

The Crime of Smuggling Imported Goods in the Perspective of Customs Law

Alexander Sico Yossymon

Universitas Dr. Soetomo Surabaya

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Abstract

Customs is everything related to the supervision of the traffic of goods, both incoming and outgoing from a customs area, including the collection of import and export duties. The purpose of this research is to understand the modus operandi of criminal acts of import goods smuggling. To understand the monitoring mechanism by the Directorate General of Customs and Excise in combating the crime of import goods smuggling. To know the sanctions for the crime of import goods smuggling. Using normative juridical research methods. The research results state that Smuggling is a crime of clandestinely importing or exporting goods to evade taxes that could harm the state. The criminal act of smuggling is regulated in Article 102, Article 102A, and B of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs. In carrying out efforts to combat and eradicate the crime of smuggling, the government conducts direct inspection or supervision of export and import goods, which is authorized to customs officials. Legal regulations regarding the crime of smuggling and violations along with their sanctions have been regulated in Law Number 17 of 2006 concerning Customs articles 102 through 109. The supervision referred to is actions taken to ensure all movements of goods, public transportation (ships, aircraft, and vehicles), and individuals crossing national borders in customs areas, so that they can proceed in accordance with the customs regulations established by law. As referred to in Article 102 and Article 102A, which result in disrupting the economic foundations of the state, can be punished by imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years.

Keywords: Criminal act, Smuggling of Imported Goods & Customs Law Perspective

(*) Corresponding Author: sico.alexander@gmail.com

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INTRODUCTION

In a country, it is common to find many goods imported from abroad to meet domestic needs. These imported goods are referred to as imports. Importing is an activity or process of purchasing goods from abroad to meet domestic needs. International trade activities conducted by bringing goods from abroad into a customs area in accordance with legal regulations are referred to as import transactions. Import can also be defined as the activity of bringing goods or services from one country to another. Import activities involve two countries that have mutual interests between them (Hodijah & Angelina, 2021).

As part of the global community that relies on each other, Indonesia engages in international trade. Importers in Indonesia import goods needed

domestically from sellers abroad. Conversely, Indonesian exporters meet the demand of foreign markets by exporting goods from Indonesia abroad. The rapid development of international trade worldwide must be anticipated by the Indonesian government to create regulations that ensure legal certainty for businesses while protecting domestic industries and the economy.

According to Customs Law, importation is the activity of bringing goods into a customs area, while exportation is the activity of taking goods out of a customs area (Kristinah et al., 2021). Importing goods activities are not separated from the existence of laws and regulations in Indonesia, as regulated in Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs.

In the shipment of imported goods, whether on a small scale such as parcels through airports or on a large scale using containers through ports, it still requires a process through the import trade mechanism. Simply put, the government will impose taxes on imported goods to each importer. Not all goods are permitted to be imported. The government, through the Directorate General of Customs and related technical agencies, has established regulations concerning restrictions and prohibitions on the importation of goods. Goods that have environmental damaging characteristics, such as hazardous waste and used clothing, are examples of goods prohibited from importation.

Customs encompasses everything related to the supervision of the traffic of goods, both incoming and outgoing from a customs area, including the collection of import and export duties. The implementation of Law No. 17 of 2006 concerning Customs has also given logical consequences for the Directorate General of Customs in the form of increasing authority as a Government institution to play its role according to the scope of duties and functions carried out. The increasing authority essentially stems from the desire of international service users. Smuggling is a deeply rooted problem in Indonesia, meaning eradicating smuggling is a significant issue. However, the impact of smuggling violations committed by perpetrators can threaten economic stability and even the foundations of society and nationhood (Suprpto, 2021).

According to Robert Jutte, smuggling is recorded as one of the oldest forms of legal deviation, which is then regulated in legislation. However, smuggling receives relatively little attention from criminologists compared to other criminal issues. Nevertheless, many extraordinary cases involved in smuggling have been discussed extensively in various literature, including journals and other academic sources (Novarizal & Kumara, 2023).

The importance of supervision in the context of Customs needs to be given more attention considering the impact of customs law violations can disrupt economic stability.

