

THE CIRCULATION OF ILLEGAL CIGARETTES IN INDONESIA IN THE PERSPECTIVE OF THE WELFARE STATE AND *MAQASHID SHARIA*

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Abstract

The state is an organization of political power. The purpose of the state is to create and distribute happiness to society. The welfare state is a system that gives a large role to the state to ensure the fulfillment of the basic needs of society. *Maqashid Sharia* is the purpose of Islamic law. Among them are rejecting *mafsadat* and attracting *maslahat*. Cigarettes are anything whose processing is based on tobacco-based-material and the process of using it using suction. Illegal cigarettes are not in accordance with the legislation. One of those does not pay taxes and excise. This research is normative. It is using a statutory and conceptual approach. This type of research is qualitative. The results showed that illegal cigarettes in the view of *Maqashid Sharia* are *haram*, because the *mafsadat* is more than the *maslahat*. The tax law according to *Maqashid Sharia* is obligatory because the *mafsadat* is greater than the *maslahat* if there is no tax payment system. The disobedience of producers in paying taxes and excise on cigarettes is due to the high cost of taxes and excise. The state must reduce the cost of taxes and excise because the state's intention in making taxes and excise expensive to reduce cigarette consumption is not effective. The state experiences losses with the presence of illegal cigarettes so that the state is not maximized in receiving revenue. Because of the lack of revenue, the state cannot fulfill the requirements of a welfare state.

Key Words: *Maqashid Sharia*, Welfare State, Illegal Cigarettes

Introduction

Article 1 point 1 of Law Number 39 of 2007 Concerning the Amendment to Law Number 11 of 1995 Concerning Excise "Excise is a state levy imposed on certain goods that have the properties or characteristics stipulated in this law". Article 2 of Law Number 39 of 2007 "The criteria for goods subject to excise are that their consumption needs to be controlled, their circulation needs to be monitored, their use can hurt society or the environment, and their use requires the imposition of state levies for the sake of justice and balance".

The classification of certain goods that are excisable goods is regulated in Article 4 paragraph (1) of Law Number 11 Year 1995 on Excise as follows:

- a. Ethyl Alcohol or Ethanol
- b. Drinks Containing Ethyl Alcohol
- c. Tobacco Products, which include: cigarettes, cigars, leaf cigarettes, sliced tobacco, and other tobacco management products.

Article 1 point 3 of Government Regulation of the Republic of Indonesia Number 109 of 2012 concerning the Safety of Materials Containing Addictive Substances in the Form of Tobacco Products for Health "Cigarettes are one of the tobacco products intended to be burned and smoked and/or inhaled smoke, including clove cigarettes, white cigarettes, cigars or other forms produced from nicotiana tabacum plants, nicotiana rustica, and other species or synthetics whose smoke contains nicotine and tar, with or without additives".

The circulation of illegal cigarettes is not small in Indonesia, both local and imported. This indicates that the illegal cigarette business in Indonesia is still promising¹. On the other hand, people also feel helped by the existence of illegal cigarettes for economic reasons².

Indonesia is predominantly Muslim³. In Islam, there is a separate law known as Islamic law (*Sharia*)⁴. That way people who are Muslims refer to two laws, namely religious law and state product law⁵. In Islamic law regarding taxes and cigarettes, there are differences of opinion among the ulama. Some say the law of smoking and taxes are haram.

On the other hand, cigarettes and taxes are closely related to state revenues for financing state activities. So it is important to study from the perspective of Islamic law, especially *Maqashid Sharia*. So that there is no conflict between Islamic law and state product law.

Cigarettes are the biggest tax contributor to the state⁶. In the concept of a welfare state, the state is at least able to provide guarantees for the basic needs of society, such as health and education⁷. To be able to guarantee that the funding is taken from taxes⁸, while with the circulation of illegal cigarettes, the state is disadvantaged, especially not maximizing state tax revenues⁹, thus reducing the state's ability to provide guarantees for the basic needs of society. Therefore, illegal cigarettes have two impacts, namely positive and negative. The positive side is seen from the perspective of the community while the negative side is seen from the side of the state. So it is necessary to study how the solution is mutually beneficial to the community and the state. This study aims to answer; what is the law on illegal cigarettes both in Islamic

¹ <https://www.detik.com/jatim/hukum-dan-kriminal/d-7477921/73-juta-batang-rokok-ilegal-dari-uni-emirat-arab-diamankan-beacukai#:~:text=Pihak%20Bea%20Cukai%20Tanjung%20Perak,ditimbun%20di%20Tempat%20Penimbunan%20Sementara.>

² Warit Aziz and Indah Cahyani, "Problematisasi Rokok Ilegal Tanpa Pita Cukai Dalam Perspektif Law of Demand Dan Undang-Undang Nomor 39 Tahun 2007 Tentang Cukai," *Inicio Legis* 4, no. 1 (2023): 62–75, <https://doi.org/10.21107/il.v4i1.19169>.

