

# THE RELEVANCE OF THE THEORY OF HARMONIZATION OF REGULATIONS ON THE STATUS OF IMPORTED GOODS IN INDONESIA

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### Abstract

The relevance of the theory of harmonization of regulations on the status of imported goods in Indonesia. The purpose of this study is to analyze: 1) To what extent is the existence of customs able to facilitate the flow of imported goods while preventing the entry of illegal imported goods? 2) Whether the regulations governing the trade administration of imported goods, especially the issue of the status of imported goods, have been able to accommodate the interests of importers or even confuse importers because of regulatory disharmony) 3) To what extent can the relevance of regulatory harmonization theory be used to overcome regulatory disharmony related to the status of imported goods? The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) or import, while excise is a state levy on an item that has properties or characteristics that have been stipulated in the Excise Law. So, if Customs are combined, it has the meaning of a government levy action on export and import goods and an item that has special characteristics. 2) *Free Trade Zone* (FTZ) is a concept in international trade whose regulation is carried out by the world customs institution called the *World Customs Organization* (WCO) which is regulated in Chapter 2 *Specific Annex D of The Revised Kyoto Convention* (RKC) 1999. 3) Based on the Regulation of the Minister of Trade entrusted to Customs as stated in the Regulation of the Minister of Trade of the Republic of Indonesia Number 48 / M- DAG/PER/7/2015 concerning General Provisions in the Field of Import which states that imported goods must be in a new state

**Keywords:** Relevance, Harmonization Theory, Regulation, Status, Imported Goods, Indonesia

## INTRODUCTION

### Background

The vast territorial waters in Indonesia facilitate traffic in and out of goods by sea transportation. Indonesia is also a country located in a strategic position sandwiched by two continents and in the middle of two oceans, therefore, Indonesia is one of the international trade routes in the world. Indonesia's strategic territory and position cause a lot of goods traffic in and out, both between Indonesian territories and between Indonesia and abroad. In and out of goods can also use many types of transportation, namely land, sea, and air transportation.<sup>1</sup>

Economic activity between residents of one country with residents in other countries is called international trade.<sup>2</sup> In international trade, export and import activities are one of the most important factors to increase economic growth. Export and import activities provide benefits for a country participating in them. Export is one of the sources of foreign exchange that is needed by countries whose economies are open, because exports can work widely in various countries will allow an increase in the amount of production that encourages economic growth so that it is expected to make a major contribution to the country's economic growth and stability. Meanwhile, through imports, the country can meet its domestic needs that cannot be produced domestically so that the costs incurred for a product of goods and services will be cheaper.<sup>3</sup>

Export and import trade is the same as domestic trade, namely there are buyers, sellers and buying and selling transactions. In foreign trade, the selling activity is called export and the buying activity is called import and the transaction is an export-import transaction. It's just that the territory or domicile of the seller and buyer crosses national borders. Regarding the definition of export-import activities, Bank Indonesia has provided a definition of export-import<sup>4</sup> in accordance with the overview of Indonesian Banking regulations, namely: Export is trade by removing goods from inside out of the Indonesian Customs area by fulfilling applicable regulations, while import is trade by entering goods into the Indonesian Customs area in accordance with applicable regulations.

The Central Statistics Agency (BPS) released that Indonesia's export development in August 2022 reached USD 27.91 billion, an increase of 9.17 percent compared to July 2022 exports. Deputy for Distribution and Services Statistics, Setianto said during a *virtual press conference*, compared to August 2021, the export value increased by 30.15 percent. "Non-oil and gas exports in August 2022 reached USD 26.19 billion, up 8.24 percent compared to July 2022, and up 28.39 percent compared to non-oil and gas exports in August 2021". The largest increase in non-oil and gas exports in August 2022 compared to July 2022 occurred in animal/vegetable fats and oils of USD 904.7 million (25.40 percent). While the largest decrease occurred in mineral fuels of US \$ 368.5 million (6.68 percent). By sector, non-oil and gas exports from the processing industry from January-August 2022 increased 24.03 percent compared to the same period in 2021. Likewise, exports of agricultural, forestry, and fishery products rose 17.14 percent, and exports of mining and other products rose 97.40 percent. The largest non-oil and gas exports in August 2022 were to China at USD 6.16 billion, followed by the United States at USD 2.59 billion and India at USD 2.47 billion, with the third contribution reaching 42.84 percent. Meanwhile, exports to ASEAN and the European Union (27 countries) amounted to US \$ 4.77 billion and US \$ 2.30 billion, respectively. According to the province of origin of goods, the largest Indonesian exports in January-August 2022 came from West Java with a value of US\$ 26.02 billion (13.37 percent), followed by East Kalimantan with US\$ 23.41 billion (12.03 percent) and East Java with US\$ 16.96 billion (8.71 percent). Cumulatively, Indonesia's export value from January to August 2022 reached USD 194.60 billion, an increase of 35.42 percent compared to the same period in 2021. Meanwhile, non-oil and gas exports reached US \$ 183.73 billion, up 35.24 percent.<sup>5</sup>

