



Violations of Excise Regulations as a Basis for Unlawful Acts and the Limits of Liability for Competitor Losses in the Legal Cigarette Market

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Abstract: This study examines whether the circulation of illegal cigarettes satisfies the elements of an unlawful act (*Perbuatan Melawan Hukum* or PMH) under Article 1365 of the Indonesian Civil Code and identifies the civil remedies available to legal cigarette businesses as a means of legal protection. This study employs normative legal research using statutory, conceptual, and case approaches. Legal materials were collected through a literature review encompassing primary, secondary, and tertiary legal materials and were analyzed qualitatively. The findings demonstrate that the circulation of illegal cigarettes satisfies the four elements of an unlawful act: an unlawful act consisting of the production and distribution of cigarettes without payment of the applicable excise duties, accompanied by indications of predatory pricing practices; fault arising from the deliberate disregard of excise obligations; losses in the form of declining sales and revenues suffered by legal cigarette businesses; and a causal relationship between the lower prices of illegal cigarettes and the losses incurred by legal cigarette businesses. Legal cigarette businesses may pursue civil remedies through litigation by bringing an unlawful-act claim under Articles 1365 and 1366 of the Indonesian Civil Code to seek compensation for pecuniary and non-pecuniary losses. Non-litigation measures may also be pursued through mediation, contractual clauses with distribution partners, and cooperation with the Customs and Excise authorities. Accordingly, civil law may serve as an additional legal instrument, alongside administrative and criminal law, for protecting legal cigarette businesses from unfair business competition.

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1. Introduction

Trade and industrial activities play an important role in a country's economic growth. Both contribute to improving societal welfare and increasing state revenue. One agro-industrial sector that plays a significant role in the Indonesian economy is the cigarette industry. This industry has the potential to generate substantial

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employment opportunities, particularly in regions that produce tobacco and cloves and serve as centers of cigarette manufacturing. It also supports local economies and contributes to state revenue through cigarette taxation ([Suprihanti et al., 2019](#)).

Excise is a state levy imposed on goods with specific characteristics, as regulated under Law No. 39 of 2007 on Excise. It applies to certain categories of goods, including cigarettes, that possess the characteristics prescribed by applicable laws and regulations. Excise is imposed on goods whose consumption or circulation requires government control, particularly because such goods may have adverse effects on society or the environment. Their circulation therefore requires supervision, and their consumption may be restricted in the public interest. Accordingly, excise also functions as a state instrument for promoting fairness and balance in the consumption of certain goods ([Nafi'ah, 2021](#)).

In practice, illegal cigarettes attract consumers primarily because of their relatively low market prices. This situation arises because illegal cigarettes circumvent Customs and Excise inspection procedures, thereby enabling producers and distributors to avoid the payment of excise duties. Consequently, such products can be sold at lower and more competitive prices in the market ([Aliyah, 2024](#)). The widespread and open circulation of illegal cigarettes indicates persistent weaknesses in excise supervision and law enforcement. At the same time, limited public legal awareness remains an obstacle to efforts to prevent and enforce the law against the circulation of illegal cigarettes ([Umbu Aldi Akbar Pakabu Tana et al., 2024](#)).

As economic activities continue to develop, law plays a crucial role in providing legal protection for society. In the context of the sale and distribution of illegal cigarettes, legal cigarette businesses and consumers constitute parties whose interests require comprehensive legal protection. In practice, however, criminal law alone is considered insufficient to address the losses suffered by the affected parties, particularly business operators and consumers. This situation indicates a normative deficiency in the existing legal framework in providing adequate legal protection. In response to this issue, a civil law approach through the application of the concept of an unlawful act (*Perbuatan Melawan Hukum* or PMH) may provide a strategic legal avenue for addressing the circulation of illegal cigarettes in Indonesia. Civil liability not only provides a mechanism for compensating losses but also serves as a form of legal protection that promotes legal certainty and safeguards the interests of legal cigarette businesses and consumers.