³ Muhammad Anwar Fathoni, "Potret Industri Halal Indonesia: Peluang Dan Tantangan," *Jurnal Ilmiah Ekonomi Islam* 6, no. 3 (2020): 428, <https://doi.org/10.29040/jiei.v6i3.1146>.

⁴ Zaidah Nur Rosidah and Layyin Mahfiana, "Efektivitas Penerapan Prinsip-Prinsip Syariah Dalam Penyelesaian Sengketa Ekonomi Syariah Di Badan Arbitrase Syariah Nasional (Basyarnas)," *TAWAZUN : Journal of Sharia Economic Law* 3, no. 1 (2020): 15, <https://doi.org/10.21043/tawazun.v3i1.7529>.

⁵ Dedy Sumardi, "Islam, Pluralisme Hukum Dan Refleksi Masyarakat Homogen," *Asy-Syirah Jurnal Ilmu Syaria'ah Dan Hukum* 50, no. 2 (2016): 481–504, <https://doi.org/10.14421/ajish.v50i2.240>.

⁶ <https://www.cnbcindonesia.com/research/20231117183712-128-490002/triliunan-rupiah-dalam-sebatang-rokok#:~:text=Beban%20perpajakan%20dalam%20sebatang%20rokok&text=Kontribusi%20cukai%20ini%20jauh%20lebih,73%25%20dari%20penjualan%20bersih%20perusahaan.>

⁷ Sindi Fitria and Tundjung Herning Sitabuana, "Penerapan Konsep Welfare State Dalam Penyelenggaraan Pelayanan Publik Di Indonesia," *Jurnal Hukum Adigama* 4, no. 2 (2021): 51–72.

⁸ Fikri Ardiansyah Pulungan et al., "Peranan Penerimaan Negara Bukan Pajak Dalam Pendapatan Dan Belanja Negara," *MANTAP: Journal of Management Accounting, Tax and Production* 2, no. 1 (2024): 169–76, <https://doi.org/10.57235/mantap.v2i1.1599>.

⁹ Fikri Ardiansyah Pulungan et al., "Peranan Penerimaan Negara Bukan Pajak Dalam Pendapatan Dan Belanja Negara," *MANTAP: Journal of Management Accounting, Tax and Production* 2, no. 1 (2024): 169–76, <https://doi.org/10.57235/mantap.v2i1.1599>.

law and state product law. What is the law of taxation in Islamic law? What is the solution to prevent or reduce illegal cigarettes?

Research Methods

In legal research, there are two forms of research, namely normative legal research and empirical legal research. In terms of legal research, until now there has been a debate that in legal research there is no such thing as empirical legal research, because what is called researching the law is the same as researching norms.

While on the other hand, experts who argue that in legal research there is such a thing as empirical research on the basis of the argument that law is not only a matter of norms, but when discussing law will also be related to humans themselves. The law exists not for the law itself but the law is solely addressed to humans. So that humans cannot be separated from legal research.

On the third side, there are experts who stand in the middle position, accepting both forms of research on the basis of the argument that indeed the law has two dimensions, namely the dimension of the norm and the dimension of the application of the norm. These two forms of research complement each other in an effort to create good law.

Legal research is conducted to solve legal problems. In the perspective of normative legal research, there are only three legal problems, namely norm conflicts, unclear norms and legal vacuum. While in the perspective of empirical legal research, it does not discuss legal problems, but what is discussed is a question of whether a law is effective or not in a certain place.

A research is conducted to seek and achieve the truth. The benchmark of truth in legal research is not the same between normative and empirical legal research. In simple terms, there are three benchmarks of truth, namely correspondence, coherence and pragmatism.

A premise is said to be true if it is in accordance with existing facts or data. This is a form of correspondence truth. A premise is true if it does not contradict the laws of logic. This is called correspondence truth. A thing is said to be true if it is useful. This is called pragmatic truth.

In normative legal research, the measure of truth uses coherence truth. Meanwhile, empirical legal research uses the correspondence truth benchmark. So that in empirical research law must be based on facts or data in the field. In this article, the author uses normative legal research methods.

This research uses normative legal research methods. The sources taken are primary legal sources, namely laws and regulations, and secondary legal sources such as books, legal dictionaries, and journals. The approaches used are the statute approach and conceptual approach¹⁰. This type of research is qualitative research¹¹.

¹⁰ Marsuki peter mahmud, *Penelitian Hukum*, 12th ed. (jakarta: Prenadamedia Group, 2016).

¹¹ Sulistyowati Irianto, "Metode Penelitian Kualitatif Dalam Metodologi Penelitian Ilmu Hukum," *Jurnal Hukum & Pembangunan* 32, no. 2 (2017): 155, <https://doi.org/10.21143/jhp.vol32.no2.1339>.

