

A Jurisprudential Review of the Application of Monetary Punishment for the Circulation of Illegal Cigarettes

Arif Rahman Hakim Syadzali¹, Ade Endang Rispani²

¹The World Islamic Science & Education University, Jordan.

²Ma'had Aly Lirboyo Kediri, Indonesia.

arhakimsyadzali@gmail.com

adeendangrispani@gmail.com

Abstract

Indonesia plays a significant role in minimizing the negative impact of large-scale illegal tobacco production. Legislation imposing fines is expected to serve as a solution to address concerns regarding its effects on public health and the economy. However, the imposition of fines is claimed to violate *maqāṣid asy-syari'ah* and even the consensus (*ijmā'*) of Islamic scholars. This study aims to analyze the extent of Islamic perspectives on the imposition of fines, particularly in Indonesia. This study employs library research using a qualitative approach. The research findings indicate that the imposition of monetary fines (*ta'zīr bi al-māl*) is not considered valid unless under circumstances of necessity (*darūrah*), according to the consensus of the four major Islamic schools of thought (*madzhāhib*). However, fines in the form of asset destruction directly related to the offense (*ta'zīr fi al-māl*) are deemed permissible according to the Mālikī school of thought. The implications of this study suggest that the government must ensure the presence of an urgent necessity to justify the legislation of fines, apply proportionality in assessing the need, and guarantee that the allocation of collected fines is accurately directed toward the public interest.

Keywords: Criminal fines, *Ta'zīr bi al-māl*, *Ta'zīr fi al-māl*, Illegal tobacco.

Abstrak

Indonesia memainkan peran penting dalam meminimalkan dampak negatif dari produksi tembakau ilegal secara besar-besaran. Legislasi yang menerapkan denda diharapkan dapat menjadi solusi untuk mengatasi kekhawatiran terkait dampaknya terhadap kesehatan masyarakat dan perekonomian. Namun, penerapan denda diklaim melanggar *maqāṣid al-shari'ah* dan bahkan konsensus (*ijmā'*) para ulama Islam. Studi ini bertujuan untuk menganalisis sejauh mana perspektif Islam terkait penerapan denda, khususnya di Indonesia. Studi ini menggunakan penelitian kepustakaan dengan pendekatan kualitatif. Temuan penelitian menunjukkan bahwa penerapan denda uang (*ta'zīr bi al-māl*) tidak dianggap sah kecuali dalam keadaan darurat (*darūrah*), sesuai dengan konsensus empat mazhab utama dalam Islam (*madzhāhib*). Namun, denda dalam bentuk pemusnahan aset yang berhubungan langsung dengan pelanggaran (*ta'zīr fi al-māl*) dianggap diperbolehkan menurut mazhab Mālikī. Implikasi dari studi ini menunjukkan bahwa pemerintah harus memastikan adanya kebutuhan mendesak untuk membenarkan legislasi denda, menerapkan proporsionalitas dalam menilai kebutuhan, dan menjamin bahwa alokasi hasil denda benar-benar diarahkan untuk kepentingan publik.

Kata Kunci: Pidana Denda, *Ta'zīr bi al-māl*, *Ta'zīr fi al-māl*, Rokok Ilegal

INTRODUCTION

Indonesia faces a major challenge in terms of tobacco control. According to the *Global Adults Tobacco Survey* (GATS) 2021, there are approximately 69.1 million active smokers in the country.¹ As a result, the deterioration of public health has increased significantly. Observations from the Health Research and Development Center (*Pusat Litbang Kesehatan*) show that premature deaths caused by smoking increased from 190,260 cases in 2010 to 240,618 in 2013. Similarly, the number of individuals with smoking-related illnesses increased from 384,058 in 2010 to 962,403 in 2013.² Moreover, the massive production and distribution of illegal cigarettes has had negative consequences for the national economy. The macroeconomic loss from untaxed cigarettes in 2015 was estimated at nearly 600 trillion rupiahs, four times higher than the country's cigarette tax revenue that year. Compared with the losses from two years earlier, there was a 63% increase in potential tax revenue that should have been collected by the state.³ To address this growing concern, the government enacted Law No. 39 of 2007 concerning exercise duties.⁴

Article 56 of Law No. 39 of 2007 stipulates that individuals involved in the exchange, sale, possession, storage, transfer, or acquisition of excisable goods known or suspected to be illegal are subject to a minimum imprisonment of one (1) year and a maximum of five (5) years, as well as fines of at least twice and up to ten times the amount of excise duty that should have been paid.⁵ The Ministry of Finance, as the authority responsible for tax collection, established a specialized body to manage excise duties—the Directorate General of Customs and Excise (DJBC)—whose legal foundation and duties are regulated under Law No. 17 of 2006, which amends Law No. 10 of 1995 on customs. According to Article 42 of the Indonesian Criminal Code (KUHP), “All expenses for imprisonment and confinement shall be borne by the state, and all proceeds from fines and confiscations shall become the property of the state”.⁶ However, the actions taken by the Directorate General of Customs and Excise, particularly the mass destruction of

¹ Ripsidiasiona, “Perokok Dewasa Di Indonesia Meningkatkan Dalam Sepuluh Tahun Terakhir,” 3 Juni 2022, <http://www.badankebijakan.kemkes.go.id/Perokok-dewasa-di-Indonesia-meningkat-dalam-sepuluh-tahun-terakhir>.

² Rokom, “Menkes Ungkap Dampak Rokok Terhadap Kesehatan Dan Ekonomi,” 31 Mei 2014, <https://sehatnegeriku.kemkes.go.id/baca/rilis-media/20140531/2710293/menkes-ungkap-dampak-rokok-terhadap-kesehatan-dan-ekonomi/>.

³ Soewarta Kosen, “Kerugian Ekonomi Dibalik Konsumsi Rokok Indonesia Capai 600 Triliun,” 5 Januari 2018, <https://nationalgeographic.grid.id/read/13309141/kerugian-ekonomi-di-balik-konsumsi-rokok-indonesia-capai-600-miliar?page=1>.

⁴ D. Nuryunarsih, “Health Risks of Kretek Cigarettes: A Systematic Review,” *Nicotine and Tobacco Research* 23, no. 8 (2021): 1274–82, <https://doi.org/10.1093/ntr/ntab016>.

⁵ “Undang-Undang Nomor 39 Tahun 2007 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 1995 Tentang Cukai,” diakses 16 Juli 2024, <https://repository.beacukai.go.id/peraturan/2011/11/0424c68a258c-uu-11-tahun-1995.pdf>.

⁶ “Kitab Undang-Undang Hukum Pidana,” diakses 16 Juli 2024, https://jdih.go.id/files/843/KUH_Pidana.pdf.

confiscated illegal cigarettes, lack a clear legal basis,⁷ Article 42 of the Criminal Code only mentions *confiscation*, not *destruction*. Furthermore, Articles 33–40 of Law No. 39 of 2007, which regulate the authority of customs officials, do not explicitly grant power to destroy such assets. Thus, the policy of imposing fines and conducting the mass destruction of illegal cigarettes has been claimed to conflict with the principles of *Maqāṣid al-Sharī'ah* (the higher objectives of Islamic law).

First, Islamic law (Shari' ah)—the formulation of which we recognize as *fiqh*—upholds individual rights and ownership of property, as long as such ownership and its utilization do not exceed the norms generally accepted in society. This includes the right to produce. Imam Ibn Hajar al-Haytami, in his work *Tuhfat al-Muhtāj*, states that every person has the right to allocate and manage their private property, provided it does not go beyond the customary limits of the local community.⁸ Second, criminal law involving financial penalties, in which property must be paid and subsequently transferred to government ownership, as stipulated in Book I, Article 42 of the Indonesian Criminal Code (KUHP), requires further examination from the perspective of Islamic jurisprudence. Muhammad Ahmad bin 'Umar al-Shāṭirī, in his work *Sharḥ al-Yāqūt al-Nafīs*, explains that the imposition of monetary fines (*al-ūqūbah al-māliyah*) is not recognized as legitimate under Islamic law according to the four major schools of jurisprudence (*madhāhib*).⁹ Third, the legal status of Shari' ah concerning the destruction of assets carried out by the Directorate General of Customs and Excise (Direktorat Jenderal Kepabeanan) must also be evaluated within the framework of Islamic legal principles.

