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DIGITAL ILLICIT TRADE AND SHARIA COMPLIANCE: ASSESSING ILLEGAL CIGARETTE TRANSACTIONS ON FACEBOOK IN INDONESIA

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ABSTRACT Illegal cigarettes are cigarettes that have not paid excise duty and therefore lack excise stamps. Illegal cigarettes clearly violate excise laws and regulations. However, this practice remains widespread, particularly through Facebook. Therefore, the purpose of this study is to analyze the legality of illegal cigarette sales on Facebook from the perspective of Islamic economic law. The legal requirements for sales and purchases may differ between positive law and Islamic economic law. This study uses an empirical legal approach with a descriptive method. The type of data in this study is qualitative data. The data sources used are primary and secondary data. Moreover, data collection techniques are carried out through interviews, documentation, and literature studies. The results of this study are that illegal cigarette trading on the Facebook application is carried out through a group containing sellers and buyers. The process of offering goods is carried out in the group. At the same time, payments can be made by transfer or COD, according to the parties' agreement. Second, the community has not complied with Law Number 39 of 2007. Therefore, illegal cigarette trading is widely carried out directly and online. Third, according to Sharia Economic Law, illegal cigarette trading fulfils the pillars of buying and selling in Islam. However, illegal cigarette trading does not meet the requirements for valid trading in Islam, including the non-halal nature of the goods being traded and the cigarettes obtained by the seller are the result of smuggling. Therefore, illegal cigarette trading is included in invalid trading and is not by Sharia principles because it contains crimes related to property. In conclusion, illegal cigarette trading is prohibited and is not by Sharia economic law and violates Law Number 39 of 2007 concerning Excise.

KEYWORDS Excise; Facebook Application; Illegal Cigarettes; Sharia Economic Law.

INTRODUCTION

Humans are creatures who require many things to survive. Therefore, they require transactions to meet their needs and live well and optimally. One of the most common transactions people engage in to meet their needs is buying and selling. Muslims believe that buying and selling should be conducted in accordance with Sharia law and principles (Muhtador et al., 2024). However, in reality, buying and selling in society sometimes violates these rules and infringes on others' rights (Riduwansah et al., 2024). Buying and selling are sometimes used to commit injustice, such as fraud and taking undue advantage (Kadir, 2023). In Islam, buying and selling in accordance with Sharia law and principles is called the al-bai' contract (Shifa, 2021).

For some Indonesian people, especially men, cigarettes are a necessity. Even cigarettes are considered more important than food, although cigarettes cannot replace food (Priherdityo, 2016). Therefore, unlike other countries, in Indonesia, cigarettes are very easy to get, and the price is quite affordable. No wonder many cigarette manufacturers exist in Indonesia, from premium to traditional cigarettes. The raw material for cigarettes comes from tobacco. However, currently, the composition of cigarettes does not only come from tobacco, but many manufacturers provide innovation by adding flavours to the cigarettes.

In Indonesia, cigarettes are a promising industry. Starting from large companies to retail traders. Currently, cigarettes do not recognize age and social status. Anyone can buy cigarettes, although the level of social status can distinguish the type of cigarette consumed. Thus, every day, there will always be cigarette buying and selling transactions on any cigarette, anywhere, and in any form. As if it will never stop, cigarettes are indeed a profitable and tempting business.

According to Government Regulation Number 109 of 2012, cigarettes are processed tobacco products wrapped in cigars or other forms to be smoked or inhaled. Apart from tobacco, cigarettes can also be made from the Nicotiana Tobacum, Nicotiana Rustica and similar plants. Each cigarette or cigar contains more than 4,000 types of chemicals (Anggraini & Muhyidin, 2024). Among the 4,000 types of chemicals, two types of chemicals are the main ingredients, namely nicotine and tar (Aula, 2010). Nicotine is a substance that users feel addicted to. Therefore, stopping someone who smokes will be challenging, which eventually becomes a habit (Ash-Shabah, 2023).

Many people think that cigarettes do more harm than good. Although cigarettes can pleasure their users, cigarettes are dangerous to health and wasteful (Aula, 2010). Therefore, there are many differences of opinion regarding the law on cigarettes from a religious and state perspective. In this case, the state regulates cigarette security in Government Regulation 81 of 1999 concerning Cigarette Security for Health. Where Article 4 states the limits of nicotine and tar content in cigarettes. Article 10 states that the production and sale of cigarettes must follow government regulations, so it cannot be arbitrary. Moreover, Article 23 states that there are places declared smoke-free.