Result and Discussion

Concept of Welfare State

The state is an organization of political power¹². The state is an instrument of society that is given the power by society to regulate people's lives, including providing physical and mental security and tranquility¹³. The purpose of the state is to create and distribute happiness to society¹⁴.

At least experts provide four definitions¹⁵;

1. Welfare condition. It is a condition of fulfillment of needs such as security, and basic needs such as nutrition, health, education, housing, and income.
2. Social services from the state. In the UK, Australia, and New Zealand, social services take five forms: social security, health care, education, housing, and personal social services.
3. Social benefits from the state, usually to the poor, disabled, and unemployed, as in the United States.
4. Efforts by both the private sector and the state to improve the quality of life

According to Jeremy Bentham, the state is considered successful if it can create and distribute happiness to as many people as possible¹⁶. A welfare state can be defined as a social welfare system that gives a greater role to the state to allocate a portion of public funds to ensure the fulfillment of the basic needs of its citizens¹⁷. The welfare state refers to the active role of the state in managing and organizing the economy, which includes the responsibility of the state to ensure a certain level of basic welfare services for its citizens¹⁸.

There are at least four models practiced by countries¹⁹.

1. Universal Model. Social services are provided by the state regardless of social status
2. Corporate Model. This model has similarities with the first model but also has differences. The similarity is that both cover all citizens, while the difference is that the service provider is not only the state but also the private sector.
3. Residual Model. This model is the opposite of the universal model. The state only provides coverage to disadvantaged citizens. The context of disadvantage includes financial disadvantages such as poverty as well as physical disadvantages such as the disabled and social disadvantages such as the elderly.

¹² Alexander Wendt, "The State as Person in International Theory," *Review of International Studies* 30, no. 2 (2004): 289–316, <https://doi.org/10.1017/S0260210504006084>.

¹³ Negara Hukum and D A N Ham, "Negara Hukum, Demokrasi, Dan Ham," *Al Qisthas: Jurnal Hukum Dan Politik* 11, no. 1 (2020): 13–48, <https://doi.org/10.37035/alqisthas.v11i1.3312>.

¹⁴ Kendry Tan and Hari Sutra Disemadi, "Politik Hukum Pembentukan Hukum Yang Responsif Dalam Mewujudkan Tujuan Negara Indonesia," *Jurnal Meta-Yuridis* 5, no. 1 (2022): 60–72, <https://doi.org/10.26877/m-y.v5i1.8803>.

¹⁵ Mochamad Riyanto and Vitalina Kovalenko, "Partisipasi Masyarakat Menuju Negara Kesejahteraan: Memahami Pentingnya Peran Aktif Masyarakat Dalam Mewujudkan Kesejahteraan Bersama," *Jurnal Pembangunan Hukum Indonesia* 5, no. 2 (2023): 374–88, <https://doi.org/10.14710/jphi.v5i2.374-388>.

¹⁶ Ahmad Dahlan and Santosa 'Irfaan, "Mengagas Negara Kesejahteraan," *El-Jizya : Jurnal Ekonomi Islam* 2, no. 1 (2014): 1–22, <https://doi.org/10.24090/ej.v2i1.2014.pp1-22>.

¹⁷ Muslim Mufti, "Analisis Kritis Terhadap Sektor Pertanian Di Indonesia Dalam Negara Kesejahteraan," *Jispo* 1, no. 1 (2016): 38, <https://doi.org/10.15575/jispo.v1i1.713>.

¹⁸ Lismanto Lismanto and Yos Johan Utama, "Membumikan Instrumen Hukum Administrasi Negara Sebagai Alat Mewujudkan Kesejahteraan Sosial Dalam Perspektif Negara Demokrasi," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 416–33, <https://doi.org/10.14710/jphi.v2i3.416-433>.

¹⁹ Oman Sukmana, "Konsep Dan Desain Negara Kesejahteraan (Welfare State)," *Jurnal Sosial Politik* 2, no. 1 (2017): 103, <https://doi.org/10.22219/sospol.v2i1.4759>.

4. Minimal Model, this model is almost the same as the residual model but is more stringent than the minimal model. In the minimal model, the state provides the minimum possible social services, both the minimum possible recipients and the minimum possible state expenditure. For example, only state employees receive social services.

Benchmarks of welfare are seen from population, health, education, labor, income²⁰. When talking about health in the context of smoking, it is very related, because every talk about smoking is always connoted with a negative impact on health²¹.

To improve the level of public health, the state must reduce everything harmful to health, especially cigarettes. It is therefore imperative for the state to minimize as much as possible so that people do not consume cigarettes to achieve a high level of welfare.

The Relation of Welfare State and Tax

Taxes are at the heart of a country²². The government has made various efforts to increase government revenue, such as increasing certain tax rates, one of which is on cigarettes²³. Excise and tax of cigarette plays an important role in increasing government revenue. The provincial government also has the right to levy taxes. Article 2(1)(e) states that the cigarette tax is one of five types of taxes that may be levied by the provincial government.