RESEARCH METHOD

In this research, the author used a research method with a normative approach, because what was carried out was a study of literature and documentation of laws and regulations and policies as well as studying legal theories and legal principles relating to customs and customs crimes. The primary legal materials used in this research

are (a) the 1945 Constitution of the Republic of Indonesia (b) Law Number 17 of 2006 concerning Customs (c) the Criminal Code (d) the Criminal Code Civil.

RESULTS AND DISCUSSION

Modus Operandi of the Crime of Smuggling Imported Goods

Smuggling is a type of criminal offense committed by an individual or a group of people by importing or exporting goods without complying with the applicable laws and regulations, violating the law, and causing harm to the state (PRATAMA, 2022). Smuggling has an impact on various aspects of community life, including social, economic, political, and cultural aspects (Yusuf, 2016). Smuggling originates from the word 'selundup', which according to the Kamus Besar Bahasa Indonesia, means sneaking, slipping, entering clandestinely, or secretly. Meanwhile, smuggling is defined as the clandestine importation of goods to evade customs duties or the clandestine exportation of prohibited goods (Marpaung, 2016).

Smuggling is importing or moving goods to and from islands without complying with the applicable laws and regulations or customs formalities (Meiry Yulia Putri, 2022). Smuggling is a criminal act of clandestinely importing or exporting goods to evade duties that could harm the state. The resulting state losses refer to the definite and calculable shortage of money due to unlawful acts, whether intentional or negligent, arising from the failure to pay or remit state levies to the state treasury by smugglers, in the form of import duties and taxes (Value Added Tax/VAT, Income Tax/PIT, import duty, Luxury Goods Sales Tax, and Non-Tax State Revenues (PNBP) in the context of importing goods and export duties (Sofiana, 2019).

The phenomenon of crime in customs areas, especially the smuggling of imported goods, is a crime that must be seriously addressed, especially by relevant agencies, which in this case is the Directorate General of Customs and Excise through regional offices and service offices spread across various regions of the Republic of Indonesia, by forming special units or sections to handle customs crime cases responsible for law enforcement tasks related to customs crimes. There are many factors causing smuggling crimes from within Indonesia to outside Indonesia, including (Kartini & Setiawan, 2019):

1. Due to significant price differences between domestic and foreign products. For instance, in Indonesia, purchasing premium gasoline is Rp 4,000 cheaper than in Timor Leste, attracting individuals to engage in smuggling. Smuggled goods typically involve sharp price differences.
2. Prohibited goods, such as hazardous waste and used clothing from abroad, circulate in Indonesia despite being banned, facilitated by smugglers or certain individuals.
3. Regarding import/export tariffs, the higher the tariffs, the more likely goods are smuggled. For example, high import tariffs on mobile phones increase the risk of smuggling them into the country. In cases involving mobile phones, the smuggling method involves separating the phones from their packaging.

Smuggling crimes regulated under Article 102, Article 102A, and B of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995

concerning Customs. According to Webster's Ninth New Collegiate Dictionary, 'smuggle' is defined as: "to import or export secretly contrary to the law and especially without paying duties import or export something in violation of the customs law". (Amelia Tindaon, 2020). Smuggling offenses must meet the elements contained in Article 103 letter (d) of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, which states: "Anyone who hoards, stores, possesses, buys, sells, exchanges, obtains, or provides imported goods known or suspected to originate from criminal acts as referred to in Article 102". Based on the above article, smugglers can be sentenced to imprisonment for up to 2.6 years and/or fines ranging from Rp. 100,000,000 (one hundred million rupiah) to Rp. 1,000,000,000 (one billion rupiah).

As an example of the smuggling of imported goods, perpetrators are caught transporting various types of goods suspected to originate from outside the customs area and are not accompanied by customs documents, illegal imported goods not protected by customs documents.

Supervision Mechanism by the Directorate General of Customs and Excise in Resolving the Crime of Smuggling Imported Goods

The Supervision Procedures carried out by the Directorate General of Customs and Excise refer to the provisions regulated in the General Regulation of Customs and Excise Number Per-17/BC/2020 concerning Supervision Procedures in the Customs and Excise Field, in which, generally, supervision is divided into several parts, including (Milala & Ismail, 2022):

