

RESPONSIBILITY OF THE PERPETRATOR OF SMUGGLING ACTS CRIMINAL PENALTIES FOR UNLAWFUL EXPORT AND IMPORT LAW NUMBER 17 OF 2016

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ABSTRACT

The crime of smuggling is the act of importing, exporting or transporting goods without complying with applicable laws and regulations or established customs formalities, thereby causing losses to the state. The results of the study indicate that the criminal mode of transporting imported goods not listed in the manifest is carried out to deceive customs officers by not explaining the true type of goods in the container. Law enforcement against the crime of transporting imported goods not listed in the manifest carried out by individuals or legal entities will be subject to accumulative criminal sanctions, namely imprisonment and fines in accordance with Article 102 letter a of Law Number 17 of 2006 concerning Customs

1. Introduction

Smuggling is basically a criminal act related to export-import activities, where the perpetrator carries out or attempts to carry out the removal/import of goods from or into Indonesian customs territory without paying attention to the provisions of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs.

The influence of strategic environmental developments as well as the influence of the motivational aspects of perpetrators, policy aspects and law enforcement aspects, have influenced the increase in smuggling that has occurred, both import smuggling and export smuggling.

The rise in smuggling, particularly import smuggling, has had various impacts, particularly the declining competitiveness of domestic production in the market, which will ultimately impact the national economy. Considering these influencing factors, it is necessary to address this smuggling problem



through preventive, repressive, and law enforcement measures to increase the use of domestic production.

The eradication of smuggling will remain an interesting topic of discussion among law enforcers, because this problem is one of the main targets in carrying out the duties of law enforcers and several related agencies that have the authority and supervision over the implementation of imports and exports of goods.

The crime of smuggling is extremely detrimental and disrupts the balance of Indonesian life. State losses due to smuggling reach trillions of rupiah. The modus operandi is generally carried out by exploiting various export-import facilities provided by Customs and Excise.

Smuggling is carried out by individuals seeking to profit significantly by violating established export-import procedures. This is clearly detrimental to the Indonesian nation if left unaddressed, as these duties will eventually be used to fund national development, one of the sources of which is taxes.

Undocumented smuggling in Indonesia occurs at such a high frequency that it's often reported and heard about in the media almost constantly. The rise in meat smuggling in Indonesia is due to the country's economic downturn.

In practice, in trade activities, there are many things that require attention and regulations. Some important aspects of trade include product quality, controlling the circulation of goods that could endanger the public, maintaining stable trading activities to maintain market conditions in a region, and much more. Globalization, particularly the globalization of trade, requires trade activities carried out by international market players to comply with and adapt to international trade regulations. National regulations must also adapt to international rules. "Modernization must be accompanied by technological developments in trade activities. Anything that hinders or disrupts trade activities, hinders economic growth, or harms state finances must be addressed."

2. Research Method

The nature of this research is descriptive analysis with pEmpirical juridical approach. This research is intended to analyze the problem by combining legal materials with primary data obtained in the field, namely about investigation into perpetrators of illegal beef smuggling combined with secondary data.

This research employs a normative legal method and is supported by empirical legal data, considering that this approach is considered quite applicable to this topic, because this research method will obtain comprehensive data and





information of a normative nature, both from primary, secondary, and tertiary legal materials. The data or information obtained will be compared using the relevant laws and regulations. law enforcement against smuggling perpetrators

3. Results And Discussion

The most prominent violation of the law in the economic sector is the violation of the provisions on the import and export of goods or what is better known as smuggling and which has become a sharp focus of public attention, because this problem has become one of the main targets in the implementation of the duties of law enforcement and several other related agencies that have the authority to regulate and supervise the implementation of the export and import of these goods.

The crime of smuggling is as dangerous as the crime of corruption, in the sense that both endanger state finances which will ultimately hinder development and furthermore will become an obstacle to the prosperity and welfare of the people. Economic crimes in general and the crime of smuggling in particular when viewed from the perspective of development are obstacles, and can even destroy economic growth in society, because with smuggling, in addition to reducing state revenues, it can also kill domestic industries and ultimately will disrupt the people's economy and national stability.

The crime of smuggling not only reduces state revenue from import duties and other levies on the import and export of goods, but can also cause chaos in the national economy and society. This is evident in the flood of smuggled goods, which makes domestically produced goods uncompetitive, both in terms of quality and price.