First, a thesis titled “*Cigarette Consumption Below the Price Regulation: The Role of Excise and Market Transaction Price Monitoring*” written by Pratiwi Kusuma Wardani, supervised by Khoirunurrofik from the Faculty of Economics and Business, University of Indonesia (2022), explores the factors influencing cigarette consumption that do not comply with the market transaction price regulations across 34 provinces in Indonesia. The study also analyzes the impact of the Directorate General of Customs and Excise's monitoring of tobacco market transaction prices using a panel fixed-effect regression model to analyze panel data over time. This study estimates the effects of tobacco price monitoring policies

⁷ Direktorat Jendral Bea dan Cukai, “*Lindungi Masyarakat, Bea Cukai Musnahkan Lebih Dari 7 Juta Batang Rokok Ilegal*,” Berita (Jakarta: Kementerian Keuangan, 2 November 2021), <https://www.beacukai.go.id/berita/lindungi-masyarakat-bea-cukai-musnahkan-lebih-dari-7-juta-batang-rokok-ilegal.html>.

⁸ Ahmad bin Muhamad Ibnu Hajar al-Haitami, *Tuhfat al-Muhtāj Wā Hawāsyī asy-Syarwānī*, vol. 6 (Lebanon: Dār Ihya at-Turās, 1983), 209.

⁹ Muhamad Ahmad bin Umar asy-Syathiri, *Syarḥ al-Yāqūt an-Nafīs* (Lebanon: Dār al-Minhāj, 2011), 760.

on non-compliant cigarette consumption between 2016 and 2019.¹⁰ In contrast, the present journal examines a different research object, namely, the Islamic jurisprudence (fiqh) perspective on criminal law regulations governing the circulation of illegal cigarettes, using a library research method.

Second, a thesis titled *“The Policy of Cigarette Tax Imposition in the Indonesian Legal System and Its Impact on National Economic Development”* written by Salwa Nida, supervised by Tri Hayati from the Faculty of Law, University of Indonesia (2024), analyzes whether the regulation of cigarette taxes has optimally fulfilled its *regulerend* (regulatory) and *budgetair* (budgetary) functions. It also examines the impact of cigarette taxation on national economic development by employing a doctrinal research method that systematically explains the rules governing specific legal categories.¹¹ Meanwhile, this journal focuses on the fiqh-based analysis of criminal law provisions regarding financial penalties and the circulation of illegal cigarettes using a library research approach.

Third, a journal article titled *“Criminal Law Enforcement on the Circulation of Illegal Cigarettes at the Regional Office of Customs and Excise in Tembilahan”* was published in *Desiderata Law Review*, Vol. One No. 1 (2024), written by Nanda Nugraha Ziar and M. Musa, discusses the implementation of criminal law enforcement against the distribution of illegal cigarettes at the Tembilahan Regional Office of Customs and Excise by employing a field observation method.¹² In contrast, the present study differs in its research object and methodology, focusing instead on the Fiqh perspective and employing a library-based analytical approach.

The fiqh perspective on the criminal law of financial penalties for the circulation of illegal cigarettes is crucial for several reasons. First, there is an urgent need to control tobacco production, which necessitates enforcement of a law that imposes monetary penalties. However, this appears to conflict with Islamic law (*Shari‘ah*). Second, the actions taken by the Directorate General of Customs and Excise, particularly the destruction of illegal assets, lack a clear legal basis. Third, no comprehensive study has specifically examined the legal position of criminal fines from the standpoint of Islamic jurisprudence.

¹⁰ Pratiwi Kusuma Wardani, “Konsumsi Rokok Di Bawah Ketentuan Harga: Peran Cukai Dan Monitoring Harga Transaksi Pasar,” 2022, Fakultas Ekonomi dan Bisnis Universitas Indonesia.

¹¹ Salwa Nida, review of *Kebijakan Pengenaan Pajak Rokok dalam Sistem Hukum di Indonesia dan Dampaknya Terhadap Pembangunan Ekonomi Nasional*, oleh Tri Hayati, ed. oleh Simatupang (Jakarta: Fakultas Hukum Universitas Indonesia, 2024), Fakultas Hukum Universitas Indonesia, <https://lib.ui.ac.id/detail?id=9999920539845&lokasi=lokal>.

¹² Nanda Nugraha Ziar dan M. Musa, “Penegakkan Hukum Pidana Terhadap Peredaran Rokok Ilegal Di Kantor Wilayah Bea Dan Cukai Tembilahan,” *Desiderata Law* 1 (2024): 1.

Therefore, this journal seeks to identify, examine, and analyze the fiqh perspective on the legislation of criminal fines, particularly as stated in Law No. 39 of 2007 on excise and other related legal instruments. It also aims to discuss how relevant authorities handle such cases and assess the implications of the fiqh perspective within the framework of state governance.

RESEARCH METHODOLOGY

This study employed a library research method (*library research*) using a qualitative approach.¹³ In this type of research, primary data sources include the Qur'an, Hadith, classical Islamic texts (kutub al-turāth), Law No. 39 of 2007 on Excise, the Indonesian Criminal Code (KUHP), and other laws related to customs and excises. Secondary sources include official government documents, academic journals, scholarly books, and dictionaries. Data analysis was conducted qualitatively through content analysis by documenting relevant data and applying source triangulation to verify and enhance data validity. This is done by comparing and cross-checking the information obtained from various sources. The analyzed data were then reduced into key themes and presented in a verified and structured form.¹⁴

RESULTS AND DISCUSSION

Criminal Fines for Illegal Cigarette Circulation in Islamic Law

The policy on criminal fines in Indonesia is regulated by the Criminal Code (KUHP). Article 10 classifies fines as one of the main forms of punishment, whereas Article 30 determines the minimum amount that can be imposed. Article 103 provides flexibility, allowing other laws to specify the scope and level of fines. Consequently, penalties related to the circulation of illegal cigarettes are governed outside the KUHP, namely under Law No. 39 of 2007 on excise.

Law No. 39 of 2007, which revised Law No. 11 of 1995, sets criminal sanctions for the production and distribution of illegal cigarettes, including financial penalties. Article 56 states: "Hukuman pidana untuk produk rokok ilegal diancam minimal satu (1) tahun penjara bagi siapapun yang menukar, menjual, memiliki, menimbun, memberikan atau memperoleh aset kena cukai yang diketahui atau diduga sebagai bentuk pelanggaran undang-undang ini dan pidana paling lama lima (5) tahun penjara beserta denda minimal

¹³ Sutrisno Hadi, *Metodologi Research* (Yogyakarta: Fakultas Psikologi UGM, 1989), 9.

¹⁴ Salim dan Haidir, *Penelitian Pendidikan: Metode, Pendekatan Dan Jenis* (Jakarta: Kencana, 2019), 100.

dua kali lipat dari nilai cukai dan paling banyak sepuluh (10) kali lipat nilai cukai yang seharusnya dibayarkan.”¹⁵

Money or material fines are classified as state revenue, as stipulated in Book I of the Indonesian Criminal Code (KUHP), Article 42, which states: “Segala biaya untuk pidana penjara dan pidana kurungan dipikul oleh negara, dan segala pendapatan dari pidana denda dan perampasan menjadi milik negara”. However, the implementation of Law No. 39 of 2007 on Excise and Law No. 17 of 2006 on Customs, carried out by the Directorate General of Customs and Excise, consistently involves the confiscation and destruction of materials belonging to convicted parties. In addition to being subjected to fines, offenders have all their excisable assets confiscated and subsequently destroyed en masse.¹⁶ Consequently, the punishment imposed on the offender consists not only of paying the stipulated fine but also of the forfeiture and seizure of all assets involved in the violation.