Several previous studies have examined the consequences of the circulation of illegal cigarettes. ([Putra & Lie, 2026](#)), employing a normative legal approach, examined the impact of illegal cigarette circulation on legal cigarette businesses in Indonesia, particularly in terms of declining market share, price fluctuations,

disruption of fair business competition, and weaknesses in supervision and law enforcement. Their study recommended strengthening excise policy, enhancing coordination among law enforcement authorities, and increasing public awareness. (I Made Citra Yudistira, 2026) addressed a similar issue but focused on criminal law enforcement, particularly the imposition of sanctions on offenders, the effectiveness of the roles of the Directorate General of Customs and Excise, the police, and the public prosecution service, as well as obstacles to the enforcement of excise-related criminal offences. These studies demonstrate that scholarship on illegal cigarettes in Indonesia remains predominantly situated within administrative-fiscal law and criminal law perspectives, with particular emphasis on excise compliance and the imposition of sanctions on offenders.

The two studies indicate that scholarship on illegal cigarettes in Indonesia has predominantly approached the issue from administrative and criminal law perspectives, with particular emphasis on excise compliance and sanctions. Meanwhile, the concept of an unlawful act (*Perbuatan Melawan Hukum* or PMH) under Article 1365 of the Indonesian Civil Code has developed to encompass infringements of rights and breaches of legal obligations. In the context of business competition, losses arising from unfair competition may give rise to a civil claim where a causal relationship can be established. However, private enforcement mechanisms available to injured parties remain limited, as enforcement continues to rely substantially on the authority of the Indonesian Competition Commission (*Komisi Pengawas Persaingan Usaha*, KPPU). Against this background, this study identifies a research gap in the limited scholarly attention devoted to the relationship between excise violations, PMH, and private civil enforcement as a means of legal redress for competing legal cigarette businesses.

This study shares with previous research a common object of inquiry, namely the impact of the circulation of illegal cigarettes on legal cigarette businesses. It differs, however, by adopting a civil law perspective through the construction of an unlawful act (PMH) under Article 1365 of the Indonesian Civil Code. The analysis focuses on the causal relationship between the conduct of illegal cigarette businesses and the losses suffered by legal cigarette businesses as a result of the disruption of fair business competition. The novelty of this study lies in its proposition that the circulation of illegal cigarettes should not be viewed exclusively as an administrative excise violation or a criminal offence but may also satisfy the elements of an unlawful act where fault, loss, and a causal relationship are established. Accordingly, this study advances a perspective on the use of civil remedies as an instrument of legal protection for legal cigarette businesses that has received limited attention in previous scholarship.

Causation in an unlawful act requires a demonstration that the loss suffered

constitutes an actual consequence of the defendant's conduct, such that the loss would not have occurred in the absence of that conduct. Based on the foregoing discussion, this study argues that the concept of an unlawful act may provide a legal basis for examining civil liability arising from the circulation of illegal cigarettes, particularly where such practices cause losses and disrupt fair business competition. This issue warrants further examination because the circulation of illegal cigarettes not only involves violations of excise regulations but may also create competitive imbalances in the market and cause losses to legal cigarette businesses. Accordingly, appropriate forms of liability and mechanisms for recovering losses are required to provide effective legal protection.

Against this background, this study addresses two principal research questions. *First*, under what circumstances can violations of excise regulations that cause losses to competing legal cigarette businesses be characterized as an unlawful act under Article 1365 of the Indonesian Civil Code, particularly in light of the relationship between the constituent elements of Article 1365 and the losses arising from competition within Indonesia's legal cigarette industry? *Second*, what civil remedies are available to legal cigarette businesses, and to what extent can legal cigarette competitors that suffer losses as a result of the circulation of illegal cigarettes obtain legal protection?

2. Methods

This study employs normative legal research, which examines legal issues in depth from the perspective of legal science. Normative legal research focuses on applicable legal rules and analyzes the meaning and application of relevant legal principles (Djulaeka & Devi Rahayu, 2020). The study is descriptive-analytical in nature and aims to examine the forms of civil liability that may be imposed on parties involved in the circulation of illegal cigarettes.

This study employs a statutory approach and a conceptual approach to examine whether the elements of an unlawful act are satisfied and to identify the civil remedies available in the context of the circulation of illegal cigarettes. Legal materials were collected through library research and comprise primary, secondary, and tertiary legal materials. The primary legal materials consist of legislation relevant to the circulation and sale of illegal cigarettes, including the Indonesian Civil Code, Law No. 39 of 2007 on Excise, and Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. Secondary legal materials include books, previous research, and scholarly opinions, while tertiary legal materials consist of Indonesian-English and English-Indonesian legal dictionaries.

