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Policies on the Imposition of Excise Tax and Other Regulations Concerning Denatured Alcohol in Indonesia

(A Comparative Policy Study with the United States of America)

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Abstract

Ethyl alcohol tax can be one of the reliable state revenues. However, denatured ethyl alcohol is exempt from excise tax. This denaturation serves as a control so that it is not misused for the manufacture of illegal alcoholic beverages and to support industrial development as a raw material in the manufacture of final products. This study aims to analyze excise tax policies and other related regulations on denatured alcohol in Indonesia and the United States. The results of this study indicate that regulations regarding denatured alcohol have been regulated in various laws and regulations in Indonesia. However, when compared to the United States, denatured alcohol regulations are more comprehensive. There are at least 3 regulations that can be adopted by Indonesia by taking into account Indonesia's diverse needs and conditions, namely strengthening institutional aspects, define various types of denaturation which adapted to the industry needs, and the existence of facilities for submitting new formulas and the utilization of specially denatured alcohol. Through this regulatory adjustment, it is hoped that Indonesia will be able to attract investors whose business apply denatured alcohol in the manufacture of the finished goods to develop their businesses in Indonesia.

Keywords: Policy; Excise Tax; Denatured Alcohol; Indonesia; The United States of America

Introduction

Tax is one sector that contributes the largest revenue to the state. Until the end of June 2022, tax revenues reached IDR 868.3 trillion. It also recorded tax revenue growth of 55.7 percent with an achievement of 58.5 percent of the target set forth in Presidential Regulation (Perpres) Number 98 of 2022 (Public Relation of the Ministry of Finance, 2022). The Ministry of Finance (2022) further predicts tax revenue in 2023 will be IDR 2,016.9 trillion, of which the customs and excise will contribute IDR 301.8 trillion.

The increase in tax revenues are relied upon for the benefit of development and government spending. Furthermore, taxes have several functions, namely (1) the budgetary function, as a source of funds earmarked for financing government expenditures; and (2) the regulatory function, as a tool to regulate or implement policies in the social and economic fields, such as the imposition of higher taxes on liquor to suppress its distribution (Hardiningsih, 2011).

Through an increasingly global and competitive business, the government is expected to be able to make policy adjustments that can support economic growth and investment development (Investment Coordination Agency, 2020). With increased investment and the business sector running smoothly, it will have a positive impact on state revenues, especially the tax sector. In the end, this also has an impact on improving the quality of life for a prosperous, fair and wealthy society in accordance with the lofty ideals of the nation's founders (Sudjana, 2018).

In general, in economic transactions, there is a term known as customs. Customs is supervision of the traffic of goods entering or leaving the Customs area and the collection of custom tax/import duties. Based on the collection, issues on customs can be divided into 2 categories, namely (a) customs are state levy which imposed on either exported or imported commodities; and (b) excise tax is a state levy imposed on goods that have characteristics or criteria which have been regulated in the law. The limits of this nature are determined based on the needs to control the limit of consumption, the needs to monitor the circulation and distribution, the negative effects caused by the use/consumption of the goods in the society, the use of luxury goods, etc (Ananda, n.d; Anjarwi, 2021).

Based on the Presidential Regulation of the Republic of Indonesia Number 57 of 2020 concerning the Ministry of Finance, it regulates the oversight in the field of excise tax is under the authority of the Directorate General of Customs and Excise which is one of the directorates under the auspices of the Ministry of Finance. Article 4 paragraph (1) of the Law of the Republic of Indonesia Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise (hereinafter abbreviated as "Excise Law") states that there are 3 (three) types of excisable goods in Indonesia, namely: (a) Ethyl alcohol; (b) Beverages containing Ethyl Alcohol; and (c) Tobacco products. These excisable goods are subject to excise tax for their circulation.

In its usage, Ethyl Alcohol is not as popular as Tobacco Products and Beverages Containing Ethyl Alcohol (MMEA). Ethyl alcohol is more often used as a raw material or auxiliary material to make a final product. This has consequences for excise collection, where state revenue from ethyl alcohol excise is still lower than tobacco excise, which indeed contributes greatly to state revenue.

However, based on data on state revenue for 2020, Ethyl Alcohol Excise managed to grow 97% compared to 2019, which reached 241.79 billion Rupiah. However, in 2021 it decreased due to the Covid 19 pandemic. Ethyl Alcohol Excise Revenue from 2016 to February 2022 is illustrated in Table 1 below.