From the context of these legal provisions concerning criminal fines for illegal cigarette distribution, several analytical points can be identified: *First*, in terms of sanctions, penalties, and the allocation of fines as stated in the KUHP and Law No. 39 of 2007, such measures fall under the category of *ta‘zīr bi al-māl* in Islamic jurisprudence, as the offender’s wealth is utilized as a means of punishment. *Second*, the money obtained from these fines represents a transfer of ownership from the offender to the government. *Third*, the confiscation and destruction carried out by the Directorate General of Customs and Excise in handling cases of illegal cigarette distribution fall under the category of *ta‘zīr fī al-māl* according to Islamic legal thought, because the punishment is not executed through monetary payment but rather through the seizure and elimination of the unlawful assets themselves.

Islamic law is codified within the discipline known as *fiqh*, which represents the result of scholars’ *ijtihād* (independent reasoning) in applying the Islamic *sharī‘ah*. Every legal provision established in this framework ultimately aims to ensure social welfare and social harmony. The implementation of punishment in Islam is not merely a form of retaliation; rather, it embodies noble objectives encapsulated in the principle of *Maqāṣid al-Sharī‘ah*—the higher intents and purposes of the law. These include the protection of faith (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-‘aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*).¹⁷

¹⁵ “Undang-Undang nomor 39 tahun 2007 tentang perubahan atas Undang-Undang nomor 11 tahun 1995 tentang Cukai.”

¹⁶ Direktorat Jendral Bea dan Cukai, “*Lindungi Masyarakat, Bea Cukai Musnahkan Lebih Dari 7 Juta Batang Rokok Ilegal*.”

¹⁷ Abū Ishāq Ibrāhīm bin Musa asy-Syātibī, *al-Muwāfaqāt*, vol. 1 (Kairo: Dār Ibnu ‘Affān, 1997), 5.

In Islamic jurisprudence, punishments that are explicitly defined in the *naṣṣ* (scriptural texts) regarding their form and type are referred to as ḥadd, whereas those without fixed provisions are categorized as *Ta'zīr*.¹⁸ As there is no explicit *naṣṣ* concerning monetary penalties or fines, such penalties are classified as part of *Ta'zīr*.

Punishment or *ta'zīr* related to fines in *fiqh* is applied in two categories. First, *ta'zīr bi al-māl* (punishment by means of wealth) refers to a form of punishment that requires the offender to pay a specific amount of money as a consequence of the crime. Second, *ta'zīr fī al-māl* (punishment upon property) refers to a sanction involving the destruction or confiscation of material goods or assets directly connected to a criminal act or violation of the law.

1. Monetary Punishment in Law No. 39 of 2007 According to Islamic Jurisprudence

The monetary penalties stipulated in Law No. 39/2007, in accordance with the provisions of the Indonesian Penal Code (KUHP), and the subsequent transfer of ownership to the government, fall under the category of *ta'zīr bi al-māl* in the context of *fiqh*. Punishment through *ta'zīr bi al-māl*, based on available data, has been a subject of scholarly debate.

Examining the authenticity and legitimacy of monetary penalties in Islamic legal theory, Ibn al-Qayyim al-Jawziyyah, in his work *Aṭ-Ṭuruq al-Ḥukmiyyah*, attributes the concept of monetary punishment to the Mālikī school. He further notes that the validity of such punishment is also supported by an opinion within the Shāfi'ī school.¹⁹ This view is in line with Muhammad Ḍiyyā' uddīn's statement in his work *Ma'ālim al-Qurbah fī ṭalab al-Ḥisbah*, where he affirms that the imposition of fines is considered legitimate according to the Mālikī school of thought.²⁰ This position is also supported by Shaykh Wahbah al-Zuhaylī in his writings, where he cites the opinions of Imām Ibn al-Qayyim and notes that this view is found among the Mālikīyyah, Ḥanābilah, and even within the Shāfi'īyyah, particularly in their *qadīm* (earlier) opinions.²¹

¹⁸ Muḥamad Sa'id Ramaḍān al-Būṭi, *Muḥādhārāt fī al-fiqh al-Muqārīn* (Lebanon: Dār al-Fikr, 1981), 149.

¹⁹ Muḥamad bin Abu Bakar Ibnu Qayyim al-Jauziyyah, *ath-thuruq al-hukmiyyah Fī as-Siyāsah asy-Syar'iyyah* (Saudi: Dār 'Alam al-Fawā'id, t.t.), 688.

²⁰ Muḥamad bin Muḥamad Ḍiyyā' uddīn, *Ma'ālim al-Qurbah Fī Talab al-Hisbah* (Iran: Dār al-Funūn, t.t.), 194.

²¹ Syekh Wahbah bin Muṣṭofa az-Zuhailiy, *al-Fiqh al-Islāmī*, vol. 7 (Lebanon: Dār Fikr, t.t.), 5596.

However, Imām Muḥammad Akmal al-Dīn in *al-Ināyah Sharḥ al-Hidāyah* states that this opinion actually originated from Shaykh Abū Yūsuf of the Ḥanafī school.²² Meanwhile, Muḥammad Aḥmad ibn ‘Umar al-Shāṭirī, in his work, notes that the four major schools (madhāhib al-arba‘ah) unanimously agree that the imposition of monetary fines is invalid.²³ Furthermore, Imām Aḥmad ibn Muḥammad al-Ṣāwī of the Mālikī school, in his *Ḥāshiyah al-Ṣāwī ‘alā Sharḥ al-Ṣaghīr*, states that a consensus (*ijmā’*) has been reached rejecting the legalization of fines as a form of punishment.²⁴ Therefore, a deeper examination and analysis of the perspectives of the three related schools of law—namely, the Ḥanafī, Mālikī, and Shāfi‘ī schools—is necessary.

a. Mazhab Hanafiyyah

The Ḥanafī school, as clarified by its scholars, includes an explanation presented by Imām Muḥammad Akmal al-Dīn in *al-Ināyah Sharḥ al-Hidāyah*, who states that the concept of punitive fines (*ta‘zīr bi al-māl*) is indeed attributed to Imām Abū Yūsuf, a prominent jurist of the Ḥanafī school. However, the claim presented indicates that, if this opinion is indeed authentic, the punishment by fine is only to be understood as the temporary seizure or restraint of the offender’s property or assets — not as the confiscation or permanent transfer of ownership to the state or another party.²⁵ Imām Muḥammad ibn ‘Alī, in his work *al-Durr al-Mukhtār*, mentions that the official position of the Ḥanafī school does not permit punitive fines. He further explains that, according to the weaker opinion, which does allow them, such fines are merely to be understood as the temporary withholding of an asset or property, which must ultimately be returned to its owner. This explanation, he notes, is taken from Shaykh Muḥammad ibn Shihāb al-Bazzāz.²⁶ From the available Ḥanafī legal literature, no other explicit clarification is found regarding the meaning of punitive fines beyond what Imām Muḥammad ibn ‘Alī has outlined.

b. Mazhab Mālikiyyah

²² Muḥammad bin Muḥammad Akmal ad-Dīn, *al-Ināyah Sharḥ al-Hidāyah*, vol. 5 (Lebanon: Dār Fikr, 1970), 344–45.

²³ asy-Syathiri, *Syarḥ al-Yāqūt an-Nafīs*, 760–61.

²⁴ Abū ‘Abbās Aḥmad bin Muḥammad aṣ-Ṣāwī, *Ḥasyiyat aṣ-Ṣāwī ‘Alā Syarḥ aṣ-Ṣāghīr*, vol. 4 (Kairo: Dārul Ma‘ārif, t.t.), 505.