The government regulation indicates that cigarettes are not safe and are freely used goods. According to positive law, cigarettes are permitted, but some limitations must be considered. Meanwhile, according to Islamic law, cigarettes have different opinions among scholars(Kamilia, 2023). The results of the Ijtima' Ulama of the Indonesian MUI Fatwa Commission III on the Law of Smoking stated that the law of smoking is divided into two, namely makruh and haram. It is haram if smoking is done in public places by children and pregnant women. Outside of these three provisions, the law is makruh (Siregar et al., 2023).

As seen from government regulations and Islamic religion, both allow but with certain limitations. That is done to minimize the impact of cigarette use on society. However, in reality, even though there is a ban on children using cigarettes, there are still many children who smoke. Sellers cannot strictly implement the rules because they only think about profit. Cigarettes can be purchased online through various e-commerce or social media. Therefore, children can get cigarettes anywhere without their parents knowing.

The government has several regulations related to the sale and purchase of cigarettes, including Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise. This law regulates cigarette excise, including licensing, excise rates, and excise collection obligations. However, the fact is that currently, many illegal cigarettes are traded, both directly and through digital platforms, one of which is Facebook social media. Currently, illegal cigarettes are in great demand by the Indonesian people because the price is cheaper. Even far from the market price of legal cigarettes. Even though the product remains the same, the only difference is whether the cigarettes have an excise permit.

Previous research on illegal cigarettes has generally focused on positive legal aspects, such as excise tax violations, smuggling, and law enforcement by authorities. However, these studies have not extensively examined the practice of illegal cigarette trading through social media, particularly Facebook, despite the digital platform now being one of the most widespread distribution channels. Furthermore, studies on illegal cigarettes from the perspective of Sharia Economic Law are still limited and typically only discuss general smoking laws, not the legality of illegal goods sales contracts. Previous research has also failed to combine two perspectives, namely the Excise Law and Sharia Economic Law, in analyzing illegal cigarette trading practices. Therefore, this study aims to fill this gap by examining the mechanism of illegal cigarette transactions on Facebook and assessing their legality according to the Excise Law and the DSN-MUI Fatwa, thus providing a new contribution to the literature on illegal trade in the digital era.

The author wants to know the law of illegal cigarette trading from the perspective of Islamic economic law. In Islamic economic law, every transaction carried out by Muslims must be based on a contract. Every contract has pillars, terms, conditions, and sharia principles that must be met. In a sale and purchase contract known as al-bai', one of the most important conditions is related to the goods being traded. Fulfilment of the conditions in the goods being traded can make the contract valid. Conversely, if the conditions of the goods in the sale and purchase do not comply with sharia provisions, the contract is invalid.

Illegal cigarette trading: The problem with this trading is the unofficiality of the goods traded according to state law. Therefore, it is necessary to study whether or not an item is official according to the state from the perspective of Islamic economic law. In addition, it is necessary to study customs law regarding illegal cigarette trading. Illegal cigarettes are not challenging to find, maybe even an open secret. However, why is illegal cigarette trading still carried out freely, even though there is a law on customs? Thus, this study will analyse the DSN-MUI Fatwa and the Customs Law on illegal cigarette trading on Facebook applications.

METHODS

This research is empirical legal research because this research will analyze the implementation of regulation in society by exploring the facts that occur in the field.(Ali, 2009) The method used is descriptive because this research will describe the authors who will be analyzed (Khilmiyah, 2016). The type of data in this study is qualitative data (Mamik, 2015). Primary and secondary data sources are used. Data collection techniques are done through interviews, documentation, and literature studies. The results will be analyzed by reducing, presenting, and drawing conclusions.

RESULT AND DISCUSSION

Legal Cigarrete

Cigarettes are goods that have special characteristics or properties made from tobacco and cloves and must be taxed to support state income (Atmana et al., 2025). Excise functions to ensure that goods in circulation, especially cigarettes, must meet the circulation standards set by the government (Wiharma et al., 2023). Thus, the reason why cigarettes are subject to excise is because these products are included in the list of goods whose circulation must be supervised, when consumed must be controlled, and their use can have a negative impact on both active smokers and passive smokers.

Excise Tape is proof of payment in the form of paper with a certain model design and has a special role as a document proving the payment of excise payments and also acts as a supervisory document for the security of receipt of goods by the State, where the acquisition of tobacco processing that is widely circulated among the population is retail cigarettes, without being accompanied by an excise tape or usually called plain cigarettes.