Table 1. Revenues of Ethyl Alcohol Excise Period 2016-2022 (Purwana & Sutartib, 2022)

| Year | Ethyl Alcohol Excise (Billion IDR) |
|--------------|------------------------------------|
| 2016 | 165.50 |
| 2017 | 150.00 |
| 2018 | 170.00 |
| 2019 | 158.21 |
| 2020 | 241.79 |
| 2021 | 110.65 |
| Jan-Feb 2022 | 21.95 |



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Apart from having a positive impact on state revenues, the imposition of excise duty on ethyl alcohol is deemed appropriate to limit public consumption because it poses negative effects to public health. With the development of science going forward, Ethyl Alcohol has great potential as an auxiliary material in various products which obviously is expected to continue to increase state revenues in the future (Directorate General of Customs and Excise, Ministry of Finance, 2021).

Based on the above background, this study aims to describe and analyze excise tax policies and other related regulations on denatured alcohol in Indonesia. Furthermore, the authors conducted a comparison with the United States, which has a more up-to-date and complete policies on denatured alcohol.

Research Method

This research is a normative legal research, especially to examine the provisions regarding denatured alcohol in Indonesia and the United States. The research approach in this study uses a statutory approach and a comparative approach.

Results and Discussion

1. Policy of Excise Imposition on Denatured Alcohol in Indonesia

Regulations on excise tax have a long history starting even before Indonesia's independence. The Dutch colonial government had regulated excise tax since around 1886, in which there were 5 types of goods which became excise objects, namely: (1) Kerosene, based on Ordonnatie van 27 December 1886, Stbl. 1886 No. 249 and Ordonnantie van 11 May 1908 stbl. 1908 Number 361.; (2) Distilled Alcohol, according to Ordonnantie van 27 February 1898, Stbl. 1898 No. 90 en 92 and Ordonnantie van 10 July 1923 stbl. 1923 Number 344; (3) Beer, based on the Bie Accijns Ordonnantie, Stbl. 1931 Number 488 en 489; (4) Tobacco, based on Tabacs Accijns Ordonnantie, Stbl. 1932 Number 517; and (5) Sugar, based on Suiker Accijns Ordonnantie, Stbl. 1933 Number 351 (Anjarwi, 2021).

The change in these colonial era regulations was later repealed with the issuance of Law Number 11 of 1995 concerning Excise. In this law, the object of excise tax has changed to only 3 types, namely ethyl alcohol, beverages containing ethyl alcohol (MMEA), and tobacco products. Sugar and kerosene are excluded as objects of excise tax because they are considered to be a public need that can burden the community if excise is imposed. Currently, Law Number 11 of 1995 has been amended by Law Number 39 of 2007. Article 2 paragraph (1) of the Excise Law states that in Indonesia excise is imposed on certain goods which have the following characteristics or conditions:

- 1) The consumption need to be controlled;
- 2) The circulation need to be monitored;
- 3) The usage poses threats or negative impact to the community or the environment; and
- 4) The usage need to be imposed with state levy for the sake of justice and fairness.

Interestingly, regarding the regulations on distilled alcohol, if observed closely at Article 5 Staatsblad 1934 Number 665, there has been regulation regarding the granting of excise facilities for refined alcohol which had been tampered with so that it is no longer edible for consumption.

In principle, ethyl alcohol as an object of excise must be subject to excise tax. The current excise value for ethyl alcohol is IDR 20,000.00/liter. However, Article 9 paragraph (2) of the Excise Law explains that excise tax can be waived if ethyl alcohol is damaged so that it is no longer edible for

consumption. The purpose of this destruction function is intended for supervision, so that the ethyl alcohol will not be misused to (for example) be made into alcoholic beverages, or even illegal alcoholic beverages. In principle, excise exemption facilities can be given in relation to support the growth or development of industries that use excisable goods as raw or auxiliary materials in the manufacture of the final product which is not an excisable object, both for export purposes and for domestic market (Safarina, 2021). This has been stated in the Elucidation of Article 9 paragraph (1) letter (a) of the Excise Law. Further provisions regarding excise exemption are regulated by a Ministerial Regulation.

Specifically, supervision in the field of excise tax is under the authority of the Directorate General of Customs and Excise which is one of the directorates under the auspices of the Ministry of Finance. Provisions regarding excise exemption itself are regulated in the Regulation of the Minister of Finance Number 109/PMK.04/2010 concerning Procedures for Excise Exemption as last amended by Regulation of the Minister of Finance Number 172/PMK.04/2019 (hereinafter referred to as PMK on Excise Exemption). In Part One of the PMK on Excise Exemption it is explained that excise exemption facilities can be granted to entrepreneurs who use ethyl alcohol as a raw material or auxiliary material to produce final product which is not included as excisable goods.