- a. Supervision is the overall supervision activities in the Customs and Excise Field, covering intelligence activities, patrols, enforcement, and case handling.
- b. Intelligence Unit is a supervision unit within the Directorate General of Customs and Excise that carries out tasks and has intelligence functions in managing information such as collection, assessment, analysis, distribution, and evaluation of data or information based on databases and/or other information indicating indicators of customs and excise violations as regulated in ministerial regulations regarding the organization and working procedures of the Ministry of Finance.
- c. Enforcement Unit is a supervision unit within the Directorate General of Customs and Excise that carries out tasks and has enforcement functions in implementing administrative physical efforts such as patrols, interception, inspection, prevention, sealing, and other enforcement actions in the supervision of customs and excise as regulated in ministerial regulations regarding the organization and working procedures of the Ministry of Finance.
- d. Investigation Unit is a supervision unit within the Directorate General of Customs and Excise that carries out tasks and has case handling functions such as investigating alleged violations and conducting investigations within the authority of the civil servant investigator of the Directorate General of Customs and Excise, handling seized goods and evidence, managing branch detention facilities, issuing research recommendation results, and other

activities related to handling customs and excise cases as regulated in ministerial regulations regarding the organization and working procedures of the Ministry of Finance.

- e. Narcotics Unit is a supervision unit within the Directorate General of Customs and Excise that carries out tasks and has intelligence, patrol, and enforcement operation functions, and operates facilities in the field of narcotics, psychotropics, and narcotic precursors (NPP) for the prevention and handling of violations of customs and excise laws and regulations concerning NPP as regulated in ministerial regulations regarding the organization and working procedures of the Ministry of Finance.
- f. Sea Patrol Unit is a supervision unit within the Directorate General of Customs and Excise that carries out tasks and has enforcement functions in implementing administrative physical efforts such as patrols, interception, inspection, prevention, sealing, and other enforcement actions in the supervision of customs and excise in waters as regulated in ministerial regulations regarding the organization and working procedures of the Ministry of Finance.
- g. Operations Facility Unit is a supervision unit within the Directorate General of Customs and Excise that carries out tasks and has functions in managing operations facilities such as providing, placing, maintaining, and utilizing as support for customs and/or excise supervision functions for Intelligence Unit, Enforcement Unit, Investigation Unit, Narcotics Unit, and Sea Patrol Unit as regulated in ministerial regulations regarding the organization and working procedures of the Ministry of Finance.
- h. Supervision Unit is a working unit within the Directorate General of Customs and Excise that carries out tasks and functions related to Supervision, including intelligence units, enforcement units, investigation units, narcotics units, and sea patrol units.
- i. Operations Facility Base is a technical implementing unit within the Directorate General of Customs and Excise that carries out tasks and has functions in managing operations facilities such as placement, maintenance, and utilization as support for customs and/or excise supervision functions for Intelligence Unit, Enforcement Unit, Sea Patrol Unit, and Investigation Unit as regulated in ministerial regulations regarding the organization and working procedures of the Ministry of Finance.
- j. Operations Facility refers to the supervision operations facilities used by the Directorate General of Customs and Excise as support for customs and/or excise supervision functions for Intelligence Unit, Enforcement Unit, Investigation Unit, and Narcotics Unit such as patrol boats, aircraft, scanners, coastal radars, firearms, tracker dogs, telecommunications equipment, and other supervision operations facilities.
- k. Narcotics, Psychotropics, and Narcotic Precursors, hereinafter referred to as NPP, are goods consisting of narcotics, psychotropics, and narcotic precursors as referred to in Law Number 5 of 1997 concerning Psychotropics and Law Number 35 of 2009 concerning Narcotics.

Sanctions for the Crime of Smuggling Imported Goods

When discussing criminal accountability, it is inseparable from criminal acts. Although the concept of criminal acts does not include issues of criminal accountability, it merely refers to the prohibition of certain actions. The basis of criminal acts is the principle of legality, while the basis for the criminal liability of the perpetrator is the principle of culpability. This means that a perpetrator of a criminal act will only be punished if they have culpability in committing the criminal act. When someone is said to have culpability, it means that the perpetrator of a criminal act will only be punished if they have culpability in committing the criminal act, and this assumption can be negated if proven otherwise (Prasetyo, 2013b).

Regarding the occurrence of smuggling offenses, there are several forms of criminal accountability for perpetrators of smuggling offenses, including: Individual responsibility in smuggling offenses, Customs and Excise Officials' responsibility, Goods Transporters' responsibility, Customs Services Provider (PPJK) responsibility, and Legal Entities (Corporations, Companies, Associations, Foundations, Cooperatives) responsibility (Pontoh, 2016).