In Minister of Finance Regulation No. 222/PMK/0.7/2017 on the Use, Monitoring, and Evaluation of Tobacco Excise Revenue Sharing, the allocation for health insurance is 50% of the DBH-CHT allocation received by each tobacco-producing-region.

Without money, the state cannot provide excellent services to the community. So taxes and the welfare state are two things that cannot be separated²⁴. So when talking about illegal cigarettes, there are two negative sides, namely to health and state finances²⁵.

Concept of *Maqashid Syariah*

Maqashid sharia emerged as a new objects in the study of Islamic Law²⁶. Etymologically, *Maqashid* means intent or purpose, *Maqashid* means things that are desired and intended. Meanwhile, *Sharia* means the law brought by Islam. The combination of these two words into *maqashid sharia*, broadly speaking, means the objectives of Islamic Law²⁷.

²⁰ Marsudi Dedi Putra, "Negara Kesejahteraan (Welfare State) Dalam Perspektif Pancasila," *LIKHITAPRAJNA Jurnal Ilmiah* 23, no. 2 (2021): 144.

²¹ Yobert N. Runturumbi, Wulan P.J. Kaunang, and Jeini Ester Nelwan, "Hubungan Kebiasaan Merokok Dengan Kejadian Hipertensi," *Jurnal KESMAS* 8, no. 7 (2019): 314–18.

²² FC. Susila Adiyanta, "Fleksibilitas Pajak Sebagai Instrumen Kebijaksanaan Fiskal Untuk Mengantisipasi Krisis Ekonomi Sebagai Akibat Dampak Pandemi Covid-19," *Administrative Law and Governance Journal* 3, no. 1 (2020): 162–81, <https://doi.org/10.14710/alj.v3i1.162-181>.

²³ FC. Susila Adiyanta, "Fleksibilitas Pajak Sebagai Instrumen Kebijaksanaan Fiskal Untuk Mengantisipasi Krisis Ekonomi Sebagai Akibat Dampak Pandemi Covid-19," *Administrative Law and Governance Journal* 3, no. 1 (2020): 162–81, <https://doi.org/10.14710/alj.v3i1.162-181>.

²⁴ N D Firdaus et al., "Strategi Harmoni Hak Dan Kewajiban Bela Negara Melalui Pajak," *Jurnal Pendidikan Transformatif (JPT)* 02, no. 06 (2023): 24–34, <https://jupetra.org/index.php/jpt/article/view/1053%0Ahttps://jupetra.org/index.php/jpt/article/download/1053/355>.

²⁵ Agustina Enny, "Hukum Pajak Dan Penerapannya Untuk Kesejahteraan Sosial," *Solusi* 18, no. 3 (2020): 407–18.

²⁶ Muhammad Syukri Albani Nasution and Rahmat Hidayat Nasution, *Filsafat Hukum Islam & Maqashid Syariah*, 1st ed. (Jakarta: KENCANA, 2020).

²⁷ E Latifah and R Abdullah, "Prespektif Maqashid Syariah: Peran Ekonomi Hijau Dan Biru Dalam Mewujudkan Sustainable Development Goals," *JISEF: Journal ...* 2, no. 01 (2023): 1–22, <http://azramedia-indonesia.azramediaindonesia.com/index.php/JISEF/article/view/1128%0Ahttps://azramedia-indonesia.azramediaindonesia.com/index.php/JISEF/article/download/1128/1067>.

Maqashid sharia according to Imam Ghazali is to reject all forms of *mafsadat* and attract *maslahat*. In his thinking, Imam Al-Ghazali divides *maslahat* into five, namely²⁸:

1. Maintaining religion (*hifdz ad-Din*)
2. Safeguarding the soul (*hifdz an-Nafs*)
3. Safeguarding the mind (*hifdz al-aql*)
4. Safeguarding property (*hifdz al-Maal*)
5. Safeguarding offspring (*hifdz an-Nasl*)

Cigarettes in the Perspective of Maqashid Sharia

Smoking can cause²⁹:

1. High blood pressure and stroke
2. Causes 25% of deaths from coronary heart disease
3. Heart attacks are 3 times more frequent than non-smokers
4. Risk of cancer such as cancer of the lips, tongue, esophagus, vocal cords, bladder, cervix, etc.
5. Respiratory system disorders
6. Miscarriage
7. Stillbirth or birth defects
8. Low birth weight in babies whose mothers smoke
9. Impotence
10. Dependence, addiction, and tendency to be influenced to use drugs

When the law of a matter is not explicitly mentioned in the Quran and/or Hadith, it is based on *ijtihad*³⁰. Because everyone has their perspective, differences of opinion are inevitable³¹. One of the things whose law is based on ulama *ijtihad* is smoking.