²⁵ Muḥammad Amīn Ibnu ‘Ābidīn, *Ḥāsiyyah Radd al-Mukhtār ‘Alā Dur al-Mukhtār*, vol. 4 (Lebanon: Dār Fikr, 1966), 61–62.

²⁶ Ibnu ‘Ābidīn, *Ḥāsiyyah Radd al-Mukhtār ‘Alā Dur al-Mukhtār*, 4:61.

According to Imām Ibn Qayyim al-Jawziyyah, the Mālikī school is among those that permit punitive fines (*ta'zīr bi al-māl*). However, as clarified by Imām Aḥmad ibn Muḥammad al-Ṣāwī, a Mālikī scholar, in his work *Ḥāshiyah al-Ṣāwī 'alā Sharḥ al-Ṣaghīr*, there is in fact a scholarly consensus (*ijmā'*) prohibiting the imposition of financial penalties. This claim of consensus is further supported by Imām Muḥammad ibn Aḥmad al-Dasūqī in his *Ḥāshiyah al-Dasūqī*, where he elaborates on the classification of *ta'zīr* punishments, stating explicitly that the prohibition of punitive fines has attained consensus among the jurists. He also mentions the weak opinion attributed to Imām Abū Yūsuf and cites the explanation of Muḥammad ibn Shihāb al-Bazzāz.²⁷ In line with the Ḥanafī view, the Mālikī perspective on punitive fines, as found in the available sources, reveals certain nuances when examined in depth. Shaykh Abū al-Abbās Aḥmad al-Shamā', in his work *Maṭāli' al-Tamām*, provides a further classification of the Mālikī position. Previously, these distinctions could only be inferred implicitly from various *fiqh* cases within the Mālikī school of thought. Nevertheless, in general, the Mālikī position on punitive fines does not lead to the transfer of the offender's property ownership.

Shaykh Abū al-Abbās Aḥmad al-Shamā' divides the Mālikī view on punishments involving wealth into two categories:

1. *Ta'zīr fī al-māl* — a punishment involving the destruction or elimination of objects or materials associated with wrongdoing; that is, the destruction of property used for sin or immorality. In the first category, the judge has the authority to decide as they deem appropriate.
2. *Ta'zīr bi al-māl* — a punishment involving the temporary seizure or withholding of a person's wealth, property, or assets related to a criminal act. This means that the offender may be required to pay or surrender part of their wealth as a form of punishment for their wrongdoing.²⁸

However, once again, this form of punitive fine—if we remain consistent with the Mālikī perspective—extends only to the understanding that the property or wealth in question is to be temporarily withheld and subsequently returned to its owner, as explained earlier through several Mālikī sources.

²⁷ Muḥammad bin Aḥmad ad-Dasūqī, *Hāshiyat ad-Dasūqī 'Ala Syarḥ al-Kabīr*, vol. 4 (Lebanon: Dār al-Fikr, t.t.), 355.

²⁸ Abū 'Abbas Aḥmad asy-Syama', *Maṭāli' at-Tamām wa naṣā'iḥ al-'anām wa manjāt al-khawāṣ wa al-'awām* (Maroko: Wazārat al-Auqāf, 2003), 11–13.

The only opinion that interprets *ta'zīr bi al-māl* as an actual transfer of ownership is the *fatwa* of Abū al-Qāsim al-Burzulī, which was endorsed by Shaykh Abū Muḥammad 'Abd Allāh al-Ḥabṭī and Shaykh Abū al-Qāsim ibn Khāju. It is important to note, however, that this *fatwa* applies only in cases of necessity (ḍarūrah).²⁹

c. Mazhab Syāfiyyah

According to the Shāfi'ī school, based on its *qaul qadīm* (the earlier opinion of Imām al-Shāfi'ī), as claimed by Imām Ibn Qayyim al-Jawziyyah, the imposition of fines (*ta'zīr bi al-māl*) is, in fact, considered permissible according to one of the Shāfi'ī views. In this regard, Imām al-Nawawī, in his *al-Majmū' Sharḥ al-Muhadhdhab*, discusses the case of a person who refuses to pay obligatory *zakāh*. Scholars of the Shāfi'ī school have agreed that punitive fines do not fall under the category of *ta'zīr*, whether in the form of *ta'zīr fī al-māl* or *ta'zīr bi al-māl*. However, concerning the specific issue of someone who refuses to pay *zakāh*, there are two interpretations that can be implicitly understood: according to the *qaul qadīm*, the earlier opinion of Imām al-Shāfi'ī, the imposition of a financial penalty in such a case is considered permissible.³⁰

However, Imām al-Nawawī once again emphasizes that the scholars of the Shāfi'ī school have reached a consensus that the sound and authoritative opinion (*al-qaul al-ṣaḥīḥ*) within the school does not permit punitive fines (*al-qaṭ'ī*).³¹ Shaykh Muḥammad Sa'īd Ramaḍān al-Būṭī, in his work *Muḥāḍarāt fī al-Fiqh al-Muqārīn*, affirms that the juristic view regarding punitive penalties involving the transfer of ownership (*ta'zīr bi al-māl*) has reached a point of agreement among scholars—namely, that no recognized school of law allows it.³² This is because there is no valid textual evidence that permits the transfer of ownership except through the legitimate means established by the revealed sources, such as contracts, inheritance, wills, endowments (*waqf*), and similar lawful avenues.³³ Hence, the act of transferring ownership under the guise of punitive fines or *ta'zīr* does not fall under any of these lawful categories and thus remains included within the general meaning of Allah's universal statement in the Qur'an.³⁴

²⁹ asy-Syama', *Maṭāli' at-Tamām wa naṣā'iḥ al-'anām wa manjāt al-khāwāṣ wa al-'awam*, 14.

³⁰ Abū Zakariyā Muhyi ad-Dīn bin Syaraf an-Nawawī, *al-Majmū' Sharḥ al-Muḥaḍḍab*, vol. 5 (Lebanon: Dār Fikr, t.t.), 334.

³¹ an-Nawawī, 5:334.

³² al-Būṭī, *Muḥāḍarāt Fī al-Fiqh al-Muqārīn*, 155.

³³ al-Būṭī, *Muḥāḍarāt Fī al-Fiqh al-Muqārīn* 155.

³⁴ Muḥamad bin Sulaiman al-Kurḍī, *Qurraṭ al-'Ayn Bi Fatāwā Sulaymān al-Kurḍī* (Dar Al-Farouk, t.t.), 96.

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

“Do not consume one another’s wealth unjustly, nor use it to bribe the authorities in order that you may wrongfully and sinfully consume a portion of other people’s property while you know (it is unlawful).” (Al-Baqarah: 2-188).³⁵

As for the other textual evidence that is claimed to abrogate or override the meaning of the above verse, namely, the ḥadīth narrated by Imām Abū Dāwūd through the chain of transmission from Bahz ibn Ḥakīm, it states:

أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: فِي كُلِّ سَائِمَةٍ إِبِلٍ فِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ، لَا تُفَرَّقُ إِبِلٌ عَنْ حَسَابِهَا، مَنْ أَعْطَاهَا مُوْتَجِرًا فَلَهُ أَجْرُهَا، وَمَنْ مَنَعَهَا فَإِنَّا آخِذُوهَا وَشَطْرَ مَالِهِ عَزْمَةٌ مِنْ عَزَمَاتِ رَبَّنَا، لَا يَحِلُّ لآلِ مُحَمَّدٍ مِنْهَا شَيْءٌ

The Messenger of Allah (peace and blessings be upon him) said:

“For every forty freely grazing camels, one bint labūn (a she-camel entering its third year) is due as zakāt. Camels must not be separated to reduce the amount of zakat due. Whoever gives it willingly, seeking a reward, will receive their reward. But whoever refuses to pay it, we will take it from him along with half of his wealth, as a judgment from our lord. It is not lawful for the family of Muḥammad to consume anything from zakāt” (HR. Nasa’i)³⁶

This ḥadīth, when examined through its chain of transmission, is found to have been narrated only by Bahz ibn Ḥakīm. No other Companion is known to have narrated the same or a similar report. Moreover, the legal rulings and practices of the Companions are inconsistent with what is stated in this ḥadīth.³⁷ This indicates that the report cannot be used as a valid legal basis for deriving rulings.