Furthermore, in Article 5 paragraph (1) and paragraph (3) of PMK on Excise Exemption, it is stated that ethyl alcohol that obtains excise exemption facilities must be mixed with certain mixing materials so that it will be unfit for consumption purpose, but still suitable to be used in the manufacture of other final product, except if the final product is in the form of food, beverage or medicine or which technically cannot use ethyl alcohol to be mixed with certain mixing ingredients. Thus, in principle, the ethyl alcohol excise exemption facility can be given to users if the ethyl alcohol has been mixed or damaged, except if based on technical reasons, ethyl alcohol which uses admixtures cannot be used.

To obtain ethyl alcohol excise exemption facility, the user must submit an application. The requirements for users of ethyl alcohol who apply for excise exemption facilities based on the PMK on Excise Exemption are as follows:

- 1) Manufacturer of a Final Product which are not subject to Excise (Non Excisable Final Product Manufacturer) submit a letter of application for site and building inspection (enclosed with at least a copy of the industrial business permit from the Ministry of Industry of Investment Coordination Agency, a picture of the site or building plan where the Non Excisable Final Product business is located, and description regarding the production process flow and the use of ethyl alcohol in the manufacture process of the Non Excisable Final Product) to the Customs and Excise Supervision and Service Office (KPPBC) which supervises it;
- 2) An order letter from the manufacturer of Non Excisable Final Product (affixed with a IDR10,000 stamp duty) attached with Minutes for Site Inspection and Production Plan and the volume of Ethyl Alcohol for which excise exemption is requested;
- 3) Submission of the PMCK-2 Form from the Supplier (affixed with IDR10,000 stamp duty);
- 4) Copy of Industrial Business Permit from the Ministry of Industry, Trade and/or Ministry of Health, or Investment Coordination Agency for the manufacturer of Non Excisable Final Product which legalized by an official from the relevant agency;
- 5) Copy of Taxpayer Registration Number;
- 6) Copy Trade Business License (SIUP) and Certificate of Company Registration (TDP);
- 7) Copy of notarial deed regarding business establishment, amendments and validation in case of the manufacturer of the Non Excisable Final Products is a legal entity;
- 8) Copy of Building Establishment Permit (IMB) and Environmental Disturbance Permit;
- 9) Drawings/plans of factory site and locations for alcohol storage;



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- 10) Description of the production process flow and the use of ethyl alcohol in the manufacture process of the Non Excisable Final Product; and
- 11) Samples of the manufactured Non Excisable Final Product.

Furthermore, provisions regarding ethyl alcohol admixture are regulated in Regulation of the Director General of Customs and Excise Number PER-53/BC/2012 concerning Procedures for Mixing and Impairing Ethyl Alcohol that Obtain Excise Exemption, which was later amended by Regulation of the Director General of Customs and Excise Number PER -37/BC/2014 and lastly amended by Regulation of the Director General of Customs and Excise Number PER-17/BC/2018 (hereinafter referred to as PerDirjen on Mixing). In this provision, the last rules on mixing materials are as follows:

- a. Bitrex (Benzyldiethyl Ammonium Benzoate), with a formula for making 1,000 liters of ethyl alcohol, 1,000 liters of ethyl alcohol mixed with 20cc of bitrex mixture which has been dissolved or with the ratio of that number. The end result is called Special Denature Alcohol Bitrex 6 ppm (SDA BIT 6);
- b. Isopropyl Alcohol (IPA), with a formula to make 1,000 liters of ethyl alcohol, 950 liters of ethyl alcohol mixed with 50 liters of Isopropyl Alcohol or with the ratio of these numbers. The end result is called Special Denature Alcohol Isopropyl Alcohol 5% (SDA IPA 5);
- c. Ethyl Acetate (EAC), with a formula for making 1,000 liters of ethyl alcohol, 980 liters of ethyl alcohol mixed with 20 liters of Ethyl Acetate or with the ratio of that number. The end result is called Special Denature Alcohol Ethyl Acetate 2% (SDA EAC 2);
- d. Mineral Fuel, with a formula of at least 5% Mineral Fuel (Premium or any kind) to the volume of the final mixture. The end result is called Fuel Denatured Ethyl Alcohol.