In Islam, the determination of the law always looks at the *maslahat* and *mafsadat* and then weighs the two. Cigarettes have both *maslahat* and *mafsadat*. Cigarettes have a *maslahat* side in the economic aspect, such as employment, higher state tax revenues, the welfare of tobacco farmers is increasing, cigarette factories help the community both in the surrounding community by providing compensation as well as in the case of cigarette factories providing scholarship assistance³². On the other hand, cigarettes also have a *mafsadat* side in the health sector.

In Indonesia, there are three major organizations that have always been a reference for the community, namely Muhammadiyah, NU, and MUI. According to Muhammadiyah, cigarettes are haram because smoking is included in the category of *khobait*s as in the Quran it is stated "and legalize for them all that is good and forbid them all that is bad". (Q.S. Al-A'raf: 152) Muhammadiyah does not see the substance of cigarettes, but sees the impact of smoking.

²⁸ Neneng Hasanah, "Maqashid Syariah Imam AlGhazali," in *Panorama Maqashid Syariah*, ed. Abdurrahman Misno, 1st ed. (Bandung: CV. MEDIA SAINS INDONESIA, 2021), 26–45.

²⁹ <https://ayosehat.kemkes.go.id/dampak-buruk-rokok-bagi-perokok-aktif-dan-pasif#:~:text=Dampak%20Buruk%20Bagi%20Perokok%20Aktif.Menyebabkan%20kerontokan%20rambut>.

³⁰ Muhammad Ali Rusdi, "Maslahat Sebagai Metode Ijtihad Dan Tujuan Utama Hukum Islam," *DIKTUM : Jurnal Syariah Dan Hukum* 15, no. 2 (2017): 152–67.

³¹ Muhammad Irkham Firdaus, Selvia Namira Ahmad, and Yashinta Aulia Santoso Putro, "Kajian Filsafat Hukum Islam (Tafsir Dan Ijtihad Sebagai Alat Metodologi Pengalian Hukum Islam)," *Al-Thiqah : Jurnal Ilmu Keislaman* 5, no. 2 (2022): 42, <https://doi.org/10.56594/althiqah.v5i2.71>.

³² Yuliartiselli, "6 Perusahaan Yang Memberikan Beasiswa Di Indonesia," *Malangpost. Id*, 2020, <https://malangpost.id/kupasedu/2020/10/22/6-perusahaan-yang-memberikan-beasiswa-di-indonesia/>.

Scientifically all agree that smoking is harmful to health and can even cause death. Because it is the same as suicide, while suicide in Islam is prohibited³³.

Cigarettes also contain addictive substances that can damage the body damaged. Damage to limbs caused by smoking is not immediate, but eventually, the limbs of someone who smokes will be damaged due to the substances in cigarettes. Muhammadiyah does not see the duration of time, whether the damage occurs immediately or slowly, but everything that damages the limbs is prohibited by Islam, no matter immediately or slowly. According to Muhammadiyah, smoking is contrary to *maqashid* sharia in the form of protection of religion, life/sport, reason, family, and property³⁴.

There are several laws of smoking in the view of Nahdhatul Ulama: a. Cigarettes are permissible because smoking is not intoxicating and the *mudharat* is very little; b. Cigarettes are makruh because they contain a negative impact, but the negative impact is not great so it does not reach the level of haram; c. Cigarettes are haram because the *mudharat* is very large. Of the three laws, the majority of NU ulama agree more on the permissible and makruh ones³⁵.

On the other hand, MUI does not punish smoking absolutely but punishes smoking casually. According to the MUI fatwa, smoking is haram if (1) it is done in a public place (2) it is done by minors (3) it is done by pregnant women³⁶.

None of the scholars hold the view that smoking is *Sunnah*; the highest ruling on smoking is *mubah*. This shows that there is not a single positive side of smoking in health. At the same time, one of the goals of Islam is to provide a good life. If you look from the health side then there is absolutely no benefit for smoking. However, it is different when viewed from the economic side.

To get to the form of cigarettes, several levels of processes are passed. Starting from planting tobacco, then processing tobacco into cigarettes, and finally distributing cigarettes. All of these stages have a positive impact on the economy. Tobacco farmers with their tobacco products can meet the needs of their families such as the fulfillment of health, and education, and even tobacco farmers can perform the pilgrimage from tobacco products³⁷. This means that by farming tobacco, primary and secondary needs can be met.

In terms of cigarette entrepreneurs, many cigarette factories provide scholarship assistance to the nation's generation³⁸, so that the basic needs of education can be fulfilled due to cigarette proceeds. It cannot be imagined that if the nation's underprivileged children cannot pursue education due to cost, then how long will this happen? Meanwhile, the future of the child is unclear, and what about when the child is an adult and has a family, then has offspring, and it turns out that he is also unable to send his offspring to school because of the cost? Then this is a systematic and hierarchical ignorance.