In *al-Majmū‘ Sharḥ al-Muḥadhdhab*, Imām al-Nawawī states that Imām al-Shāfi‘ī considered the ḥadīth narrated by Bahz ibn Ḥakīm to be unreliable and invalid as evidence.³⁸

³⁵ “Terjemahan Kemenag 2019” (Kemenag, 2019).

³⁶ Abu ‘Abdirrahman Ahmad an-Nasa’i, *as-Sunan al-Kubrā*, vol. 3 (Bairut: Mu’assasah ar-Risālah, 2001), 15.

³⁷ al-Būṭi, *Muḥādhārāt Fī al-Fiqh al-Muqārīn*, 156.

³⁸ an-Nawawī, *al-Majmū Syarḥ al-Muḥāḥab*, 5:334. Lihat juga Abū al-Faḍl bin Aḥmad bin ‘Alī Ibnu Ḥajar al-‘Asqalānī, *Tahdzīb at-Tahdzīb*, vol.1 (India: Da’irat al-Ma’arif, 1943), 498.

Furthermore, the second ḥadīth narrated by Imām Abū Dāwūd, through the chain of transmission of ‘Amr ibn Shu‘ayb, states that...

عَنْ رَسُولِ اللَّهِ ﷺ: أَنَّهُ سُئِلَ عَنِ الثَّمَرِ الْمُعَلَّقِ فَقَالَ: مَا أَصَابَ مِنْ ذِي حَاجَةٍ غَيْرَ مُتَّخِذٍ حُبْنَةً، فَلَا شَيْءَ عَلَيْهِ، وَمَنْ خَرَجَ بِشَيْءٍ مِنْهُ فَعَلَيْهِ غَرَامَةٌ مِثْلِيهِ وَالْعُقُوبَةُ، وَمَنْ سَرَقَ شَيْئًا مِنْهُ بَعْدَ أَنْ يُؤْوِيَهُ الْجَرِينُ فَلَبَّغَ ثَمَنَ الْمِجَنِّ فَعَلَيْهِ الْقَطْعُ، وَمَنْ سَرَقَ دُونَ ذَلِكَ فَعَلَيْهِ غَرَامَةٌ مِثْلِيهِ وَالْعُقُوبَةُ.

From the Messenger of Allah (peace and blessings be upon him):

“The Prophet was asked about dates that were still hanging on their trees. He replied: “Whoever eats from them out of necessity, without hiding or taking more, incurs no sin. However, whoever leaves (the orchard) carrying something away from it must repay double the amount and face additional punishment. Whoever steals something from it after it has been gathered into baskets and its value equals that of a shield, his hand is to be cut off. But whoever steals something of lesser value must repay double and face an additional punishment.” (HR. Abu Daud).³⁹

The ḥadīth similar to the one narrated by Bahz ibn Ḥakīm is also classified as weak (ḍa‘īf) and therefore cannot serve as a valid basis for establishing a legal ruling.⁴⁰

A comparative analysis of various opinions concerning *ta‘zīr bi al-māl* (punitive fines) reveals several key insights. First, the imposition of punitive fines, as stipulated in Law No. 39 of 2007, which is derived from the provisions of the Indonesian Criminal Code (KUHP) and involves the transfer of ownership to the government, lacks support from any recognized Islamic legal school (*Madhhab*). Second, the claims attributed to Imām Abū Yūsuf and later by Imām Ibn al-Qayyim regarding the permissibility of punitive fines according to the Mālikī, Ḥanafī, and one opinion within the Shāfi‘ī school are unsubstantiated and lack proper classification. A thorough examination of the authoritative texts of these schools shows no consistent support for these claims. Even if these opinions were assumed to be correct, the fines would only mean temporary withholding of property, not permanent confiscation or transfer of ownership. Third, the only opinion that interprets punitive fines as involving the transfer of ownership is the *fatwa* of Shaykh Abū al-Qāsim al-Burzulī, as

³⁹ Abu Dāūd Sulaimān bin Ishāq al-Azdī, *Sunan Abī Dāūd Hadits Ma‘a Syarhi ‘Aun al-Ma‘būd*, vol. 4 (India: Al-Anṣāriyyah, 1905), 238.

⁴⁰ al-Būṭī, *Muhādharāt Fī al-Fiqh al-Muqārīn*, 161.

cited by Shaykh Abū al-‘Abbās Aḥmad al-Shamā‘ in his work. However, this *fatwa* is explicitly restricted to situations of necessity or emergencies (ḍarūrah).⁴¹

2. Confiscation of Money Obtained from Punitive Fines in the Criminal Code from the Perspective of Islamic Jurisprudence

As previously mentioned, under the Indonesian Criminal Code (*KUHP*), money obtained from punitive fines is transferred to the State Treasury as national revenue. This means that the assets or funds paid by the convicted offender are confiscated and become government property.

From the perspective of Islamic jurisprudence (*fiqh*), the government possesses the authority and right to impose punishments for violations of the law and public order.⁴² Producers or distributors of illegal cigarettes, for instance, are considered to have breached societal regulations that affect public interest. The imposition of fines on such offenders is intended to deter them from repeating their actions and to educate them toward discipline. Moreover, the money obtained from these penalties can be utilized for public welfare, particularly to support the economy. However, Islamic law places the utmost emphasis on protecting individual rights and ownership. The Prophet Muhammad (peace and blessings be upon him) said in a ḥadīth narrated by Al-Bukhārī;

عَنْ أَبِي بَكْرَةَ أَنَّ النَّبِيَّ ﷺ قَالَ: فِي خُطْبَتِهِ يَوْمَ النَّحْرِ بَيِّنِي: إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ، كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا

Abū Bakrah (may Allah be pleased with him) said:

“The Prophet (peace and blessings be upon him) delivered a sermon before us on the Day of ‘Īd al-Adḥā at Minā, saying: “Indeed, your blood and your property are sacred among you, just as sacred as this day of yours, in this month of yours, in this land of yours” (HR. Bukhārī-Muslim).⁴³

This ḥadīth clearly shows that Islamic law, in formulating its legal rulings, upholds the noble principle of protecting both life and property. Therefore, even though the policy of imposing punitive fines (*pidana denda*) may appear beneficial, it seemingly contradicts the

⁴¹ asy-Syama‘, *Maṭāli‘ at-Tamām wa naṣā’ih al-‘anām wa manjāt al-khāwāṣ wa al-‘awam*, 13.

⁴² *Ibid.*

⁴³ Aḥmad bin ‘Alī Ibn Ḥajar al-‘Asqalānī, *Bulūgh al-Marām Min Adillat al-Aḥkām* (Saudi: Dār al-Qays, 2014), 245.

essence of prophetic teaching. Therefore, the transfer of ownership may only be executed through procedures explicitly sanctioned by legitimate textual evidence (*dalīl sharʿī*), which does not include the confiscation of wealth under the pretext of *taʿzīr* (disciplinary punishment). The opinion attributed to Imām Abū Yūsuf of the Ḥanafī school cannot be interpreted as permitting the transfer of ownership, as explained above. Likewise, the claims made by Imām Ibn al-Qayyim, which attribute the permissibility of punitive fines to the Mālikī, Ḥanafī, and Shāfiʿī schools, cannot be understood as allowing *taʿzīr* to confiscate property.