Apart from the above mixture, there is also the term impairing, namely ethyl alcohol which impaired into rubbing alcohol, with the formula 400 liters of methanol mixed with 96 grams of blue or violet colored material, then mixed with 160 liters of kerosene (kerosene) and becomes 560 liters impairing agent, then the impairing formulation is 80 liters of 50% ethyl alcohol mixed with 1.4 liters of impairing agent.

Based on the latest data sourced from the Directorate General of Customs and Excise (2022), it is stated that the most widely used SDA is SDA BIT 6 of 54%, then SDA IPA 5 of 19%, SDA EAC 2 of 2%, and the last is the undenatured Ethyl Alcohol which score as much as 25%. SDA BIT 6 is widely used for cosmetics and household health supply, chemicals, pesticides, external medicine, and others. SDA IPA 5 is widely used to produce cosmetics and household health supply, coatings, inks, paints, thinners, and others. SDA EAC 2 is widely used for ink manufacturing. As for the undenatured ethyl alcohol, it is widely used for the manufacture of medicines, food, chemicals, bottle washing products and baby antiseptics, and others.

2. Policy on the Imposition of Excise Tax on Denatured Alcohol in the United States of America

The United States has well-established regulations and institutions governing denatured alcohol. Institutionally, the agency in charge of alcohol, particularly in its circulation and utilization as well as the imposition of excise tax, that is the Alcohol and Tobacco Tax and Trade Bureau (TTB) under the auspice of Department of the Treasury. Previously, the one handling alcohol control in the United States was the Bureau of Alcohol, Tobacco and Firearms (ATF). However, since President Bush enacted the Homeland Security Act in 2002, the ATF was split into 2 (two) institutions, namely the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) under the Department of Justice and the Alcohol and Tobacco Tax and Trade Bureau (TTB) under the Department of Treasury (Libertucci, 2003). The ATF under the Department of Justice focuses more on monitoring acts of violence and crime, as well as the smuggling of



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alcohol, tobacco, firearms and explosives (Justice Department of United States of America, n.d.). Meanwhile, TTB, as its name implies, focuses more on trade regulation and collection of excise taxes from alcohol and tobacco.

In its circulation in the United States, the undenatured Alcohol is subject to excise tax. The excise tax is charged at USD 13.50 per proof gallons. If observed closely at the Code of Federal Regulations Title 27 Part 20 (27 CFR 20), what is meant by proof gallons is "a gallon at 60° Fahrenheit which contains 50% by volume of ethyl alcohol having specific gravity of 0,8939 at 60° Fahrenheit referred to water at 60° Fahrenheit as unity, or the alcoholic equivalent thereof". Gallon itself is a measure equal to a volume of 231 cubic inches or equivalent to 3.785411784 liters (Butcher, et.al., 2017).

Interestingly, denatured alcohol in the United States is divided into 2 (two), namely Completely Denatured Alcohol and Specially Denatured Alcohol. The TTB website explains that Specially Denatured Alcohol (SDA) is "alcohol to which denaturing materials have been added. Manufacturers may use SDA in the manufacture of any product that is not intended for consumption. Generally, SDA is used in cosmetic products but its use extends to pharmaceuticals, chemical manufacturing, and products where SDA is the solvent or reactant". Whereas, Completely Denatured Alcohol (CDA) is defined as "alcohol that has been so thoroughly denatured that the product is utterly unfit for beverage use, and the denaturants used are very nearly inseparable from the alcohol. The use of CDA is authorized without permit restrictions because of the reduced risk that the pure alcohol can be extracted and diverted to beverage use" (Alcohol and Tabacco Tax and Trade Bureau of US Department of the Treasury, 2019). It is clear that CDA is "heavier" than SDA in terms of admixture, so that in its utilization CDA does not require certain permit restrictions because it has a lower risk compared to SDA. SDA itself in its use must submit an application for alcohol user permit for industry to TTB. The denatured alcohol is not subject to excise tax by TTB.

Despite of the existing several types of denatured alcohol that have been approved by TTB, any interested party may submit a petition to TTB for approval of a new general use formula by sending a letter explaining the proposed general use formula to the appointed TTB officer.

