

Applying Strict Compliance Rule to Customs and Excise Documents in Indonesia as an Effort in Improving the People's Welfare

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ABSTRACT

Indonesia has ratified the international convention on General Agreement of Tariff and Trade (GATT) in the Customs Law. The ratification includes the transplanted application of applying strict compliance rule which requires every importer to declare each imported goods entered into the customs territory. This application is aimed at achieving the justice aspect in customs. This means that everybody engaging in customs activities is treated equally in similar terms and conditions. So, it can create a good social system. However, the regulation of strict compliance rule in Indonesia Customs Law is not clear and not concise that makes it subject to hiding the origin of the goods through wrong and falsified Customs and Excise Declaration. This is certainly dangerous and detrimental to the country economy both the country of the goods origin and the country of importer. Uncertainty and vagueness of the Customs Law relating to the application of strict compliance rule can also be seen from the absence of measurement to determine falsified condition of customs and excise declaration.

Keywords: Customs, Law, Strict

1. INTRODUCTION

Imposing import duty on imported goods depends on the type of goods entering the customs and excise territory; customs and excise value of the goods; and, the import duty determined by the Ministry of Finance. High import duties and taxes (PDRI) can cause a gap for disobedient importer to falsely declare the number and type of imported goods in the documents, as outlined in Article 102 letter h Law No 17 of 2006 injunction to Law No. 10 of 1995. This modus is often used by the importers to avoid high or costly import duty [1].

The Directorate General of Customs and Excise is one of the organizational units under the Ministry of Finance with the duties and functions to organize and implement the policies in terms of supervision, law enforcement, services and optimization of state revenue from customs and excise.

Their supervision includes the monitoring of incoming and outgoing goods as well as levying import and export duties. Technically, the importation process greatly involves a number of interests or parties to handle activities prior to the goods arrival, to the process of goods arriving, to the process during arrival, to the process of customs clearance, and to the

release of goods. In this case, an effective control is required to customs and excise officers in carrying out their duties of controlling goods traffic.

The aim is basically to protect the society from harmful goods; goods that endanger the nation security; and, goods that disturb the public. If such goods can be prevented, the state's loss can be avoided. This practice will increase the public trust in the Government [2]. Consequently, a good social life can be existed.

2. METHOD

This is a normative legal research. The data are secondary data comprised of (a) primary legal materials such as legislations, (b) secondary legal materials such as writings, either books or articles covering commentaries or analysis related to topic of discussion, and (c) tertiary legal materials like dictionaries. Literature review and document analysis were used to collect the data. The data were analyzed using a qualitative deductive reasoning method.

3. RESULT and DISCUSSION

3.1 The Impact of Improper Application of the Strict Compliance Rule Principle in Customs and Excise Documents in Indonesia on the Society.

An economist Chatib Basri, conducted a research on smuggling starting from measuring the impact on the people, consequences, causes and finding the solution. His research concluded that smuggling typically occurs due to three interrelated things; the failure of customs system, corrupt officials, and government policies that led to the differences between domestic and foreign prices [3].

Declaration on the types and number of imported goods in the customs documents is legally made because the process of customs clearance at the customs and excise area can go through several lanes, including:

- The red lane, providing services and control of the imported goods by physical inspection and document analysis prior to the issuance of Release of Goods Approval Letter (SPPB);
- The green lane, providing services and control of the imported goods without physical inspection, only document analysis after the issuance of Release of Goods Approval Letter (SPPB);
- The yellow lane, providing services and control on the imported goods without physical inspection, but document analysis prior to the issuance of Release of Goods Approval Letter (SPPB);
- The Main Partners of Customs (Priority MITA and Non-Priority MITA) are importers and/or exporters with special custom services.

Based on the priority services, the importers falsify the types of imported goods in the customs documents illegally by choosing the green lane in an attempt to avoid physical inspection and to enable their imported goods to be released from the bonded storage. This modus is used by disobedient importers to put in the high duty imported goods by paying a cheap or low import duty.