The only opinion that allows *taʿzīr* to involve the transfer of ownership is the *fatwa* of Shaykh Abū al-Qāsim al-Burzulī, as cited in the book *Maṭāliʿ al-Tamām*. However, this view carries a strict condition—that such a measure may only be applied in cases of urgent necessity or dire emergency (*ḍarūrah*).⁴⁴

3. Destruction by the Directorate General of Customs in Handling Cases of Illegal Cigarette Distribution

The mass destruction of assets belonging to offenders involved in the distribution of illegal cigarettes, as carried out by the Directorate General of Customs, lacks a clear legal basis in statutory regulations, based on available research. Article 42 of the Criminal Code (KUHP) refers only to *confiscation* (*perampasan*) and not destruction (*pemusnahan*). Likewise, Article 33 of Law No. 39 of 2007 outlines the authority of customs officials in paragraph (1): Even up to Article 40, there is no indication of authority to destroy confiscated assets “*Pejabat bea dan cukai berwenang mengambil tindakan yang diperlukan atas barang kena cukai dan/atau barang lainnya yang terkait dengan barang kena cukai berupa penghentian, pemeriksaan, penegahan, dan penyegelan untuk melaksanakan undang-undang ini.*” However, regardless of the absence of an explicit statutory basis, from the perspective of Islamic jurisprudence (*fiqh*), such destruction may fall under the category of *taʿzīr fī al-māl*—a disciplinary punishment involving the destruction of property or material directly related to a violation or that serves as a cause or means of committing the offense.⁴⁵

According to the Mālikī school, this form of punishment is permissible, as it is directed toward eliminating instruments of wrongdoing (*izālat mā kāna sabab al-maʿṣiyah*) and preventing future harm or transgression.

⁴⁴ asy-Syamaʿ, *Maṭāliʿ at-Tamām wa naṣāʾih al-ʿanām wa manjāt al-khawāṣ wa al-ʿawam*, 14.

⁴⁵ “Undang-Undang nomor 39 tahun 2007 tentang perubahan atas Undang-Undang nomor 11 tahun 1995 tentang Cukai.”

Imām Ibrāhīm ibn Mūsā al-Shāṭibī, in his seminal work *al-I'tiṣām*, affirms that within the Mālikī school, punishments involving the destruction of material objects connected to a criminal act (*ta'zīr fī al-māl*) are recognized as legitimate. He cites several illustrative cases to explain this legal principle—for instance, the spilling of milk belonging to a merchant who deliberately cheated in trade and the destruction of wine bottles when a Muslim was found purchasing them from a non-Muslim.⁴⁶ From such cases, it can be concluded that Mālikī scholars permit the implementation of *ta'zīr fī al-māl*. Nevertheless, it must be emphasized that this form of punishment applies strictly to material objects or commodities that serve as the direct cause or instrument of wrongdoing.⁴⁷

Implications of Islamic Jurisprudence on the Enforcement of Punitive Fines in Illegal Cigarette Distribution under Indonesian Law

The uncontrolled circulation of illegal cigarettes poses a significant threat to both the national economy and public health. Economic losses occur due to the decline in excise revenue and the shift of consumers from legal products to more affordable, illegal alternatives. According to data reported by Kosen (2018), Indonesia's macroeconomic loss due to smoking in 2015 alone reached nearly 600 trillion rupiahs, an amount four times greater than the total tobacco excise revenue received by the government that same year. This figure does not account for potential losses in subsequent years.⁴⁸ The economic impact is largely tied to the healthcare costs associated with addressing diseases caused by tobacco exposure. From a public health perspective, data from the 2023 Indonesian Health Survey (SKI) conducted by the Ministry of Health (KemenKes) indicates that approximately 70 million Indonesians are active smokers, with 7.4% of them being between the ages of 10 and 18. This alarming statistic provides strong evidence of a rising trend in premature deaths caused by tobacco use, from 190,260 deaths in 2010 to 240,618 deaths in 2013, not yet including increases in the following years.⁴⁹

Considering the wide-ranging harms caused by cigarette consumption, it is clear that not only the producers of illegal cigarettes deserve blame. Even legal cigarette manufacturers bear partial responsibility for the social and economic damages that arise. However, regardless of who should ultimately be held accountable, these circumstances provide a strong indication that Indonesia faces an urgent need to curb and fully regulate

⁴⁶ Ibrāhīm bin Musā asy-Syāṭibī, *Al-'Itiṣām*, vol. 2 (Saudi: Dār Ibn 'Affān, t.t.), 622.

⁴⁷ asy-Syama', *Maṭāli' at-Tamām wa naṣā'iḥ al-'anām wa manjāt al-khāwāṣ wa al-'awām*, 13.

⁴⁸ Soewarta Kosen, "Riset terbaru: kerugian ekonomi di balik konsumsi rokok di Indonesia hampir Rp. 600 triliun," 4 Januari 2018, <https://theconversation.com/rist-terbaru-kerugian-ekonomi-di-balik-konsumsi-rokok-di-indonesia-hampir-rp600-triliun-89089>.

⁴⁹ Dr. Siti Nadia Tarmizi, M.Epid, "Perokok Aktif di Indonesia Tembus 70 Juta Orang, Mayoritas Anak Muda," 29 Mei 2024, <https://kemkes.go.id/id/rilis-kesehatan/perokok-aktif-di-indonesia-tembus-70-juta-orang-mayoritas-anak-muda>.

cigarette circulation within public markets.⁵⁰ Driven by the necessity to minimize the economic and health impacts resulting from the rampant production and distribution of tobacco products, the government carries a critical responsibility to continuously monitor social dynamics and assess whether the current situation has reached a genuinely alarming stage. The latest data, as reported by Indodata (2021), revealed that 28% of smokers in Indonesia consume illegal cigarettes, causing an estimated state loss of around 53.18 trillion rupiahs. For comparison, in the same year, the Center for Indonesia Taxation Analysis (CITA) conducted a survey involving 1,000 respondents across Java Island and found that 5.9% were consumers of illegal cigarettes, with an estimated maximum annual loss of 14.1 trillion rupiahs. Furthermore, research from Gadjah Mada University (UGM) demonstrated a significant year-to-year increase in the proportion of illegal cigarette consumption, from 5.5% in 2022 to 6.9% in 2023. These statistics strongly indicate that the growth and spread of illegal cigarette distribution require serious legal attention to ensure stricter control and minimize further economic losses to the state.⁵¹

Islamic law in Indonesia is recognized as an essential component in the formation of national law and serves as a significantly influential source. Various cases demonstrate that Islamic law can function as a foundation and guideline for the social and legal dynamics of Indonesian society to achieve its objectives. From the perspective of Indonesian legal philosophy, the state's role is to protect every religion and its adherents by ensuring freedom of worship, providing supportive facilities, and maintaining harmony among religious communities. Therefore, religion must serve as the moral foundation of the nation. Consequently, any regulation or law that contradicts moral and religious principles must be set aside.⁵²

The legislation concerning monetary penalties (fines) may, from the standpoint of statutory law, have been tested and justified in terms of urgency and public benefit — for the sake of protecting social welfare and prosperity, as well as maintaining national stability in health and the economy. However, from the perspective of Islamic jurisprudence (fiqh), such a penal system, regardless of the offense, cannot be deemed valid. This is because fines imposed for the distribution of illegal cigarettes fall under the category of ta'zīr punishment

⁵⁰ N. Handayani, "A Long And Winding Road Of The Tobacco-Free Areas Implement Ation In Semarang," *Indonesian Journal of Health Administration* 11, no. 2 (2023): 242–51, <https://doi.org/10.20473/jaki.v11i2.2023.242-251>.

⁵¹ "Rokok Ilegal Kian Merajalela," Id, *Kompas* (blog), 11 September 2024, https://www.kompas.id/baca/investigasi/2024/09/04/rokok-ilegal-kian-merajalela?utm_source=link&utm_medium=shared&utm_campaign=tpd_-_website_traffic.