If someone does not smoke, and their health is good because they do not consume cigarettes, then what is the point if their brain is empty and does not know anything? Filling the brain is more important than filling the stomach. Brain health is more important than body

³³ Omiga Chabiba and Diana Lailatus Sa'diyah, "Analisis Maqasid Syariah Dan Kesadaran Hukum Masyarakat Terhadap Ijtihad Muhammadiyah Dalam Fatwa Tentang Haram Rokok," *Muslim Heritage* 6, no. 1 (2021), <https://doi.org/10.21154/muslimheritage.v6i1.2849>.

³⁴ Chabiba and Sa'diyah.

³⁵ Perkasah Pandji Palantei and Fatmawati Hilal, "Metode Penalaran Hukum Islam Dalam Hukum Merokok; Studi Komparasi Terhadap Metode Ijtihad Bahtsul Masail Nahdhatul Ulama Dan Majelis Tarjih Muhammadiyah," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum*, 2021, 206-18, <https://doi.org/10.24252/shautuna.v2i1.14830>.

³⁶ Heri Firmansyah, "Kajian Metodologis Terhadap Fatwa Majelis Ulama Indonesia Tentang Rokok" 4 (2019).

³⁷ <https://kemenag.go.id/daerah/sekampung-berangkat-haji-kompak-daftar-usai-musim-panen-yXsE8>

³⁸ <https://www.sampoernaoundation.org/id/beasiswa/>

health. Someone whose body is healthy is not necessarily able to contribute to the country. It may only not burden the state in spending money to take care of his health. But even if there is someone whose health is not good, but whose brain is smart, then surely that person can contribute to the country, more specifically to the development of science.

On the other hand, cigarette companies also absorb a very large labor force. If all cigarette companies close, millions of workers will lose their jobs. So how will these workers fulfill the needs of their families, especially education and health? When there is a large-scale dismissal of workers, this further creates a burden on the state, because more and more people are dependent on the state, while state revenues are decreasing due to the closure of cigarette companies as the largest tax contributor.

So the author agrees more with the opinion that the law on smoking is casuistic, depending on the circumstances. It cannot only be seen from the health side. If you say that smoking is harmful to health, then the state issues a smoking ban policy, and there will be a greater impact, namely the brain health of the nation's children, and tobacco farmers and cigarette workers in cigarette factories can no longer meet the needs of their families.

When the head of a family is unable to fulfill his or her family's needs, such as starving, this has an impact on health. When the state closes cigarette factories the state lacks revenue because the biggest contributor to taxes is cigarette companies. Then the state can no longer provide free education to the nation's children. When the state is no longer able to provide free education to the nation's children, there will be continuous dumbing down systematically and hierarchically, from father, son, grandson, and so on. Because the thing that can change fate is intellectual ability³⁹. Intellectual ability can only be honed in education. Education costs money.

If communities such as tobacco farmers and cigarette factory workers are more prosperous in terms of income, then the state will not be burdened to bear the costs of education and public health, because the community can fulfill the costs of education and health independently. Even if the state has to bear the costs of education and public health, it may not be so large an amount.

So if viewed in terms of maqashid sharia, especially weighing the maslahat and mafsadat, the existence of smoking is more maslahat than mafsadat. Because the mafsadat is only in terms of health alone. Meanwhile, if viewed from an economic perspective. When cigarettes do not exist, the more mafsadat than maslahat, both to the state, tobacco farmers, cigarette factories, cigarette factory workers, and to education. So in this case, cigarettes are legal casuistically.

Tax in the Perspective of Maqashid Syariah

Taxes are levied by the state on the public for the cost of running the state⁴⁰. The practice of such levies in Islam is known by three concepts, namely *dharibah*, *kharaj*, and *jizyah*⁴¹. The term tax is more accurately translated as *dharibah* than *kharaj* and *jizyah*⁴².

In Islam, there are two opinions regarding taxes. Some argue that taxes are permissible and some argue that taxes are haram. Ulama argues that taxes are permissible and that taxes may even be obligatory if without tax money the state cannot carry out its duties. The state is

³⁹ Madekhan Madekhan, "Fungsi Pendidikan Dalam Perubahan Sosial Kontemporer," *Jurnal Reforma* 9, no. 1 (2020): 51, <https://doi.org/10.30736/rf.v9i1.252>.

⁴⁰ Agung Fakhruzy, "Peranan Hukum Pajak Dalam Upaya Mewujudkan Tujuan Negara," *Mizan: Jurnal Ilmu Hukum* 9, no. 2 (2020): 84–94, <https://ejournal.uniska-kediri.ac.id/index.php/Mizan/article/view/1059>.

⁴¹ K Pebrina IP Maharani, "Pajak Dalam Islam Al-Furqon," *Jurnal Regional, Sosial, Budaya, Ekonomi* 2 (2023): 1198, <https://almanhaj.or.id/2437-pajak-dalam-islam.html>.

⁴² Institut Agama et al., "Jurnal Tamaddun Ummah Revitalisasi Konsep Pajak Dalam Perspektif Islam," *Jurnal Tamaddun Ummah* 1, no. 2 (2021): 27–28.

obliged to protect and provide security to its citizens, especially Muslims⁴³. This is because, with this security, Muslims can worship solemnly. The means to the solemnity of worship is security⁴⁴.