Individual responsibility in smuggling offenses is the responsibility of any person who commits a criminal act in customs, and liability in customs is inherent in it (T. I. P. Sari et al., 2016). Criminal liability of individuals can be imposed if the defendant is proven guilty by the judge, and the judge through the verdict (sentence) imposes a prison sentence accompanied by a fine that must be paid (Indriana, 2019). If the fine is not paid by the convicted person, it can be substituted with a subsidiary punishment in the form of a substitute imprisonment as stipulated in Article 30 of the Criminal Code (Auliya & Setiyono, 2022).

Criminal Sanctions in the context of import activities are regulated in Article 102 covering actions (Kelung, 2021): (a) Transporting imported goods not listed in the manifest as referred to in Article 7A paragraph (2); (b) Unloading imported goods not listed in the customs notification as referred to in Article 7A paragraph (3); (c) Unloading or storing imported goods still under customs supervision at a place other than the designated and/or permitted place; (d) Hiding imported goods unlawfully; (e) Releasing imported goods that have not fulfilled their customs obligations and customs areas or from bonded warehouses or other places under customs supervision without the approval of customs and excise officials resulting in non-compliance with state levies based on this Law. (f) Transporting imported goods from temporary storage places or bonded warehouses that do not reach the destination customs office and cannot prove that it is beyond their capacity or; (g) Intentionally providing incorrect information on the type and/or quantity of imported goods in the customs notification, shall be punished for smuggling in the import field with a minimum imprisonment of 1 (one) year and a maximum imprisonment of 10 (ten) years and a fine of at least Rp50,000,000,- (fifty million Rupiah) and a maximum of Rp5,000,000,000,- (five billion Rupiah).

Heavier Criminal Sanctions for Smuggling Offenses are regulated in Article 102B, Covering Acts; (Lantu et al., 2019) "As referred to in Article 102 and Article 102A which results in the disruption of the country's economic pillars can be punished with a minimum imprisonment of 5 (five) years and a maximum imprisonment of 20 (twenty) years and a minimum fine of Rp5,000,000,000.00

(five billion Rupiah) and a maximum of Rp100,000,000,000.00 (one hundred billion Rupiah)".

In Law No.17 of 2006 concerning Customs, there is a possibility of obtaining a reward, namely compensation for individuals, groups, or work units that can assist in handling and capturing customs violations. This is mentioned in Article 113D of Law No. 17 of 2006:

1. Individuals, groups, and/or work units that have contributed to handling customs violations are entitled to receive rewards.
2. The amount of the reward is given up to 50% (fifty percent) of administrative sanctions in the form of fines and/or auction proceeds from customs offenses. The above article explains that the premium is 50% of administrative sanctions in the form of fines and/or proceeds from the auction of smuggled goods.

In carrying out development, significant costs are required, and it is a continuous effort that began since the First Pelita. After experiencing a long historical journey, entering Pelita V, development can be implemented without significant obstacles. This is based on the high work and discipline of Government Apparatus and the community. Thus, the ultimate goal of a fair and prosperous society based on Pancasila and the 1945 Constitution is expected to be achieved soon. Where the costs needed to carry out this development are obtained from within and outside the country, including various taxes and export and import duties. The increasing incidence of smuggling crimes is one of the obstacles that can hinder development. Smuggling offenses, both physical and administrative, have been ongoing for a long time. The increased smuggling is possible due to the vast territory, the ability and willingness of government officials to combat it, and the low participation of the community in cooperating with government officials. Smuggling crimes committed by a few or a small group of irresponsible individuals are solely for their own or their group's benefit, while the perpetrators do not consider their widespread and severe impact on the nation's economy, in addition to national security and stability being disrupted.

Law No.17 of 2006 concerning Customs mentions the accountability of individuals who commit smuggling offenses individually or as legal entities. For the provisions regarding the accountability of legal entities as perpetrators of smuggling offenses, it is mentioned in Article 108 of Law No.17 of 2006 concerning Customs, which states:

1. In the event that a punishable offense under this Law is committed by or on behalf of a legal entity, corporation or company, association, foundation or cooperative, the criminal prosecution is directed to: a. the legal entity, corporation or company, association, foundation or cooperative; and/or b. those who give orders to commit the offense or who act as leaders or neglect prevention.
2. Offenses under this Law are also committed by or on behalf of a legal entity, corporation or company, association, foundation or cooperative if the offense is committed by individuals who, based on other relationships, act within the legal entity, corporation or company, association, foundation or cooperative without considering whether each person has acted individually or collectively.