All legal materials are analyzed qualitatively by interpreting the relevant legal

norms and relating them to the phenomenon of illegal cigarette circulation. This analysis is directed toward addressing the research questions concerning the fulfilment of the elements of an unlawful act and the civil remedies available to legal cigarette businesses. Through its descriptive-analytical orientation, the study identifies and examines the applicable legal provisions in order to determine the forms of civil liability that may be imposed on parties involved in the circulation of illegal cigarettes.

3. Results

Goods possessing specific characteristics and satisfying the requirements stipulated in Article 2 of Law No. 39 of 2007 are classified as excisable goods (*Barang Kena Cukai* or BKC). The need to supervise their circulation and control their consumption constitutes one of the principal grounds for the imposition of excise duties, particularly with respect to goods that may have adverse effects on society or the environment. In addition, excise constitutes a form of state levy intended to increase state revenue while promoting fairness, welfare, and balance within society (Aziz & Cahyani, 2023). The circulation of illegal cigarettes has become a serious concern in Indonesia because of its implications for state revenue and business competition. Cigarettes circulated in violation of applicable legal requirements may reduce state revenue due to non-fulfilment of tax obligations and may create unfair competition within the tobacco industry. This situation also causes losses to legally operating manufacturers, which are required to comply with government regulations and bear the applicable tax burden (Junfirio et al., 2024).

The relatively high price of legal cigarettes constitutes one of the factors contributing to the prevalence of illegal cigarette trading in Indonesia. This situation has intensified alongside annual increases in excise rates imposed by the government, which have contributed to higher prices for legally marketed cigarettes (Fatmariyah et al., 2022). Excise duties on tobacco products are determined on the basis of government-prescribed rates and constitute one of the components affecting the amount of excise payable by manufacturers (Hardi, 2024).

Furthermore, the circulation of illegal cigarettes affects competitive conditions and price stability in the market. The absence of an excise burden on such products enables illegal cigarettes to be offered at lower prices than cigarettes produced and marketed through lawful channels (Putra & Lie, 2026). This situation not only affects market price stability but may also cause losses to businesses that conduct their production and commercial activities in compliance with applicable legal requirements.

The textual formulation of Article 1365 of the Indonesian Civil Code requires a party whose conduct causes loss to another party to compensate for such loss,

thereby making the provision relevant to cases involving the sale of illegal cigarettes. Under this provision, four elements must be established, which are examined in this study as follows: The Existence of an Act; The Existence of Fault; The Existence of Loss; A Causal Relationship Between the Act, Fault, and Loss

Furthermore, under Indonesian civil law, two avenues are available for resolving disputes of this nature:

- 1) Civil Remedies Through Litigation. Business operators may bring a civil action before a court to obtain a legally binding judgment pursuant to Articles 1365 and 1366 of the Indonesian Civil Code.
- 2) Civil Remedies Through Non-Litigation Mechanisms. Business operators may pursue out-of-court measures, including mediation, contractual clauses, and coordination with the relevant authorities, such as the Directorate General of Customs and Excise, the Ministry of Trade, and law enforcement authorities.

4. Discussion

With reference to Article 1365 of the Indonesian Civil Code, the element of an act essentially refers to conduct consciously undertaken by a person. From the perspective of an affirmative act, this element is manifested through concrete conduct or particular behavior undertaken by a legal subject ([Wardhani & Ningsih, 2024](#)). Operators involved in the illegal cigarette trade actively produce, distribute, and market tobacco products without fulfilling their excise payment obligations with the aim of obtaining greater profits. Such conduct is undertaken consciously and is contrary to applicable legal provisions, particularly Law No. 39 of 2007 on Excise ([Anggraini et al., 2026](#)).