According to the current regulations, the use of cigarettes that can be consumed by the public must have an excise tape attached, in addition to the free trade zone (FTZ) area, cigarettes that have been accompanied by an excise tape are one of the characteristics of cigarettes that are official, and have gone through customs and excise inspections. Excise tape can be handed over to producers after carrying out mandatory requirements, namely by paying taxes and provisions for implementing access permits in the area.

One of the characteristics of products that are subject to excise is tobacco products, namely cigarettes, according to article 4 paragraph 1 of the Excise Law, cigarettes, including products in circulation, must be supervised, because their users can have a negative impact on the community in Indonesia. Cigarettes distributed in Indonesia must be legal cigarettes accompanied by an excise tape attached to the cigarette package. (Wildatul Aliyah, 2023).

Illegal Cigarette

Syarif Hidayat, Director of the Department of International and Inter-Agency Customs, smuggled cigarettes are cigarettes that have not been paid excise. Smuggled cigarettes are cigarettes that are traded in the market realm but in their implementation do not heed the applicable rules of state financial regulations, customs, and a number of other regulations. Haram tobacco can be in the form of merchandise that is original but under ownership whose distribution process is carried out without paying taxes that have been determined in the legislation, or it can also be called fake cigarettes are cigarettes that in the production process are not in accordance with the applicable permit. (Sherlinluncia, 2023).

Illegal Cigarette Buying and Selling Group on the Facebook Application

Facebook was first introduced to the public by Mark Zuckerberg, the founder, and his co-founders Dustin Moskovitz, Chris Hughes, and Eduardo Saverin on February 4, 2004. When it was launched in February 2004, Zuck named the site "Thefacebook" at thefacebook.com. That name was inspired by the Harvard student information and photo directory of the same name, namely "face book". In the early stages, Facebook was accessible only to members of the Harvard University student dormitory, and on March 1, 2004, it expanded its reach from Harvard to Stanford, Columbia, and Yale.

According to records, on June 1, 2004, Mark and his colleagues moved Facebook's offices from Harvard to Palo Alto, California. Three months later, Facebook changed its appearance by launching the Facebook Wall, a platform for people to post messages to their friends. Less than a year after its launch, Facebook had one million active users by December 1, 2004.

On May 1, 2005, Facebook was reported to have grown rapidly, supporting access to over 800 college networks in the United States and Canada. After college, Facebook targeted expansion by adding high school networks. On September 20, 2005, Facebook changed its name from thefacebook.com to facebook.com (Facebook).

With its rapid growth, Facebook has become the most anticipated app giant in several countries. Facebook has recently acquired several other social media apps, including Instagram and WhatsApp Messenger. These acquisitions have made Facebook an influential and respected platform in today's technology world. To this day, Facebook remains a popular social media platform amidst increasingly fierce competition in social media app technology. One reason is that, in addition to be a communication medium for users, Facebook also serves as a bridge, facilitating activities such as buying and selling.

The practice of buying and selling illegal cigarettes on Facebook uses a method, namely through intermediaries in buying and selling groups about illegal cigarettes that cover specific areas, to facilitate the transaction process. There are several groups that the author observed to obtain data in analyzing the practice of buying and selling illegal cigarettes on the Facebook application, including:

a. Group “Buy and Sell Cheap Cigarettes in East Bandung and Surrounding Areas.”

Based on the interview, the Admin stated that the purpose of creating this group was to provide a platform for seekers and sellers of illegal cigarettes in East Bandung and the surrounding area. In addition, this group also serves as a medium for sharing information with members about the price of illegal cigarettes and the types of illegal cigarettes. The Admin also stated that sellers are aware that illegal cigarettes violate state regulations because they do not pay excise taxes. However, the sale of illegal cigarettes is very profitable because it is in high demand by the public.

The price of illegal cigarettes also varies depending on the type of cigarette. Prices range from IDR 10,000 per item to IDR 80,000 per package. The Admin also explained that illegal cigarettes are not produced in-house but are shipped from other cities. Initially, the Admin not only marketed illegal cigarettes on the Facebook application, but also left these illegal cigarettes in small stalls or in shops. However, currently it often occurs in stalls and shops, so the sale and purchase of illegal cigarettes is finally only done through the Facebook application.