⁵² H. Megatsari, "Anti-Smoking Messages Versus Pro-Smoking Messages Among Indonesian Adolescent Smokers," *Indonesian Journal of Health Administration* 12, no. 1 (2024): 86–96, <https://doi.org/10.20473/JAKI.V12I1.2024.86-96>.

(discretionary penalties determined by the ruler). Although the determination of *ta'zīr* lies within the prerogative of the ruler for the purpose of public discipline and reform, it remains strictly limited by the Qur'an and Hadith and must not contradict their principles.⁵³ This differs from criminal offenses for which the Qur'an and Hadith explicitly prescribe financial penalties, such as expiation (*kafārah*), where the payment of wealth is directly mandated by the divine texts.

In the discipline of Islamic jurisprudence (*fiqh*), *maṣlaḥah* (public interest or benefit) holds an important role as a secondary source of consideration after *ijmā'* (consensus) and *qiyās* (analogical reasoning) in formulating legal rulings. However, any form of *maṣlaḥah* that contradicts the explicit texts (*naṣṣ*) of the Qur'an has no legal weight or influence in deriving rulings is not legally valid.⁵⁴ In other words, within the framework of legislation concerning monetary penalties (fines), one might argue that such laws benefit the continuity and welfare of society at large. Yet, on the other hand, the Qur'an explicitly prohibits anyone from taking another person's wealth or property through means not prescribed by the *Sharī'ah*.

Muḥammad ibn 'Alī al-Shawkānī, in his work *as-Sayl al-Jarrār al-Mutadaffiq 'alā Ḥadā'iq al-Azhār*, states that the sanctity of a Muslim's life, property, and rights has been firmly established by clear textual evidence of the *Sharī'ah*. This sanctity constitutes a fundamental legal principle that cannot be altered unless another valid textual proof explicitly permits such a change.⁵⁵ In essence, the prohibition against violating or seizing a Muslim's life, rights, or property is a fixed ruling (*ḥukm thābit*), clearly defined by the Qur'an and Sunnah, and cannot be overridden merely on the basis of perceived public interest (*maṣlaḥah*).

Regarding the implications of Islamic legal perspectives on the imposition of monetary penalties (fines) within the framework of Indonesia's criminal law—specifically regarding the circulation of illegal cigarettes—there are at least several important points of consideration derived from this study. *First*, according to the views of the four major schools of Islamic jurisprudence (*madhāhib*), a monetary penalty (*'uqūbah māliyyah*) cannot be understood as the transfer of ownership from the offender to the state. This is because the seizure of another person's wealth or property through *ta'zīr* (discretionary punishment)

⁵³ Maṣṣūr bin Yunus al-Buḥuṭī, *Kasyf al-Qinā' 'an Maṭn al-Iqnā'*, vol. 6 (Riyadh: Maktabah an-Naṣr, 1968), 446. Lihat juga Muḥamad bin Sulaiman al-Kurḍī, *Qurraṭ al-'Ayn Bi Fatāwā Sulaymān al-Kurḍī*, 96.

⁵⁴ Syekh Wahbah bin Muṣṭofa az-Zuḥailiy, *Al-Wajiz fī Uṣūl al-Fiqh al-Islāmī*, 2 ed., vol. 1 (Suriah: Dār al-Khoir, 2006), 256.

⁵⁵ Muḥamad bin Ali' Asy-Syaukānī, *as-Sayl al-Jarrār al-Mutadaffiq 'alā Ḥadā'iq al-Azhār*, 1 ed. (Lebanon: Dār Ibn Hazm, t.t.), 947.

has no established textual foundation (dalil) in the Islamic law. However, if such a measure becomes absolutely necessary due to urgent or emergency circumstances (*ḍarūrah*), then the imposition of fines may be deemed permissible as an exceptional ruling.

Second, in such emergency situations, the government must observe certain conditions and limitations, particularly by measuring the level of necessity in proportion to the situation.⁵⁶ This aligns with the established legal maxim (*qā'idah fiqhiyyah*):

مَا أُبِيحَ لِلضَّرُورَةِ يُقَدَّرُ بِقَدْرِهَا

"Something that is permitted due to necessity must be limited only to the extent of that necessity"

In this regard, the government must continually monitor and evaluate the level of need to address cases related to the circulation of illegal cigarettes, ensuring that the measures taken are targeted and proportional. Furthermore, the government must guarantee that the funds obtained from such penalties are genuinely distributed for the public's benefit.⁵⁷ *Wallāhu 'alam.*

CONCLUSION

The conclusions derived from the identification, study, research, and analysis of the legislation of monetary penalties for the circulation of illegal cigarettes from the perspective of Islamic jurisprudence (fiqh) are as follows:

1. The monetary penalty (fine) for illegal cigarette distribution, as stipulated in the Criminal Code (KUHP) and Law No. 39 of 2007 (an amendment to Law No. 11 of 1995), is categorized under *ta'zīr bi al-māl*, which means a punishment involving the seizure of property ownership. In the context of Islamic law, such a measure is not valid because it contradicts the Qur'an, except in cases of dire necessity (*ḍarūrah*).

Second, the confiscation and destruction carried out by the Directorate General of Customs and Excise in handling cases of illegal cigarette circulation fall under the category of *ta'zīr fī al-māl*, which is considered a legitimate form of punishment in accordance with the view of the Mālikī school.

2. The implications of Islamic legal perspectives on the monetary penalty legislation in Law No. 39 of 2007 on illegal cigarette circulation serve as a moral and legal control for the government in establishing such laws. *First*, monetary penalties may only be

⁵⁶ al-Kurdī, *Qurrat al-'Ayn bi Fatāwā Sulaymān al-Kurdī*, 96.

⁵⁷ asy-Syama', *Maṭāli' at-Tamām wa naṣā'iḥ al-'anām wa manjāt al-khawāṣ wa al-'awam*, 13.

legitimately imposed in cases of emergency; thus, the government must continuously observe and verify the urgency of implementing such criminal fines. *Second*, in cases of public emergency, the government must measure the degree of punishment proportionally, ensuring that any wealth or assets obtained are properly allocated to collective welfare and benefit.