The flood of smuggled goods can cause congestion or obstacles in the development of domestic industry, so that textile factories and other factories will stop production and ultimately these factories will not be able to repay the bank loans they received and in turn will hinder development in various sectors. Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs regulates and establishes procedures or obligations that must be fulfilled when someone imports or exports goods. If someone imports or exports goods without heeding the provisions or procedures established by law, they may be subject to criminal penalties in the form of imprisonment and fines. Criminal sanctions in the form of imprisonment and fines in Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs regulated in Article 102, which reads: Anyone who imports or exports or attempts to import or export goods without paying attention to the provisions





of this Law shall be punished for smuggling with a maximum prison sentence of eight years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

To ignore the above article is to completely disregard the procedural requirements as stipulated in this law. Therefore, if someone imports or exports goods without completely complying with the provisions of this law, this is not considered an act punishable under this article.

Article 103 Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs states that: Whoever:

1. Submitting a Customs Notification and/or accompanying customs documents and/or providing false or falsified oral or written information used to fulfill Customs obligations.
2. Removing imported goods from the Customs Area or from Bonded Storage Places, without the approval of Customs and Excise Officials with the intention of evading payment of Import Duty and/or other state levies in the context of imports.
3. Making, approving, or participating in false additions to books or records.
4. Storing, keeping, possessing, buying, selling, exchanging, obtaining, or providing imported goods originating from criminal acts as referred to in Article 102, shall be punished with imprisonment of up to five years and/or a maximum fine of Rp. 250,000,000.00 (two hundred and fifty million rupiah).

A person who hoards, stores, owns, buys, sells, exchanges, obtains or provides imported goods originating from a criminal act will be subject to criminal sanctions, in this case specifically linked to illegal importers of goods that are not registered in the manifest.

These four types of customs crimes clearly regulate violations of customs obligations, distinct from the articles on violations. For example, point 4 emphasizes the deliberate submission of false documents, which is generally also regulated under the forgery articles in criminal law.

Provisions of Article 103 letter d Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs which relates to a situation where a person is found hoarding, possessing, storing, buying, selling, exchanging, obtaining or providing imported goods originating from the Crime of Smuggling where the goods can be confiscated with the authority they have. The person who does the above can be subject to a maximum prison sentence of five years or a maximum fine of Rp. 250,000,000.00 (two hundred and fifty million rupiah). However, if the person concerned obtained the goods in good faith, then the person concerned cannot be prosecuted. However, another



possibility can occur if the perpetrator of the crime can be identified, so that both can be punished.

A person or group who violates the regulations stipulated in this law can be subject to sanctions for transporting goods without having valid documents which according to this law must be kept, this is seen in Article 104. Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs which reads: Transporting goods originating from criminal acts as referred to in Article 102 which reads:

1. Destroy, alter, cut, hide or throw away books or records which according to this Law must be kept.
2. Omitting, approving, or participating in the omission of information from Customs Notifications, customs accompanying documents, or records.
3. Storing and/or providing blank trade invoices from companies domiciled abroad which are known to be able to be used as a complement to Customs Notifications according to this Law, shall be punished with a maximum imprisonment of two years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).
4. This article states that all evidence of trade transactions must be properly stored and safeguarded, a requirement under the law. Furthermore, any documents that must be submitted to customs, as part of state administration, relate to transactions between countries.

Article 106 Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs states that: Importers, exporters, Temporary Storage Place operators, Customs Management Operators, or transportation operators who do not implement the provisions as referred to in Article 49, Article 50, or Article 51 and such actions cause state financial losses shall be punished with imprisonment for a maximum of two years and/or a maximum fine of Rp. 125,000,000.00 (one hundred and twenty five million rupiah).

By examining the contents of the article above, it can be seen that if an importer imports goods that are not registered in the manifest, it is an act that is detrimental to the state's finances, where goods that are not registered in the manifest, apart from violating the provisions of the law, have also exceeded the authority of customs in guarding and carrying out the task of supervising trade in a region.

Article 107 Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs also states that: Customs service providers who process the notification of power of attorney received from importers or exporters, if they commit an act that is punishable by law, the criminal threat applies to them.