The author also interviewed one buyer. The buyer stated that the reason they prefer illegal cigarettes is that the price of legal cigarettes is increasingly high. For buyers, there is no difference between illegal and legal cigarettes in terms of product; the only differences lie in the distribution permit and price. For buyers, cheap cigarettes, even though they are illegal, are more profitable than expensive legal cigarettes.

b. “Bandung Cigarette Lovers” Group

This group covers a broader area, specifically Greater Bandung City. Similar to the previous group, interviews with the group's administrator revealed that the group facilitates illegal cigarette transactions. Furthermore, the group can serve as a platform for exchanging information. The admin created this group due to the high demand for illegal cigarettes. That is because legal cigarettes are too expensive, while illegal cigarettes are relatively affordable. While the prices may be different, the product is essentially the same, except that illegal cigarettes lack excise stamps.

Illegal Cigarette Trading Practice on Facebook Application

Based on the author's interviews and the information collected, to be able to make transactions in the "Bandung Cigarette Lovers" group and the "Buy and Sell Cheap Cigarettes in East Bandung and Surrounding Areas" group, there are several steps that the seller and buyer must take in making transactions in these groups, namely:

The first, of course, is to have a Facebook account. Prospective members who do not yet have the Facebook app can download it from the Play Store for Android users and the App Store for Apple users. Prospective members can choose between downloading the Facebook app or Facebook Lite. Both are similar apps, differing only in the features offered. Most members with limited storage space prefer to download Facebook Lite due to its relatively small file size. The features are not significantly different, and due to its small capacity, the features offered are designed with flexibility and effectiveness in mind.

Second, prospective members can log in directly by entering their personal Facebook email address and password. Users can then search for the groups "buy and sell cheap cigarettes in East Bandung and surrounding areas" or "cigarette lovers in Bandung." Both groups are public, so clicking "join" automatically makes you a member. Third, there is interaction between sellers and buyers.

Here is the practice of trading illegal cigarettes through social media Facebook: First, the seller will create a group with the title (example) "Buy and Sell Cheap Cigarettes East Bandung and Surrounding Areas." Then, buyers who are interested in illegal cigarettes will join the group. In the group, the seller will send pictures of illegal cigarettes that are being sold so that buyers can see and choose before finally making a transaction.

Picture 1. Announcement of Illegal Cigarettes Available in the Group

Source: Facebook Application

Picture 2. Examples of Illegal Cigarettes

Source: Seller

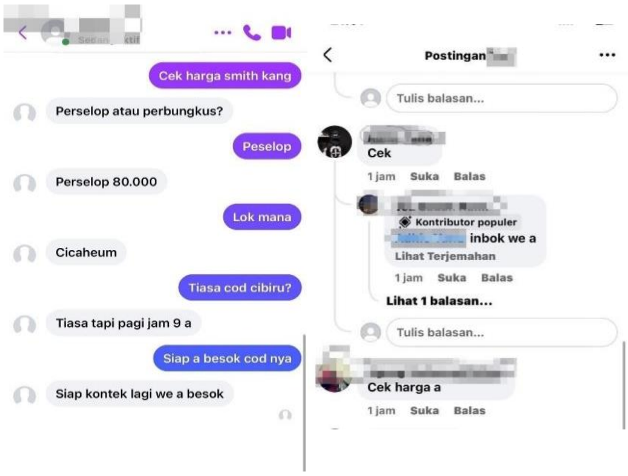
In addition to sellers, buyers can usually post announcements related to cigarettes being sought or wanting to be purchased in the group. Therefore, the group is truly a place that brings together sellers and buyers of illegal cigarettes

Picture 3. Announcement of Search for Illegal Cigarettes by Prospective Buyers

Source: Facebook Application

Second, after the buyer finds the type of illegal cigarette to be purchased, the buyer can contact the seller through the comment column or the messenger inbox on the Facebook application. Third, the next step is the buying and selling transaction process, after the seller and buyer agree on the type of goods and price. Fourth, buying and selling transactions can be done directly using the cash-on-delivery payment system, or payment is made via transfer, and the goods will be sent via the agreed shipping service.

Picture 4. Payment Agreement for Illegal Cigarette Sales



Source: Facebook Application

Implementation of Excise Law in Regulating the Trading of Illegal Cigarettes

Excise is a state levy imposed on selected products with legally defined characteristics. State revenue, intended to ensure public safety, is also a state tax levied on consumers. It is strictly enforced and broadens its application based on the behavior or characteristics of the exercise object. Excise is an indirect tax, but it has distinct characteristics, particularly those not shared by other types of taxes. Furthermore, its form differs from that of indirect taxes.

The term "customs and excise" is defined in Law Number 17 of 2006 concerning Customs. Excisable goods are certain goods that are considered to have specific properties or characteristics. When consumed, they need to be controlled; their circulation needs to be monitored; their use can have adverse effects on individuals or society; and their use requires the imposition of state levies for the sake of justice and balance.