REFERENCES

- Ad-Dasuqī, Muḥamad bin Aḥmad. *Ḥāsyiat ad-Dasuqī 'ala Syar hal-Kabir*. Vol. 4. 4 vol. Lebanon: Dār al-Fikr, t.t.
- Akmal ad-Dīn, Muḥamad bin Muḥamad. *Al-'Ināyah syarh Al-Hidāyah*. Vol. 5. Lebanon: Dār Fikr, 1970.
- An-Nasa'i, Abu 'Abdirrahman Aḥmad. *As-Sunan al-Kubrā*. Vol. 3. 12 vol. Bairut: Mu'assasah ar-Risālah, 2001.
- Asy-Syātibī, Abū Ishāq Ibrāhīm bin Musa. *Al-Muwāfaqāt*. Vol. 1. 4 vol. Kairo: Dār Ibnu 'Affān, 1997.
- Asy-Syaukāni, Muḥamad bin Ali'. *as-Sayl al-Jarrār al-Mutadaffiq 'alā Ḥadā'iq al-Azhār*. 1 ed. Lebanon: Dār Ibn Hazm, t.t.
- Azdī, Abu Dāud Sulaimān bin Ishāq al-. *Sunan Abi Dāud hadits ma'a Syarhi 'Aun al-Ma'būd*. Vol. 4. India: Al-Anṣāriyyah, 1905.
- Buhuṭi, Maṣṣur bin Yunus al-. *Kasyf al-Qinā' 'an Matn al-Iqnā'*. Vol. 6. Riyadh: Maktabah an-Naṣr, 1968.
- Buṭi, Syekh Muḥamad Sa'id Ramaḍān al-. *Muḥādḥarāt fī al-fiqh al-Muqārīn*. Lebanon: Dār al-Fikr, 1981.
- Direktorat Jendral Bea dan Cukai. "Lindungi Masyarakat, Bea Cukai Musnahkan Lebih Dari 7 Juta Batang Rokok Ilegal." Berita. Jakarta: Kementerian Keuangan, 2 November 2021. <https://www.beacukai.go.id/berita/lindungi-masyarakat-bea-cukai-musnahkan-lebih-dari-7-juta-batang-rokok-ilegal.html>.
- Dr. Siti Nadia Tarmizi, M.Epid. "Perokok Aktif di Indonesia Tembus 70 Juta Orang, Mayoritas Anak Muda," 29 Mei 2024. <https://kemkes.go.id/id/rilis-kesehatan/perokok-aktif-di-indonesia-tembus-70-juta-orang-mayoritas-anak-muda>.
- Hadi, Sutrisno. *Metodologi Research*. Yogyakarta: Fakultas Psikologi UGM, 1989.
- Handayani, N. "A Long And Winding Road Of The Tobacco-Free Areas Implementation In Semarang." *Indonesian Journal of Health Administration* 11, no. 2 (2023): 242–51. <https://doi.org/10.20473/jaki.v11i2.2023.242-251>.
- Ibnu Hajar al-Haitami, Aḥmad bin Muḥamad. *Tuhfaḥ al-Muḥtāj wā Hawāsyī asy-Syarwānī*. Vol. 6. Lebanon: Dār Ihya at-Turās, 1983.
- Ibnu Qayyim aj-Jauziyah, Muḥamad bin Abu Bakar. *aṭ-Ṭuruq al-Ḥukmiyyah fī as-Siyāsah asy-Syar'iyyah*. Saudi: Dār 'Alam al-Fawā'id, t.t.
- Ibnu 'Ābidīn, Muḥamad Amīn. *Ḥāsiyah Radd al-Muḥtār 'alā Dur al-Muḥtār*. Vol. 4. Lebanon: Dār Fikr, 1966.
- "Kitab Undang-Undang Hukum Pidana." Diakses 16 Juli 2024. https://jdih.go.id/files/843/KUH_Pidana.pdf.
- Kompas. "Rokok Ilegal Kian Merajalela." Id, 11 September 2024. https://www.kompas.id/baca/investigasi/2024/09/04/rokok-ilegal-kian-merajalela?utm_source=link&utm_medium=shared&utm_campaign=tpd_-website_traffic.
- Kosen, Soewarta. "Kerugian ekonomi dibalik konsumsi rokok Indonesia capai 600 triliun," 5 Januari 2018. <https://nationalgeographic.grid.id//read/13309141//kerugian-ekonomi-dibalik-konsumsi-rokok-indonesia-capai-600-miliar?page=1>.

- . “Riset terbaru: kerugian ekonomi di balik konsumsi rokok di Indonesia hampir Rp. 600 triliun,” 4 Januari 2018. <https://theconversation.com/rist-terbaru-kerugian-ekonomi-di-balik-konsumsi-rokok-di-indonesia-hampir-rp600-triliun-89089>.
- Kurdī, Muḥamad bin Sulaiman al-. *Qurrat al-‘Ayn bi Fatāwā Sulaymān al-Kurdī*. Dar Al-Farouk, t.t.
- Megatsari, H. “Anti-Smoking Messages Versus Pro-Smoking Messages Among Indonesian Adolescent Smokers.” *Indonesian Journal of Health Administration* 12, no. 1 (2024): 86–96. <https://doi.org/10.20473/JAKI.V12I1.2024.86-96>.
- Muḥamad bin Muḥamad Ḍiya’udīn. *Ma’ālim al-Qurbah fī Talab al-Hisbah*. Iran: Dār al-Funūn, t.t.
- Nanda Nugraha Ziar, dan M. Musa. “Penegakkan Hukum Pidana Terhadap Peredaran Rokok Ilegal Di Kantor wilayah Bea dan Cukai Tembilahan.” *Desiderata Law* 1 (2024): 1.
- Nawawī, Abū Zakariyā Muḥyiddhīn bin Syaraf an-. *Al-Majmū Syarḥ al-Muḥaḏab*. Vol. 5. 5 vol. Lebanon: Dār Fikr, t.t.
- Nuryunarsih, D. “Health Risks of Kretek Cigarettes: A Systematic Review.” *Nicotine and Tobacco Research* 23, no. 8 (2021): 1274–82. <https://doi.org/10.1093/ntr/ntab016>.
- Pratiwi Kusuma Wardani. “Konsumsi Rokok dibawah Ketentuan Harga: Peran Cukai dan Monitoring Harga Transaksi Pasar,” 2022. Fakultas Ekonomi dan Bisnis Universitas Indonesia.
- Ripsidasiona. “Perokok Dewasa di Indonesia Meningkatkan Dalam Sepuluh Tahun Terakhir,” 3 Juni 2022. <http://www.badankebijakan.kemkes.go.id/Perokok-dewasa-di-Indonesia-meningkat-dalam-sepuluh-tahun-terakhir>.
- Rokom. “Menkes ungkap dampak rokok terhadap Kesehatan dan ekonomi,” 31 Mei 2014. <https://sehatnegeriku.kemkes.go.id/baca/rilis-media/20140531/2710293/menkes-ungkap-dampak-rokok-terhadap-kesehatan-dan-ekonomi/>.
- Salim, dan Haidir. *Penelitian Pendidikan: Metode, Pendekatan dan Jenis*. Jakarta: Kencana, 2019.
- Salwa Nida. *Review of Kebijakan Pengenaan Pajak Rokok dalam Sistem Hukum di Indonesia dan Dampaknya Terhadap Pembangunan Ekonomi Nasional*, oleh Tri Hayati. Disunting oleh Simatupang. Jakarta: Fakultas Hukum Universitas Indonesia, 2024. Fakultas Hukum Universitas Indonesia. <https://lib.ui.ac.id/detail?id=9999920539845&lokasi=lokal>.
- Ṣāwī, Abū ‘Abbās Ahmad bin Muḥamad aṣ-. *Hasyiyat aṣ-Ṣāwī ‘alā Syarḥ aṣ-Ṣaghīr*. Vol. 4. Kairo: Dārul Ma‘ārif, t.t.
- Syama’, Abū ‘Abbas Ahmad asy-. *Maṭālī’ at-Tamām wa naṣā’ih al-‘anām wa manjāt al-khawāṣ wa al-‘awam*. Maroko: Wazārat al-Auqāf, 2003.
- Syathiri, Muḥamad Ahmad bin Umar asy-. *Syarḥ al-Yāqūt an-Nafīs*. Lebanon: Dār al-Minhāj, 2011.
- Syaṭibī, Ibrāhīm bin Musā asy-. *Al-‘Itiṣām*. Vol. 2. Saudi: Dār Ibn ‘Affān, t.t.
- “Terjemahan Kemenag 2019.” Kemenag, 2019.
- “Undang-Undang nomor 39 tahun 2007 tentang perubahan atas Undang-Undang nomor 11 tahun 1995 tentang Cukai.” Diakses 16 Juli 2024. <https://repository.beacukai.go.id/peraturan/2011/11/0424c68a258c-uu-11-tahun-1995.pdf>.
- Zuḥailiy, Syekh Wahbah bin Muṣṭafa az-. *al-Fiqh al-Islāmī*. Vol. 7. Lebanon: Dār Fikr, t.t.
- . *Al-Wajiz fī Uṣūl al-Fiqh al-Islāmī*. 2 ed. Vol. 1. 1 vol. Suriah: Dār al-Khoir, 2006.
- ‘Asqalānī, Aḥmad bin ‘Alī Ibn Ḥajar. *Bulūḡ al-Marām min Adillat al-Aḥkām*. Saudi: Dār al-Qays, 2014.