The state cannot provide security to its citizens, including Muslims if there is no money to pay security guards. Security costs should be paid by citizens, including Muslims. Therefore, since the cost of security is integral to the focus of worship, the ruling on paying for security is the same as the ruling on worship⁴⁵.

According to Ibn Taymiyyah, the permissibility of taxes for Muslims is based on justice. If Muslims do not pay taxes while non-Muslims pay taxes, then this is unfair, while the benefits of paying taxes are enjoyed by everyone including Muslims. According to Umer Chapra, there is already *zakat* in Islam, but the payment of *zakat* is already specified recipients, the state only organizes. According to Abu Yusuf, taxation is permissible on the condition that it is based on the ability of the community⁴⁶. On the other hand, one of the scholars who forbid taxes is Hasan Turabi. The reason for the rejection of taxes is that it is used as a tool to intimidate the community⁴⁷.

Every right has an obligation. In the context of taxes, the community is obliged to pay taxes to the state because the community has enjoyed the obligations that have been carried out by the state, namely protecting people's lives.

When weighing the *maslahat* and *mafsadat* between tax and no tax in the Maqashid Sharia perspective in the context of a welfare state, the *mafsadat* is more if there is no tax. Perhaps the *maslahat* is only one, namely Muslims are not burdened with taxes. But the *mafsadat* is that the state cannot carry out its duties because there is no money. One example is that the state cannot provide security to the community because there is no money to pay the security forces. When there is no security, then worship is not in order.

Secondly, the state cannot provide free education services to the nation's children⁴⁸. Then what is the fate of the country in the future? Who will continue the leadership of the country if the quality of the nation's children is very low due to not receiving education in childhood? Then it is very possible that the country will be controlled by other countries. Based on existing history, no country that is subject to another country is prosperous, even the population of that country is used as a cash cow by the controlling country⁴⁹.

When the country is subject to other countries, then sleeping and eating are not calm, let alone worshipping. From the aspect of health, when the state is unable to provide social security, one of which is health for free treatment and care, then the community will feel heavy when burdened to do their own financing. This is because hospital fees are very expensive. This is natural because it pays for doctors, nurses, and the cost of buying medicines.

When people cannot afford hospital treatment, they can only surrender to death. But if the state is financially able to provide free treatment and care, then no matter how poor people are, they can still enjoy health services in hospitals at the expense of the state. So this is the

⁴³ Ade Fartini, "Hukum Dan Fungsi Negara Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Al-Ahkam* 14, no. 1 (2018): 1, <https://doi.org/10.37035/ajh.v14i1.1427>.

⁴⁴ Ridwan Hakim, "Konsep Pajak Dalam Kajian Al-Qur'an Dan Sunnah," *TAFAKKUR (Jurnal Ilmu Al-Qur'an Dan Tafsir)* 2 (2021): 36–48.

⁴⁵ Duski Ibrahim, *Al-Qawa'id Al-Fiqhiyah (Kaidah-Kaidah Fiqih)*, 1st ed. (Palembang: CV. AMANAH, 2019).

⁴⁶ Edi Haskar, "Hubungan Pajak Dan Zakat Menurut Perspektif Islam," *Menara Ilmu* 14, no. 2 (2020): 28–38.

⁴⁷ Gusfahmi Arifin, "Pajak Menurut Syari'ah," *Advances In Social Humanities Research* 2, no. 1 (2024): 63–82, <https://doi.org/10.46799/adv.v2i1.142>.

⁴⁸ Musayyidi, "MENYOAL KOMERSIALISASI PENDIDIKAN DI Kariman , Volume 08 , Nomor 01 , Juni 2020," *Kariman* 08 (2020): 125–40.

⁴⁹ Muhammad Ishak, "Sistem Penjajahan Jepang Di Indonesia," *Jurnal INOVASI* 9, no. 1 (2012): 1–12.

mafsadat that will occur if taxes are eliminated. So in the perspective of *Maqashid Sharia*, paying taxes is obligatory.

Illegal Cigarettes and the Solution

One of the things that is regulated by legislation related to cigarettes is the excise tax. When cigarette manufacturers pay excise tax, it increases production costs and the price of cigarettes is also expensive. Therefore, many cigarette manufacturers do not pay excise so that their cigarettes are sold more cheaply⁵⁰. Therefore, illegal cigarettes are more in demand than legal cigarettes. According to the Indonesian Minister of Finance, the losses experienced by the state due to illegal cigarettes amounted to Rp. 13.48 trillion. In a study by the Indodata Survey Institute, if illegal cigarettes are converted to taxation as illegal cigarettes, the state revenue is estimated at Rp. 53.18 trillion⁵¹.