Excise objects or excisable goods are regulated in Article 4 paragraph (1) of Law Number 39 of 2007 concerning Excise, namely: a) Ethyl Alcohol or Ethanol, regardless of the materials used and the manufacturing process. b) Beverages containing Ethyl Alcohol in any concentration, regardless of the materials used and the manufacturing process, including concentrates containing ethyl alcohol. c) Tobacco products, including cigarettes, cigars, leaf cigarettes, sliced tobacco, and other tobacco processing products, regardless of whether or not substitute materials or auxiliary materials are used in their manufacture. d) Types of Cigarettes: there are Cigarettes, Cigars, Leaf Cigarettes, and sliced tobacco (Riski, 2024), (Pradifta et al., 2024). Illegal cigarettes are cigarettes that do not use excise stamps or usually use fake excise stamps.(Yunus, 2024a) Moreover, this is one form of violation of excise committed by business actors, tobacco excise (CHT) (Putri et al., 2022).

Illegal cigarettes mean cigarettes that do not pay taxes in circulation (Yasinta et al., 2023). Therefore, illegal cigarettes are sold at low prices. Because illegal cigarettes are cheap, they are in high demand by the public, and this benefits traders. Regulations on excise have been in place since 2007. However, the public does not care or implement the regulations as if they never existed. The government has prepared various sanctions for excise violators, from administrative to criminal penalties.

Excise sanctions on illegal cigarettes are adjusted according to the type of violation. First, perpetrators who use fake excise stamps are subject to a fine of at least 10 times the excise value that should be paid and a maximum of 20 times the excise value that should be paid. Perpetrators can also be sentenced to imprisonment from 1 year to 8 years. Second, the sanctions for using used excise are the same as those for using fake excise stamps. Third, the sanctions for different excise stamps are 2 times the excise value to 10 times the excise value that should be paid. Fourth, the sanctions for products that do not use excise stamps are imprisonment ranging from 1 to 5 years and fines ranging from 2 times the excise value to 10 times the excise value that should be paid (Harahap & Pasaribu, 2024; Perkasa et al., 2024) (Perkasa et al., 2024).

The threat of sanctions in the Customs Law Regulations has not made the circulation of illegal cigarettes disappear. It has increased. Moreover, the price of legal cigarettes continues to increase, causing people to switch to illegal cigarettes so that illegal cigarette sellers are increasingly profitable. The rampant circulation of illegal cigarettes in Indonesia is evidence of the lack of supervision from the government. Likewise, a lack of awareness of sellers and buyers regarding government regulations. Thus, the Customs Law has not been complied with by some Indonesian people, especially in terms of buying and selling illegal cigarettes.

The Law on Trading of Illegal Cigarettes Based on DSN-MUI Fatwa Number 110/DSN-MUI/IX/2017 concerning the Sale and Purchase

The Indonesian Ulema Council (DSN MUI) Fatwa on Cigarette Laws. Among the decisions of the 3rd Ijtima' Ulama (Islamic Council) Fatwa Commission in Padang Panjang in 2009 was the one regarding the cigarette law. Its deliberations explained the following: a) Smoking is harmful to health (dharar) and has the potential to lead to waste (israf), and constitutes an act of tabdzir (immorality); b) According to health experts, cigarettes contain nicotine and other substances that are harmful to health, both for smokers and others around them. And then c) The pros and cons regarding the cigarette law have confused the public.

Some advocate prohibiting it, others demand a limited prohibition, and still others want to maintain the original law, which is makruh (rejected). Based on these considerations, the 13th Ijtima' Ulama (Islamic Council) Fatwa Commission of the Indonesian

Ulema Council (MUI) determined that: a) They agreed that there are differing views regarding the law on smoking, namely, between makruh and haram (khilaf ma baina al-makruh wa al-haram); b) Agree that smoking is haram if done in public places, by children, and by pregnant women.

The difference of opinion among scholars regarding the law of smoking also leads to differences of opinion regarding the law of selling cigarettes. For scholars who permit smoking, who consider cigarettes not to be an impure object, but can be beneficial (for some people), then the law of selling and profiting from cigarettes is halal. Because one of the valid conditions for a sale and purchase transaction is that the object being traded is pure, beneficial, and owned by oneself, then the sale and purchase transaction is valid in the eyes of Islamic law. A. Hassan emphasized that selling cigarettes is not haram because there is no text (Quran and hadith) that prohibits it. The dangers depend significantly on the level or quality of each person's immune system and the quantity used. The best thing according to religion is not to smoke and not to sell them.