Furthermore, the sale of illegal cigarettes also raises concerns from a consumer protection perspective, particularly because consumers are entitled to guarantees of security and safety in the use or consumption of products and to accurate, clear, and honest information regarding the condition and guarantees of such products, as stipulated in Article 4(a) and (c) of the Consumer Protection Law. In the context of the circulation of illegal cigarettes, the non-fulfilment of these consumer rights may be reflected in the absence of certainty regarding product safety and the lack of adequate information concerning the condition of, and guarantees associated with, the products offered to consumers.

In addition, the existence of an act as the first element of an unlawful act (PMH) is also reflected in the business practices of operators involved in the illegal cigarette trade and their effects on fair business competition. The circulation of illegal cigarettes may disrupt fair competition because such products are not subject to the excise burden borne by legally marketed cigarettes, thereby enabling operators to

offer their products at prices substantially below those of legal cigarettes and to obtain an undue competitive advantage. Such circumstances may be associated with indications of predatory pricing, understood as a strategy of setting prices at very low levels for a certain period in order to attract consumers and exert competitive pressure on rivals. Such a practice may ultimately displace legal businesses from the market and create opportunities for operators in the illegal cigarette trade to acquire a greater share of the market ([Tainpubolon, 2021](#)).

The element of fault requires that the resulting loss be attributable to the defendant and that liability for such loss can be established on the basis of the defendant's conduct. This means that a person may be held liable for a loss only where the conduct causing that loss is proven to be attributable to that person as fault ([Waluyo, 2022](#)). In the context of the circulation and sale of illegal cigarettes, fault is reflected in conduct consciously undertaken in disregard of legal obligations concerning the payment and settlement of excise duties. Although economic factors may contribute to the circulation of illegal cigarettes, the decision to continue selling and distributing products without evidence of the settlement of excise duties demonstrates fault that may be attributed to the responsible party.

Loss constitutes an essential element of an unlawful act because it provides the basis for determining the form and amount of compensation. Compensation for losses arising from an unlawful act is not limited to monetary damages but may also take the form of measures aimed at restoring the injured party, as far as possible, to the position that existed prior to the unlawful conduct ([Mantili, 2019](#)). The circulation of illegal cigarettes may suppress sales of legal cigarette products, thereby reducing the revenues of legal businesses and their capacity to sustain production activities. Such circumstances may result in further losses, including workforce reductions, delays in the fulfilment of workers' entitlements, and a decline in the welfare of communities whose livelihoods depend on the tobacco industry.

In establishing causation, the loss suffered must be directly traceable to the unlawful conduct of the responsible party. In other words, the loss would not have occurred in the absence of such conduct. Establishing a causal relationship between the conduct and the resulting loss therefore provides a basis for seeking civil liability and compensation under the law governing unlawful acts ([Mantili, 2019](#)).

The losses suffered by legal cigarette businesses may arise from the circulation of illegal cigarettes offered at lower prices in the market. Such price disparities may encourage consumers to shift toward illegal products, thereby establishing a causal relationship between the distribution of illegal cigarettes, the disruption of fair business competition, and the losses suffered by businesses operating in compliance with applicable legal requirements ([Wardhani & Ningsih, 2024](#)).

Where all the elements discussed above are satisfied, violations of excise regulations arising from the circulation of illegal cigarettes may be characterized as an unlawful act under Article 1365 of the Indonesian Civil Code, provided that legal cigarette businesses suffer actual losses, a causal relationship exists between the conduct and those losses, and fault can be attributed to the responsible party.

Weaknesses in the distribution system have contributed to the persistence and increasing prevalence of illegal cigarette trading in Indonesia. The widespread circulation of illegal cigarettes constitutes one factor that may reduce government revenue derived from excise duties on cigarette products ([Astri & Yopan, 2025](#)). Unfair competition arising from the sale of cigarettes that circumvent applicable fiscal obligations may result in substantial losses and adverse economic consequences for legally operating businesses. These consequences may be reflected in declining sales, reduced profits, and losses of market share experienced by authorized cigarette manufacturers and retailers. In addition to threatening the business continuity of legally operating enterprises, particularly small and medium-sized enterprises, these circumstances may also undermine the stability of the sector as a whole ([Pranata & Syahputra, 2025](#)).

