law. This research applies a normative legal approach through conceptual and statutory analysis combined with public policy evaluation. The scope of the analysis includes specific criminal acts such as illegal factories (Article 50), goods released without documents (Article 52), and possession of illegal excisable goods (Article 56). The findings reveal that applying *ultimum remedium* can enhance fiscal efficiency and promote restorative justice through administrative fines, with state revenue from these settlements showing an increasing trend, reaching up to IDR 106.2 billion in 2025. However, challenges remain in terms of transparency, accountability, and the lack of integration with broader health and environmental policies. The study recommends reformulating excise regulations to be more adaptive, strengthening supervisory mechanisms, and integrating the policy with social goals to safeguard sustainability and integrity in law enforcement.

Keyword: *Ultimum Remedium*, Excise Law, Termination of Investigation, Public Policy

INTRODUCTION

The enforcement of excise law in Indonesia demonstrates a crucial evolution through the application of the principle is *ultimum remedium* (criminal sanctions as the last resort) in handling excise crimes. This principle strategically shifts the primary focus from punitive criminal prosecution to an administrative recovery mechanism. This grants violators an opportunity to settle state losses through administrative fines before the case proceeds to criminal proceedings. The implementation of *ultimum remedium* in the excise sector serves as a fiscally effective alternative to previous enforcement methods, which often resulted in criminal investigation leading to imprisonment and fines, or the seizure of goods

(BDN/BMN) that did not translate into immediate fiscal benefit for the state. Consequently, the current application of *ultimum remedium* is a significant factor supporting state revenue optimization.

Regulatory Context and Scope of Application

The legal foundation for this approach is formalized in recent national regulations. Specifically, the mandate for *ultimum remedium* is established by Article 14 paragraph 3 of Law Number 7 of 2021 concern the Harmonization of Tax Regulations (UU HPP), which amends Article 64 paragraph (9) of the Excise Law. The technical procedures for terminating investigations for the sake of state revenue are further detailed in Government Regulation Number 54 of 2023 and Minister of Finance Regulation No. 82 of 2024. The basic legal framework for the implementation is also PMK 165/2023.

The criminal acts eligible for the application of *ultimum remedium* are clearly delineated, covering offenses where the primary motive is often fiscal evasion, including: running a factory or storage place without a license with the intent to evade excise (Article 50); releasing excisable goods without documents with the intent to evade excise (Article 52); selling or providing excisable goods that are not packaged for retail sale and are not affixed with excise stamps (Article 54); possessing or selling excisable goods known or suspected to originate from a criminal act (Article 56); and using or selling excise stamps that are not the violator's right (Article 58).

Empirical Effectiveness and Current Challenges

Empirical data from the Directorate General of Customs and Excise (DJBC) for a period 2020–2025 indicates a consistent increase in illegal cigarette crackdowns, affirming the stability and optimization of supervision. The number of excise crime investigations also shows a stable and increasing trend, confirming DJBC's commitment. Crucially, the fine revenue generated through the administrative settlement mechanism has demonstrated significant fiscal effectiveness, with the value of the *ultimum remedium* fine reaching IDR 77.61 billion in 2024. This figure confirms the approach as a real and efficient contributor to the state's fiscal recovery efforts.

However, the policy's efficacy is not without inherent problems. Criticisms arise regarding the potential for abuse of authority in the administrative process, the weakness of oversight mechanisms, and a substantial lack of integration with broader public health and environmental protection policies, particularly those aimed at controlling high-risk excisable goods like cigarettes. While previous academic studies tend to focus on the normative aspects of the application of *ultimum remedium* in tax and excise law, there is minimal research addressing its real-world effectiveness from the holistic perspective of public policy and the protection of wider societal interests.

Research Gap and Objectives

This research aims to fill the existing research gap by not only analyzing the regulatory framework but also evaluating the legal effectiveness of the *ultimum remedium* policy from institutional, public policy, and sustainability perspectives. This analysis employs an integrated theoretical framework, including the Theory of the State of Law (*Rechtsstaat*), Soerjono Soekanto's Law Enforcement Theory, and Baldwin & Black's Theory of Regulatory Effectiveness.

The specific objectives of this research are:

1. To analyze the regulations that regulate the termination of investigations of excise crimes.
2. To assess the effectiveness of the implementation of *ultimum remedium* in the fiscal and social dimensions.
3. To examine the public policy implications of its application on integrity and legal certainty.
4. To formulate legal and policy recommendations that strengthen the integrity and sustainability of excise law enforcement in Indonesia.

METHOD

This research applies the normative legal method with conceptual, legislative, and evaluative approaches. The main consideration is to ensure that enough detail is provided to verify the findings and enable the replication of the study. A choice of this methodology is based on the necessity to analyze the legal substance (regulations) and its effectiveness in achieving policy goals.