Buying and selling in Islam is an agreement to exchange goods or objects of value voluntarily. The buyer receives the object, while the seller receives the agreed price, as justified by sharia. A valid sale and purchase according to Syara fulfills its pillars, terms, and conditions.

Based on the Word of Allah in Q.S. An-Nisa' verse 29, it is explained that humans should acquire wealth in a good way, avoid wrong ways according to the guidance of sharia, and give, receive, and obtain it entirely voluntarily. The pillars of buying and selling are ijab and qabul, which indicate the intention to exchange or something similar (mu'athaa). The majority of Islamic jurists hold that buying and selling have four pillars: the seller, the buyer, the statement of words (ijab and qabul), and the goods. Their opinion applies to all transactions. The parties are obliged to fulfill the pillars of buying and selling.

In addition to the pillars, the parties must also ensure that the conditions of sale and purchase according to Sharia have been met. The conditions of sale and purchase according to the pillars stated by the majority of scholars above are as follows: a) The conditions of the seller and buyer, namely people who have reached puberty and are of sound mind, the transaction actors must be multiple or carried out by different people, so that the sale and purchase is not valid if carried out by only one person. b) Conditions related to the ijab qabul, Islamic jurisprudence scholars state that the conditions for ijab and qabul are that they are carried out in one place. That means both parties to the sale and purchase agreement are present and discuss the purpose of the agreement. The ijab and qabul can be done either verbally, in writing, or by gesture.

Meanwhile, the condition for goods to be traded is that they be tangible. If the goods are not yet available, the seller must declare their ability to procure them. The goods being traded must also be helpful, owned by the seller, and capable of immediate or future delivery. Both parties must mutually agree upon the price. Furthermore, the price must be a precise amount and readily available for delivery at the time of the contract. If both parties agree that the buyer will deliver the price to the seller at a later date, the delivery date must be precise. If the sale involves exchanging goods, the goods used as exchange value must not be prohibited by Islamic law.

The validity of buying and selling according to Islamic law is the fulfilment of Sharia's pillars, terms, conditions and principles. That is also stated in the DSN MUI Fatwa No: 110 / DSN-MUI / IX / 2017 concerning Buying and Selling. Based on the author's analysis, the illegal buying and selling of cigarettes fulfills the pillars of buying and selling. The pillars of buying and selling consist of: First, Seller and Buyer. Second, Goods traded, namely cigarettes and price. Third, ijab and qabul are agreements between the parties, and fourth is the purpose of buying and selling, namely to exchange goods and prices.

The author also analyzed the legal requirements for illegal cigarette trading. The results are that the seller and buyer have met the requirements because adults carry them out, are of legal age, and are of sound mind. However, the requirements for the goods being traded do not meet the requirements because they are non-halal goods. This non-halalness is related to the way the trader obtains the goods. The seller obtains cigarettes illegally, namely without paying excise duty. Thus, the seller does not comply with government regulations. Government regulations are something that must be followed in Islamic law.

The following are the requirements for goods traded: First, the goods traded are halal and pure or purified. That means that the goods traded are not qualified as unclean objects or are included in goods classified as forbidden. Second, the goods can be utilized. That means that the goods traded must have benefits, so it is not permissible to trade goods that are not useful. Third, the goods can be handed over.

seller or belong to another person he represents. Suppose the goods being traded are not his own, according to the Shafi'i, Maliki and Hanbali schools. In that case, the sale and purchase are permissible and valid because the owner's permission is obtained. However, the sale and purchase are invalid if the owner's permission is not obtained. Fifth, the goods can be known by the seller and the buyer, including their substance, form, content, and characteristics. Therefore, a sale and purchase that raises doubts among the parties is invalid. Moreover, sixth, the goods being traded are not limited by time.

According to the DSN-MUI Fatwa, there are four provisions relating to goods being sold:[1] First, the goods being sold may be in the form of goods and/or in the form of rights and belong to the seller in full; Second, the goods sold must be goods and/or rights that can be used according to sharia (mutaqawwam) and can be bought and sold according to sharia and applicable laws and regulations. And third, the goods sold must be tangible, definite/specific and can be handed over at the time the sale and purchase agreement.

Another pillar, namely Ijab and Qabul, has met the requirements, but the purpose of the sale and purchase violates Islamic law. The sale and purchase of illegal cigarettes are carried out consciously and with full consideration from both parties. The seller and buyer both know that the cigarettes are illegal. The seller and buyer also know that the sale and purchase violate government regulations, and there are sanctions for violators. Thus, the seller and buyer consciously intend to violate the regulations.