Legal and illegal tobacco businesses compete within the same market. However, illegal tobacco businesses may obtain a cost advantage by failing to comply with licensing requirements, operating without corporate legitimacy, and avoiding the payment of excise duties and the use of excise stamps. Such practices may reduce the effectiveness of tobacco control programs and disrupt the allocation of fiscal revenue for public purposes ([Aulana et al., 2025](#)). Pursuant to Article 1(6) of the Indonesian Competition Law, such conduct may fall within the concept of unfair business competition arising from unlawful practices. Accordingly, the operation of illegal cigarette businesses not only violates applicable legal provisions but may also impede the achievement of the objectives associated with the Job Creation Law, particularly the creation of a competitive and fair business environment that provides legal certainty and protection for businesses operating in good faith.

Cost and pricing structures, together with product quality and regulatory compliance, constitute significant factors affecting commercial competitiveness in the legal and illegal cigarette markets. The production costs and selling prices of illegal cigarettes are substantially lower than those of legal cigarettes, which are subject to taxation and quality certification requirements. This cost disparity arises because illegal cigarettes circumvent applicable fiscal obligations, including through the exploitation of regulatory gaps associated with increases in excise rates. In contrast to illegal cigarettes, which may involve the use of counterfeit excise stamps and contain substances of uncertain composition, legal cigarette manufacturers are required to comply with applicable quality and regulatory standards, including

labeling and packaging requirements and the use of appropriate excise stamps.

In practice, illegal cigarettes are sold directly to consumers by street vendors, including through transactions conducted in public spaces. The high level of consumer demand for illegal cigarettes at retail kiosks is cited as one reason why vendors continue to sell such products despite being aware that their conduct violates applicable legal requirements. Such circumstances indicate the existence of conduct that is inconsistent with applicable law and may provide affected business operators with a basis for pursuing civil claims where the requisite elements of liability are established.

The marketing of products that fail to satisfy applicable quality standards and violate prevailing legal requirements may constitute deceptive conduct that infringes consumer rights and demonstrates business practices inconsistent with legally accepted standards. Operators of illegal tobacco businesses that sell such products directly to consumers may therefore be subject to civil claims where losses arising from those sales can be established ([Haqy Prasetya A, 2025](#)).

Businesses that suffer losses as a result of unlawful activities may seek compensation under Article 1365 of the Indonesian Civil Code, either through out-of-court mechanisms or judicial proceedings. Compensation, generally assessed in monetary terms, may encompass both actual losses (*damnum emergens*) and loss of expected profits (*lucrum cessans*) arising from unlawful conduct attributable to illegal tobacco businesses. This framework reflects the role of the principle of legal certainty (*Rechtssicherheit*) within Indonesian civil law ([Sari, 2025](#)).

The circulation of illegal cigarettes not only affects the public interest but may also cause losses to legal cigarette businesses. Such losses may provide a basis for bringing an unlawful-act claim as a means of dispute resolution under Indonesian civil law. In this context, civil liability may be imposed on parties directly involved in the circulation of illegal cigarettes, including producers, distributors, and retailers proven to have distributed cigarettes without valid excise stamps. Under Indonesian civil law, disputes of this nature may be addressed through two principal avenues: litigation and non-litigation mechanisms.

Civil Remedies Through Litigation

Business operators may bring a civil action before a court to obtain a legally binding judgment concerning liability for the losses suffered. Legal cigarette businesses may bring an unlawful-act claim before a District Court against individuals or groups of businesses whose unlawful conduct adversely affects their ability to maintain business operations. Articles 1365 and 1366 of the Indonesian Civil Code, which govern liability arising from unlawful acts and negligence, constitute relevant legal bases for such claims.

Through such proceedings, legal cigarette businesses may seek compensation for losses that can be substantiated and economically quantified. Evidence may include declining revenues, lost profits, or costs incurred in restoring their market position, while the precise amount of compensation will depend on the evidence presented before the court ([Suryoutomo & Wibowo, 2023](#)). Where losses are difficult to quantify, such as damage to corporate reputation or diminished confidence among distributors and consumers, the plaintiff may also seek compensation for non-pecuniary loss. The amount of such compensation is determined at the discretion of the court on an *ex aequo et bono* basis, taking into account considerations of fairness, the degree of the defendant's responsibility, and the impact of the loss suffered, rather than through a strictly mathematical calculation ([Suryoutomo et al., 2022](#)).