One example occurred in September 2011 involving an importer, the chairman of PT Alam Tirta Gemilang when importing goods from Singapore via Port of Panjang Bandar Lampung. For that activity, the Directorate General of Customs and Excise official makes a declaration

document of the imported goods. The document reads that the imported goods is one container of office stationeries. However, the contents of the container are not in accordance with the contents mentioned in the document. When the state's investigators of the Directorate General of Customs and Excise conducted an inspection, the contents of the container were liquor with more than ten percent (10%) alcohol and several bales of women and men's clothes.

From this case, the defendant takes an advantage of the priority lane facility. The Directorate General of Customs and Excise entrusts the defendant to import goods. However, the defendant tried to import goods different from what is indicated on the document which leads to the state's great loss.

Hence, justice aspect as one of the aspects in the customs cannot be realized. Justice aspect is closely related to people's lives. This aspect requires the people who conduct customs activities and to be treated equally under similar terms and conditions. This aspect protects all parties, among others are: importers, exporters, Customs Service Management Companies (PPJK), transporters, where each of them has similar rights, obligations and responsibilities [4].

Therefore, law enforcement in the field of customs documents is an effort of the Government to fulfill the provisions of the customs law. The law enforcement describes the recognition of users and the people to customs and excise authorities within the customs area [5]. Simply, law enforcement efforts are essentially a part of community protection efforts [6]. If the people are not protected, the social system will be disrupted.

3.2 The Application of Strict Compliance Rule to Customs and Excise Documents in Indonesia.

Strict compliance rule specifies that the submitted documents must conform to the L/C (Letter of Credit) requirements, where such conformity element determines the L/C to be paid by the issuing bank or its authority. According to a strict compliance rule, the documents required in the L/C must be complete as appropriate. A substantial or non-substantial difference between L/C and the documents is not allowed. If there is a difference, the issuing bank or its authority is not obligated to pay the L/C to its recipient. The Court's judgment based on the strict compliance rule has been adopted by a number of courts in the United States such as in the case of Board of Trade of San Francisco v. Swiss Credit Bank, 728 F. 2d, 1241, the court argues that the L/C issued in New York requires a warehouse receipt. Thus, the document must legally be a warehouse receipt in accordance with the Law of New York. The issuing bank shall not be entitled to determining the ownership of the goods if the warehouse receipt is not in accordance with the Law of New York [7].

Sirait (2007) argues that international business contracts have always dealt with more than one legal system. The parties generally prefer to making a contract under their own country's laws. To avoid the difference in the legal system particularly in the transaction of using L/C, the International Chamber of Commerce (ICC) has formulated a UCP (Uniform Custom and Practice for Documentary Credit) as a uniform reference. This UCP is made up from the habit of an emerging international business transaction. UCP has been revised several times with the last revision made in 1993 with the issuance of UCP number 500 or commonly known as UCP 500. UCP 500 is a reference in the international business transactions using L/C as a method of payment [8].

The customs declaration is done by filling out the document issued by the holder which is also known as holder's certification. The document referred to here is the Asean Common Effective Preferential Tariffs/Asean Industrial Cooperation Scheme Certificate of Origin [9].

Finally, the main purpose of applying strict compliance rule on customs and excise documents in Indonesia is to provide a protection for the country's economy in general and for the welfare of the people in particular who will be directly affected by the imported goods [10]. As customs activities are the main door of economic activities between Indonesia and other countries, if the Government cannot apply the strict compliance rule, it will lessen the competitive advantage of the society in the economic activities and will consequently disturb the people's lives.

4. CONCLUSION

Regarding with the Customs Declaration, the Law on the customs regulates threats of criminal penalty as stipulated in Article 103 letter a on counterfeiting customs documents. However, the provisions in the Article 103 letter a do not specify the parameter of a false or falsified customs declaration and oral or written testimony. The absence of such parameter makes the provisions of Article 103 letter a is difficult to achieve. Moreover, the precedent from the court's judgment in Indonesia for the falsehood in customs declaration has never been used in detail as a reference for Customs officials to resolve the false customs declaration. Consequently, the state economy will be harmed, and certainly will affect the people's lives, and also to damage the social life in the society.

Therefore, there should be a more detailed Regulation of the Minister of Finance regulating the Application of Strict Compliance Rule that can be used as a parameter for determining the falsehood level of customs documents. In addition, applying strict compliance rule is expressly capable of preventing criminal acts of counterfeiting customs documents including certification of goods origin.

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