In Islamic economic law, a sale and purchase that fulfils the pillars but violates the conditions is called a bathil trading (Siswandi & Najihah, 2023). A bathil trading in which one of the pillars or conditions is not fulfilled. A bathil trading is different from a fasid trading. A bathil trading is a trading in which there is damage to the goods being traded. A fasid trading is concerns damage that can still be repaired, such as an error in the price (Yuliastutik, 2016).

In addition, the act of selling illegal cigarettes is included in the crime of smuggling. Smuggling is bringing in goods illegally without complying with state requirements (Umboh et al., 2024). Usually, smuggling is done to avoid paying taxes. The definition of smuggling is also contained in Law No. 17 of 2006 concerning Customs, in Article 102, Article 102 A and 102 B, which stipulates that smuggling is a criminal act related to the removal of goods or money from Indonesia to abroad (export) or the entry of goods or money from abroad to Indonesia (import) (Kelung, 2021).

From the perspective of Islamic Economic law, smuggled goods are not by the principles of Islamic economic law because smuggling is done by falsifying administrative files on illegal goods. This action is an act of fraud and deception. Fraud and deception are actions contrary to Islamic principles and even prohibited by the Prophet Muhammad SAW (Akbar & Arifin, 2024).

Smuggling or fraud is also included in the elements of violations in the form of property-related criminal acts. Fraud is carried out to obtain illegal profits. Meanwhile, in Islamic economic law, a person may not take advantage of something wrong. As in Q.S An-Nisa: 29, it is stated that humans may not take property unjustly or invalidly. Therefore, conducting illegal cigarette sales is prohibited in Islamic economic law.

The Higher Objectives of Islamic Law (*Maqasid al-Shari'ah*) and the Doctrine of Harm (Mafsada)

The mere fulfillment of the formal pillars of a contract is insufficient to determine its permissibility or validity in Islamic law, particularly when public welfare is at stake. In such cases, the overarching principles of *maqasid al-Shari'ah* and the doctrine of mafsada become essential analytical tools. These principles shift the discussion beyond the structural elements of the contract toward an assessment of broader societal impacts.

Maqasid al-Shari'ah represents the ultimate aims and wisdom underlying Islamic legislation. It focuses on bringing about benefits (masalih) and preventing harms (mafasid) for humanity in both worldly and spiritual realms. Classical Islamic scholarship identifies five essential objectives preservation of religion, life, intellect, lineage, and wealth which serve as the foundational pillars of public welfare (Man, 2025). When the trading of illegal cigarettes is examined through the lens of these objectives, it becomes evident that such activities contradict several core maqasid.

The preservation of life (*hifz al-nafs*) is directly threatened by cigarette consumption, which is widely proven to cause severe health problems, including cancer, cardiovascular disease, and respiratory illnesses (Sa'diyah, 2021) (Mustafa, 1970). Illegal cigarettes, often produced without quality control and sold at lower prices, increase accessibility and amplify the harm. This contradicts the Sharia's highest priority of safeguarding human life. Consequently, many scholars have ruled smoking to be haram or makruh tahrimi due to its harmful nature(Firmansyah, 2019).

The preservation of wealth (*hifz al-mal*) is also violated. On the individual level, purchasing cigarettes especially products known to cause harm constitutes wasteful expenditure (israf), which Islamic teachings strongly discourage. At the societal level, illegal cigarette trading circumvents excise duties and taxes, a critical source of state revenue for funding public services such as healthcare, education, and infrastructure (l.E Tuty Rahmawaty AND Muh. Rasywan Syarif AND Fathor AS, 2022). Tax evasion therefore reduces public wealth and undermines distributive justice, violating the communal objectives upheld by Sharia. The preservation of intellect (hifz al-'aql), although indirectly affected, is compromised as illicit trade cultivates corruption, dishonesty, and an erosion of ethical norms that weaken society's moral and intellectual structure.

Complementing the maqasid framework is the doctrine of mafsada, which emphasizes the prevention and removal of harm. The trading of illegal cigarettes encompasses multiple forms of harm. It creates health-related harm for both users and passive smokers. It causes economic harm by reducing government revenue, distorting fair market competition, and potentially financing organized crime (Mustafa, 1970) (Yunus, 2024b). It contributes to social harm by encouraging lawlessness, weakening respect for regulations, and fostering criminal networks. Ethically, such trade involves deception, counterfeiting, tax evasion, and neglect of communal responsibility.