3. In the event of criminal prosecution against a legal entity, corporation or company, association, foundation or cooperative, at the time of prosecution, it is represented by administrators who can legally be held accountable according to the form of the legal entity in question.
4. Against legal entities, corporations or companies, associations, foundations or cooperatives that are sentenced to imprisonment under this Law, the principal penalty imposed is always a fine of up to Rp. 1,500,000,000.00 (one billion five hundred million Rupiah) if the offense is punishable by imprisonment, without eliminating the fine if the offense is punishable by imprisonment and a fine.

In addition to criminal sanctions in the context of import activities regulated in Article 102 of Law Number 17 of 2006 concerning Amendments to the Customs Law, administrative sanctions are also regulated in the context of import activities in Law Number 17 of 2006 concerning Amendments to the Customs Law, namely in the form of payment fines and reimbursement of state financial losses. The formulation of smuggling criminal sanctions as regulated in Articles 102, 102A, and 102B of Law Number 17 of 2006 concerning Customs above basically applies cumulative (combined) criminal sanctions in the form of imprisonment and fines, with an emphasis on the application of imprisonment sanctions first and then followed by fines cumulatively.

Although the criminal sanctions in Law No.17 of 2006 concerning Customs adopt cumulative criminal sanctions and even minimum maximum criminal systems, smuggling offenses do not mean that smuggling offenses will no longer occur and can be eradicated to the root. Here, the limitations of criminal sanctions in preventing and combating smuggling offenses are evident. In Article 8A of Law No.17 of 2006 concerning Customs, paragraphs 2 and 3 mention that: (2) Entrepreneurs or importers who have fulfilled their obligations as referred to in paragraph (1), but the amount of imported goods unloaded is less than that reported in the customs notification and cannot prove that the error occurred beyond their capacity, must pay import duties on the shortfall and are subject to administrative sanctions in the form of fines of at least Rp25,000,000.00 (twenty-five million Rupiah) and a maximum of Rp250,000,000.00 (two hundred fifty million Rupiah). (3) Entrepreneurs or importers who have fulfilled their obligations as referred to in paragraph (1), but the amount of imported goods unloaded is more than that reported in the customs notification and cannot prove that the error occurred beyond their capacity, are subject to administrative sanctions in the form of fines of at least Rp25,000,000.00 (twenty-five million Rupiah) and a maximum of Rp250,000,000.00 (two hundred fifty million Rupiah).

CONCLUSION

Smuggling is a criminal act of clandestinely or illegally importing or exporting goods to evade duties that may harm the state. Smuggling offenses are regulated in Article 102, Article 102A, and Article 102B of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs. Smuggling offenses must meet the elements contained in Article 103 letter (d) of

Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, which states:

"Every person who hoards, stores, possesses, purchases, sells, exchanges, acquires, or provides imported goods known or reasonably suspected to originate from criminal acts as referred to in Article 102."

In efforts to combat smuggling offenses, the government conducts inspections or direct supervision of export and import goods, which are authorized to customs officials. The supervision referred to is actions taken to ensure that all movements of goods, public transportation (ships, aircraft, and vehicles), and individuals crossing national borders in customs areas comply with customs regulations and procedures established by customs laws. Based on Customs Law Number 17 of 2006, which replaces Law Number 10 of 1995, customs authorities have the authority to inspect goods in national and international trade crossings.

Heavier Criminal Sanctions for Smuggling Offenses are regulated in Article 102B, Covering Acts; (Lantu et al., 2019) "As referred to in Article 102 and Article 102A which results in the disruption of the country's economic pillars can be punished with a minimum imprisonment of 5 (five) years and a maximum imprisonment of 20 (twenty) years and imprisonment. In addition to the criminal sanctions mentioned in Article 102 of Law Number 17 of 2006 concerning Customs, there are administrative sanctions in the form of fines. This can be seen in Article 8A paragraphs 2 and 3.

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