3. Comparison of Policy on Denatured Alcohol in Indonesia and the United States of America: What We Can Learn?

There are some fundamental differences in the rules regarding denatured alcohol between Indonesia and the United States. First, in the United States, government agency that handles ethyl alcohol is divided into 2 (two) bureaus, namely the Alcohol Tobacco Tax and Trade Bureau (TTB) and the Alcohol Tobacco Firearms and Explosives Bureau (ATF). TTB is under the auspice of the Ministry of Finance, while ATF is under the auspice of the Ministry of Justice. ATF's authority is more on law enforcement related to criminal acts committed related to the abuse of alcohol, tobacco, firearms and explosives, along with the smuggling. The authority of TTB is more to the mechanism of excise collection and the mechanism of excise exemption, especially for its utilization in industry. Meanwhile in Indonesia, the mechanism for excise collection, excise exemption, and even criminal acts in the field of excise tax is held under the authority of the Directorate General of Customs and Excise which is under the auspices of the Ministry of Finance. The second is the types of admixtures for denatured alcohol. In Indonesia there are 4 types of denatured alcohol, namely SDA BIT 6, SDA IPA 5, SDA EAC 2, and Fuel Denatured Ethyl Alcohol. Besides that, there is also the impaired type, which is ethyl alcohol that being impaired into rubbing alcohol. While in the United States there are dozens of types of denaturation, where the most common types of denaturants can be found, for example are including methanol, isoprophyl alcohol, acetone, methyl ethyl ketone, and others. Third, the provisions in the United States allow parties who wish to submit new formulas for general use to the authorities. In addition, in the United States, the use of Specially Denatured Alcohol has been regulated and its application has been determined for each formula, while in Indonesia even until today it has not yet been regulated up to the application of each formula. Furthermore, summary on the comparison of policies on denatured alcohol in Indonesia and the United States is presented in Table 2 below.

Table 2. Summary of Comparison of Policies on Denatured Alcohol in Indonesia and the United States

| Categories | The United States | Indonesia |
|--------------------------|---------------------------------------|------------------------------------|
| Institutions | 1. Alcohol Tobacco Tax and Trade | Directorate General of Customs and |
| | Bureau, Ministry of Finance | Excise, Ministry of Finance |
| | 2. Alcohol Tobacco Firearms and | |
| | Explosives Bureau, Ministry of | |
| | Justice | |
| Admixtures of | There are many kinds of denatured, | There are 4 types of denatured |
| Denatured Alcohol | such as methanol, isoprophyl alcohol, | alcohol: SDA BIT 6, SDA IPA 5, |
| | acetone, methyl ethyl ketone, and | SDA EAC 2, and Fuel Denatured |
| | many others | Ethyl Alcohol |
| Application for new | Regulated | Not Regulated |
| formula and the | | |
| utilization of Specially | | |
| Denatured Alcohol | | |

Sources: Authors Analysis

When viewed using the theory of legal certainty, both in Indonesia and in the United States there is legal certainty regarding denatured alcohol provisions. Both Indonesia and the United States have their own procedures governing denatured alcohol. However, there are a number of issues we can learn from denatured alcohol laws in the United States. With a more advanced industry in the United States, the mixing materials needed by the industry are also increasing following the needs and the utilization has been determined based on the existing needs. As going with the times and the increase in the Indonesian economy, Indonesia must also be able to anticipate this kind of condition. It can be done with more comprehensive arrangements regarding denatured alcohol which tailored according to market needs. For example, in the United States, there has been regulation for denatured alcohol to be used as alcohol reagents, where to make an alcohol reagent, 95 (ninety-five) parts of Specially Denatured Alcohol with formula 3-A are required, which then mixed with 5 (five) parts of isopropyl alcohol with added water as needed. In Indonesia, this formulation has not been regulated, whereas if it has been regulated it could potentially attract investors both from within and outside the country to produce alcohol reagents in Indonesia and these products can be distributed for markets both in Indonesia and even being exported.

Conclusion

Ethyl Alcohol is one source of state revenue from excise tax that bears great potential. However, there is a policy that regulate tax exemption to denatured alcohol. Denatured alcohol is expected to be more beneficial as an industrial raw material. Indonesia already has clear and detailed rules regarding denatured alcohol. However, when compared to denatured alcohol policies in the United States, the regulations could be more comprehensive, both from the institutional perspective, the various types of denaturated alcohol tailored to industrial needs, and the existence of facilities for submitting new formulas and using specially denatured alcohol. Indonesia is expected to adopt a more comprehensive regulation on denatured alcohol that can attract investors to come to Indonesia to develop their businesses that utilize denatured alcohol in the manufacture of final product. However, this regulation change still has to pay attention to the diverse needs and conditions of Indonesia.

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