The approach used includes:

- a. Conceptual and Legislative Analysis: This involves mapping and understanding the concepts and rules that govern the termination of investigations of excise crimes, particularly the principle of *ultimum remedium*.
- b. Evaluative Approach: This is used to assess the effectiveness of the *ultimum remedium* policy implementation against its stated objectives, specifically in the fiscal and social dimensions.

The data sources consist of laws and regulations, policy documents of the Directorate General of Customs & Excise (DJBC), a latest academic literature, and limited interviews.

Analysis techniques include:

1. Qualitative Descriptive: Used to map regulations.
2. Evaluative: Used to assess the effectiveness of policy implementation.
3. Reconstructive: Used to formulate recommendations for regulatory improvements.

The theoretical framework applied to ensure validity and reliability includes the Theory of the State of Law (*Rechtsstaat*), emphasizing legality, legal certainty, and substantive justice; Soerjono Soekanto's Law Enforcement Theory, which considers legal structure, legal substance, and legal culture; and Baldwin & Black's Theory of Regulatory Effectiveness, which focuses on achieving social goals efficiently, fairly, and responsively. These frameworks are integrated to assess the legal, institutional, and public policy aspects of *ultimum remedium*. The scope or limitations of this methodology lie in its focus on the normative and policy analysis of the law, primarily using secondary data and limited interviews.

RESULT AND DISCUSSION

The purpose of the Results and Discussion is to state the findings and describe the implications of the findings, connecting them to the research questions posed in the Introduction. The main function here is to answer the questions posed and explain how the results support the answers and fit with existing knowledge in the study.

Regulatory Dynamics and Enforcement Trends

DJBC data from 2020–2025 shows a consistency of supervision with an increase in the number of illegal cigarette crackdowns every year, although the issuance of Service Investigation Warrants (SBP) saw a temporary decrease in 2024 due to the simplification of procedures in the enforcement of goods delivery services (PJT). The number of investigations of excise crimes is relatively stable, with an increasing trend.

Since the enactment of PMK No. 165 of 2023 and PMK No. 82 of 2024, there has been a significant shift, with many cases being transferred to administrative settlement. This shows that the legal structure is adapting to the mandate of *ultimum remedium*.

Effectiveness in Fiscal and Restorative Dimensions

Fiscally, the implementation of *ultimum remedium* is highly effective in recovering state losses. The value of the fines collected has consistently increased: IDR 67.01 billion in 2023, increasing to IDR 77.61 billion in 2024, and reaching IDR 106.2 billion in 2025. This massive increase demonstrates that *ultimum remedium* plays a significant role in increasing state revenue.

Socially, this mechanism supports restorative justice because offenders can be held accountable through the payment of administrative fines without the consequence of long-term imprisonment. This aligns with the principle that criminal law is the last resort.

Table 1. Ultimum Remedium Implementation Data

Year	Number of Research UR	Research UR Value (Rp. M)	Number of UR Investigation	Value of UR Investigation (Rp M)
2023	1.486	67,01	-	
2024	1.793	77,61	2	1,2
2025	1.441	106,2	9	16,22

Public Policy Implications and Limitations

Problems arise in the implementation concerning public policy. Issues such as the unclear deadline for submitting applications, the potential for administrative manipulation, and the lack of integration with public health policies remain significant obstacles. Excisable goods such as cigarettes have a major impact on public health, yet the regulations primarily focus on state revenue rather than comprehensive control.

This situation shows that the policy, while efficient fiscally, has not fully met the criteria of Regulatory Effectiveness, which emphasizes the achievement of social goals fairly and responsively. The application of *ultimum remedium* risks obscuring the message if side issues like health impacts are ignored. It is critical that the interpretation of the results do not go beyond what a support by the data; the data supports fiscal efficiency, but not necessarily comprehensive social effectiveness.

CONCLUSION

The application of the principle of *ultimum remedium* in excise crimes is effective in significantly increasing state revenue and supporting the principles of restorative justice. The data confirms that this mechanism successfully recovers state losses through administrative fines, demonstrating a more efficient way to enforce excise law compared to methods that only focused on seizure without fiscal benefit.

However, the findings also highlight that weaknesses remain in the aspects of transparency, accountability, and the integration of the policy with public health and environmental objectives. The conclusion is that while fiscally effective, the current policy framework has not fully achieved effectiveness as a complete public policy due to these remaining obstacles.

Based on this synthesis, the following recommendations are proposed:

1. Reformulation of Regulations to be clearer and firmer.
2. Strengthening Internal and External Supervision mechanisms to enhance accountability and reduce manipulation.
3. Integration with Health and Environmental Policies to ensure the enforcement aligns with broader social protection goals.

4. Institutional capacity building of DJBC.
5. Adoption of a responsive legal approach in excise policy.

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