Customs service providers who commit criminal violations regarding their work and actions that are subject to criminal penalties, then the officer will be subject to the appropriate criminal penalties, likewise officers who assist importers of used clothing and are directly involved in the transaction mode will be subject to the applicable sanctions.

Article 108 Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs states that:

1. In the event that a criminal act which is punishable under this Law is committed by or on behalf of an entity law, corporation or company, association, foundation or cooperative, criminal charges are directed and criminal sanctions are imposed on:
 - a. Legal entity, corporation or company, association, foundation or cooperative.
 - b. Those who give orders to commit the crime or who act as leaders or neglect to prevent it.
2. Criminal acts according to this Law are also committed by persons on behalf of a legal entity, corporation or company, association, foundation or cooperative, if the criminal act is committed by persons who, either based on an employment relationship or based on another relationship, act within the legal entity, corporation or company, association, foundation or cooperative without considering whether each of the persons has committed the act individually or together.
3. In the event that a criminal charge is brought against a legal entity, company or association, foundation or one that is convicted of a crime as referred to in this Law, the principal penalty imposed will always be a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah) if the crime is punishable by imprisonment, without eliminating the fine if the crime is punishable by imprisonment and a fine.

Article 109 Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs states that: Imported or exported goods originating from criminal acts as referred to in Article 102, 103 letter b or letter d, Article 104 letter a or Article 105 letter a are confiscated for the state:

1. Means of transport used to commit a crime as referred to in Article 102 may be confiscated for the state.
2. The goods as referred to in paragraph (1) are settled based on the provisions as stipulated in Article 73.

Article 109 Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs It is clearly stated that all types of goods prohibited from export-import activities will be confiscated by the state and prosecuted,



and will also receive legal redress without exception. In other words, the import and export of used clothing prohibited by law will receive the same treatment as the law regulates.

Regarding the criminal sanctions given to a legal entity that commits a criminal act of smuggling can be seen in Article 108 of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs. This article makes it possible to criminalize a legal entity, corporation or company, including state-owned or regional-owned enterprises with which and in any form, permanent establishment or other form of business, association, including partnership, firm or kongsi, foundation or similar organization, or cooperative where sometimes people commit the crime hidden behind or in the name of the above-mentioned bodies. Therefore, in addition to the above-mentioned bodies, those who have given orders to commit the crime or who actually commit the crime must also be punished. Thus, people who act not for themselves but as representatives of the body, must also heed the regulations and prohibitions that are threatened with criminal penalties, as if they themselves committed the crime. Based on the results of the investigation, criminal charges can be determined which will be imposed on the relevant bodies and/or their leaders. The above-mentioned bodies can be punished with a maximum fine of IDR 300,000,000.00 (three hundred million rupiah), if the crime is punishable by imprisonment, without eliminating the fine if the crime is punishable by imprisonment or a fine

4. Conclusion

The criminal method of transporting imported goods that are not listed in the manifest is carried out to deceive customs officers by means of The defendant failed to truthfully state the type of goods contained in the container. The type of goods contained in the container did not match the manifest and was prohibited for export. Therefore, if the shipping documents were not falsified, the goods could not be exported, thus the defendant falsified the shipping documents.

Law enforcement against the crime of transporting imported goods that are not listed in the manifest committed by individuals or legal entities will be subject to accumulative criminal sanctions, namely imprisonment and fines in accordance with Article 102 letter a of Law Number 17 of 2006 concerning Customs.

Accountability smugglers which is not listed in the manifest as Decision Number 270/Pid.Sus/2024/PN Tjb related The criminal act of smuggling goods that are not registered in the manifest is the Defendant's actions can cause state losses in the form of loss of potential state revenue from Import Duties and Taxes in the





Context of Imports estimated at Rp243,776,226.00. The Defendant Heri Purnama was legally and convincingly proven guilty of committing the crime of smuggling in the import sector, so that the Defendant is therefore sentenced to imprisonment for 2 (two) years 6 (six) months and a fine of Rp50,000,000.00 (fifty million rupiah) with the provision that if within 1 (one) month the fine is not paid, the Defendant's assets and/or income can be confiscated by the Prosecutor to replace the amount of the fine that must be paid and if it is insufficient, it will be replaced with imprisonment for 1 (one) month

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