Evidence submitted by business operators to demonstrate losses arising from unlawful conduct may also be supported by an analysis of relevant market conditions, including market structure, barriers to entry, trends in lower-priced cigarette products, and competitors' conduct indicating undue competitive advantages or potentially anti-competitive behavior. This study examines business competition as a context in which legal cigarette businesses may suffer legally cognizable losses as a consequence of the circulation of illegal cigarettes. Where such losses and the other requisite elements of liability can be established, affected legal cigarette businesses may bring a civil action before a District Court seeking compensation for the losses they have sustained.

Civil Remedies Through Non-Litigation Mechanisms

To reduce the circulation of illegal products and prevent further violations, business operators may also pursue out-of-court legal measures. Through mediation, the parties may reach a settlement without resorting to court proceedings, which may otherwise require considerable time. Where mediation results in an agreement, the parties may negotiate mutually acceptable terms for resolving the dispute without a judicial determination. A formal agreement executed by the parties may include provisions requiring the withdrawal of relevant products and imposing consequences for repeated violations ([Oktavia, 2024](#)).

Furthermore, business operators may incorporate contractual provisions requiring suppliers and distributors to comply with applicable excise laws, granting rights to inspect goods within the distribution chain, and permitting the termination of business relationships where illegal cigarettes are identified within that chain. To ensure that such measures are implemented transparently and efficiently and have a legally binding basis, each stage should be supported by appropriate evidence, including transaction records, distribution data, product samples, and other evidence of violations ([Nababan et al., 2021](#)).

Finally, business operators may strengthen cooperation and coordination with the relevant authorities, including the Directorate General of Customs and Excise, the Ministry of Trade, and law enforcement authorities. Through more effective information exchange and enhanced monitoring of distribution channels, business operators may contribute to efforts to reduce the circulation and sale of illegal cigarettes. They may also play an active role by refusing to sell products that do not bear valid excise stamps, educating consumers and retailers about the various risks and potential legal sanctions associated with the circulation of illegally distributed tobacco products, and supporting regular legal education programs aimed at improving awareness of and compliance with applicable laws and regulations. These measures are intended to facilitate the effective and preventive monitoring and suppression of the illegal cigarette trade (Heldi, 2025).

5. Conclusion

Based on the findings and discussion presented above, this study concludes that the circulation of illegal cigarettes in Indonesia satisfies the four elements of an unlawful act (*Perbuatan Melawan Hukum* or PMH) under Article 1365 of the Indonesian Civil Code. The element of an act is reflected in the production, distribution, and marketing of cigarettes without the settlement of excise duties, accompanied by indications of predatory pricing practices that disrupt fair business competition. The element of fault is reflected in the conscious disregard of legal obligations concerning excise duties for the purpose of obtaining greater profits. The element of loss is demonstrated by declining sales and revenues and the diminished capacity of legal cigarette businesses to sustain their production activities, with further consequences for employment and the welfare of communities dependent on the tobacco industry. The element of causation is satisfied where the losses suffered by legal cigarette businesses result directly from the substantially lower prices of illegal cigarettes, which encourage consumers to shift from legal to illegal products.

Furthermore, legal cigarette businesses have two avenues of civil remedies through which they may seek legal protection for the losses suffered. Through litigation, affected businesses may bring an unlawful-act claim before a District Court under Articles 1365 and 1366 of the Indonesian Civil Code, seeking compensation for pecuniary losses, such as declining revenues and costs incurred in restoring their market position, as well as non-pecuniary losses arising from damage to corporate reputation and market confidence, the amount of which is determined at the discretion of the court on an *ex aequo et bono* basis. Through non-litigation mechanisms, business operators may pursue mediation, incorporate contractual provisions requiring distribution partners to comply with applicable excise laws, and strengthen cooperation with the Directorate General of Customs

and Excise, the Ministry of Trade, and law enforcement authorities to prevent and reduce the circulation of illegal cigarettes.

Accordingly, a civil law approach based on the construction of an unlawful act may serve as a complementary legal instrument alongside administrative-fiscal and criminal law in providing more comprehensive legal protection for legal cigarette businesses and in safeguarding fair and equitable business competition in Indonesia.

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