Cigarette manufacturers do not pay excise because the cost of excise is expensive. If they pay excise duty, cigarettes must be sold at a higher price. If cigarettes are sold at normal prices then they will not be bought by the public, because there are still many cheaper options. So that the reason for the high cost of excise is one of the reasons why cigarette manufacturers do not want to pay excise.

However, the existence of illegal cigarettes has a positive impact on tobacco farmers, because their tobacco is bought at a high price. This means that with the production of illegal cigarettes, large legal cigarette companies do not monopolize the purchase of tobacco⁵². If there is no illegal cigarette production, large legal cigarette entrepreneurs buy tobacco very cheaply, thus making tobacco farmers lose. On the other hand, tobacco farmers have no choice but to sell to large legal factories. With the production of illegal cigarettes, tobacco farmers have the option to sell their tobacco to illegal cigarette factories, because it is bought at a high price.

This creates a dilemma, on the one hand, it is felt to have a positive impact on society, on the other hand, it makes the state short of revenue due to cigarette entrepreneurs not paying excise. To compromise this dilemma, one way is for the excise tax to be reduced by the state. So illegal cigarette entrepreneurs whose class is still lower can still afford to pay excise fees.

The state's intention to increase excise taxes so that people do not consume cigarettes is not effective. People still buy cigarettes. It does not mean that people are not aware of the dangers of smoking, but for them, as long as it does not provide direct harm or occur at that time negative impact, then for the community it is normal. It is not only cigarettes that have a negative impact in the long run, but such as sugar also has a negative impact in the long run⁵³.

The policy of making excise taxes expensive has a negative impact on the state because the state experiences financial losses. People continue to consume cigarettes, while the state does not benefit from the consumption of cigarettes. Therefore, it is necessary to reduce the cost of excise tax on cigarettes in order to benefit the community and the state.

Even if more people smoke because cigarettes are cheap, the state's income will also increase, so that it is able to provide health insurance in the context of community care and treatment. As mentioned above, some percent of the cigarette tax is allocated for health, so it is

⁵⁰ Mochammad Afif, "Teori Permintaan Dan Konsumsi Inter-Temporal Antara Islam Dan Konvensional," *JES (Jurnal Ekonomi Syariah)* 2, no. 2 (2017): 229–42, <https://doi.org/10.30736/jesa.v2i2.29>.

⁵¹ <https://www.antaranews.com/berita/4173408/kerugian-negara-akibat-rokok-ilegal-hingga-mei-2024-capai-rp55-miliar>

⁵² Andri Prasetyo and Bhimo Rizky Samudro, "Tinjauan Perspektif Ekonomi Politik Dalam Tata Niaga Tembakau," *SALAM: Islamic Economics Journal* 4, no. 1 (2023): 49–62.

⁵³ Susanti and Difran Nobel Bistara, "Hubungan Pola Makan Dengan Kadar Gula Darah Pada Penderita Diabetes Mellitus (The Relationship between Diet and Blood Sugar Levels in Patients with Diabetes) Mellitus," *Jurnal Kesehatan Vokasional* 3, no. 1 (2019): 29–34, <http://journal.ugm.ac.id/jkesvo>.

a symbiotic relationship. Smokers pay taxes to the state, and the tax money is allocated to public health insurance. So there is nothing for the state to lose by making excise taxes cheap.

This way, the state still gets additional revenue to provide health and education insurance as the main requirement for a welfare state. This means that, even though excise taxes are cheap, the state can still fulfill the requirements of a welfare state. Rather than the state making excise tax expensive, the state loses itself, while the initial intention of making the cost of cigarette production expensive to reduce people who consume cigarettes is not effective. Because in fact, the number of smokers remains large.

So that the state does not lose itself, then by lowering the cost of excise and cigarette taxes, the state will increase its income. With increased revenue, the state is increasingly able to provide excellent services to the community by providing guarantees of basic community needs such as education and health.

Conclusion

A welfare state can be defined as a social welfare system that gives a greater role to the state to allocate a portion of public funds to ensure the fulfillment of the basic needs of its citizens. *Maqashid Sharia* broadly means the objectives of Islamic Law. *Maqashid Sharia* according to Imam Ghazali is to reject all forms of *mafsadat* and attract *maslahat*. In his thinking, Imam Al-Ghazali divides *maslahat* into five namely: Maintaining religion, protecting the soul, protecting the mind, protecting property, and protecting offspring. Ulama has different opinions about smoking. Muhammadiyah ruled cigarettes *haram*. The majority of Nahdhatul Ulama believe that smoking is permissible. The Indonesian Ulama Council argues that the law of smoking casuistic. Taxes are the main source of state revenue so the welfare of the state and taxes cannot be separated. Taxes are obligatory because the *mafsadat* is greater than the *maslahat* if you do not pay taxes. The solution to minimize the circulation of illegal cigarettes is for the state to reduce the cost of taxes and cigarettes so that small cigarette entrepreneurs can also afford the cost of taxes and excise. s

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