Given these extensive harms, it is inconceivable that a DSN-MUI fatwa grounded in the Sharia's commitment to promoting maslahah and preventing mafsadah would consider illegal cigarette trading permissible, even if the apparent contractual pillars seem fulfilled. The profound and multifaceted harms embedded in such transactions render them fundamentally illegitimate within Islamic law.

The Context of "Illegal Cigarettes" in Indonesia: Legal Framework and Societal Impact

To fully understand DSN-MUI Fatwa No. 110/DSN-MUI/IX/2017, it is essential to clarify what is meant by "illegal cigarettes" within Indonesia's legal and economic landscape. The term refers to tobacco products that violate national laws and regulations, particularly those related to excise duties, taxation, and product standards. Illegal cigarettes circulate outside the legitimate regulatory system, creating both economic and public health risks.

The legal governance of tobacco products in Indonesia is primarily grounded in three major instruments. Law No. 39 of 2007 on Excise (amending Law No. 11 of 1995) establishes the mandatory payment of excise duties on tobacco products. Cigarettes sold without excise stamps, with counterfeit stamps, or using reused stamps are explicitly categorized as illegal and subject to criminal sanctions (Yunus, 2024b). This framework serves both to control tobacco consumption and to secure significant state revenue. Government Regulation No. 109 of 2012, which regulates addictive substances in tobacco products, sets strict requirements on production, distribution, advertising, and sales, emphasizing public health protection, including health warnings and advertising restrictions (Hadiwasito, 2020). In addition, Law No. 8 of 1999 on Consumer Protection requires that products meet safety and quality standards, a requirement typically violated by illegal cigarettes.

The illegality of these cigarettes' manifests in several ways. The most common form is tax evasion through the deliberate non-payment of excise duties, resulting in substantial losses to state revenue (Bintoro, 2025) (Anindyntha, 2024). Because they avoid excise, these products are sold at significantly lower prices, which increases accessibility especially among low-income groups and weakens public health policies aimed at reducing smoking rates. Illegality also appears in the counterfeiting of branded cigarettes and the smuggling of foreign cigarettes into Indonesia without customs clearance or tax payments, both of which undermine market integrity and national security (Sultan, 2022). Another form involves unregistered production and distribution by entities that operate outside regulatory oversight and fail to meet mandatory labeling, safety, and quality requirements.

The Indonesian government, particularly through the Directorate General of Customs and Excise, actively combats illicit cigarette trade because of its extensive negative consequences. Illegal cigarettes drain essential state revenue, reducing the government's capacity to fund public services. They undermine public health initiatives by making cheaper, unregulated products widely available. They also distort fair market competition, disadvantaging businesses that comply with the law. Furthermore, illicit cigarette networks are frequently connected to organized crime and illegal financial flows, adding broader security risks that extend beyond the tobacco sector itself. This national legal and economic context is indispensable for interpreting DSN-MUI's ruling on illegal cigarettes. Any Islamic legal judgment regarding their permissibility or prohibition cannot be separated from the structural conditions that define their illegality under Indonesian law. The fatwa must therefore be viewed as part of a broader effort to uphold public welfare, economic justice, and social order.

CONCLUSION

The findings of this study reveal that illegal cigarette trading through the Facebook application is conducted openly within buying and selling groups that connect sellers and buyers without any form of legal verification. Transactions occur via cash-on-delivery (COD) or bank transfer, and both parties knowingly engage in the sale of products that do not comply with Law Number 39 of 2007 concerning Excise. The persistence of this practice is driven by low public compliance with excise regulations, insufficient government oversight, and high consumer demand fueled by rising prices of legal cigarettes. These conditions indicate that the existing legal framework has not been effective in controlling the circulation of illegal cigarettes, particularly within digital platforms that operate beyond conventional regulatory reach.

From the perspective of Sharia Economic Law, the trading of illegal cigarettes is classified as bāṭil because, although the formal pillars of sale are fulfilled, the object of the transaction does not meet the requirements of a valid good in Islamic jurisprudence. Illegal cigarettes are obtained through smuggling, deception, and the avoidance of state-imposed obligations, all of which contradict principles of permissibility, public welfare (maslahah), and obedience to legitimate authority (ṭāʿat ulil amri). An analysis based on maqāṣid al-sharīʿah and the doctrine of mafsadah further demonstrates that illegal cigarette trading poses harm to human life, undermines state revenue, and fosters unethical economic behavior. Therefore, illegal cigarette trading is prohibited not only under national law but also within the framework of Sharia

Economic Law, as it violates justice and compromises the collective well-being of society.

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