In Indonesia there are several regulations regarding activities in importing exports of goods. Especially in the field of imports, the Ministry of Trade regulates import activities in the Regulation of the Minister of Trade of the Republic of Indonesia Number 17 of 2021 concerning Exporters and Importers of Good Standing. Article 1 point 3 states "Import is the activity of entering goods into the customs area". While the definition of importer is contained in Article 1 number 6 that, "Importer is an individual or institution or business entity, whether in the form of a legal entity or non-legal entity, who carries out imports".<sup>6</sup>

### **Problem Statement**

1. To what extent is the existence of customs able to facilitate the flow of imported goods while preventing the entry of illegal imported goods?
2. Have the regulations governing the trade governance of import goods, especially the issue of the status of imported goods, been able to accommodate the interests of importers or have they confused importers because of regulatory disharmony?
3. To what extent can the relevance of regulatory harmonization theory be used to overcome regulatory disharmony related to the status of imported goods?

### **Theoretical Framework**

#### **1. Harmonization Theory of Regulations**

L. M. Gandhi who quoted the book *tussen eenheid en verscheidenheid: Opstellen over harmonisatie instaat en bestuurecht* (1988) said that harmonization in law includes adjustments to laws and regulations, government decisions, judges' decisions, legal systems and legal principles with the aim of increasing legal unity, legal certainty, justice (*justice, gerechtigheid*) and comparability (*equit, billijheid*), the usefulness and clarity of the law, without obscuring and sacrificing legal pluralism where necessary. Meanwhile, according to the National Legal Development Agency in a book compiled by Moh. Hasan Wargakusumah and friends, harmonization of law is a scientific activity to lead to a process of written harmonization that refers to philosophical, sociological, economic and juridical values.<sup>7</sup>

Legal harmonization can be done through prevention, where legal harmonization efforts are carried out to avoid the occurrence of a legal disharmonization. When in the implementation of laws and regulations in large numbers that have a relationship with one another, then of course if it is not studied properly and in depth in the process of its formation, it will have implications for legal disharmonization. For example, when there is a clash of legal norms between PP and the Law or Law with other laws. Legal harmonization exists to be able to overcome when there is legal disharmonization.<sup>8</sup> Harmonization has a function to prevent and overcome the occurrence of legal disharmonization. Harmonization can also ensure the process of forming draft laws that comply with the principles for legal certainty. Harmonization of regulations is closely related to the hierarchy of laws and regulations. The harmonization process is needed as

a form of resolving the disharmony or overlap of a higher rule with a lower one or regulations that are parallel but not harmonious with each other.<sup>9</sup>

Legal harmony in addition to being able to prevent and overcome legal disharmonization, legal harmonization can also be aimed or functioned to enforce the law. Law enforcement is an act of activity in harmonizing the relationship of values formulated into solid rules and then harmonized with the attitude of action in the final elaboration series, to create, maintain, and maintain peace in community life.<sup>10</sup> Physical strength is needed in law enforcement to enforce the rules of law to become a reality and channeled.<sup>11</sup>

## 2. Law Enforcement Theory

Law enforcement can be realized with the existence of an applicable legal system. Lawrence Meir Friedman said that the success or failure of law enforcement depends on 3 (three) things, namely Legal Substance, Legal Structure / Legal Institution and Legal Culture.<sup>12</sup> Law enforcement is not only to implement legislation, although in reality in Indonesia the tendency is so. But law enforcement is the process of making efforts to uphold or function legal norms in real terms as a code of conduct in traffic or legal relations in public and state life. Concrete law enforcement is the enactment of positive laws in practice as they should be obeyed. Therefore, providing justice in a case means deciding the law in *concreto in* maintaining and guaranteeing the observance of material law using procedural means established by formal law.<sup>13</sup>

Law enforcement is influenced by circumstances and social interactions that occur in society. A society that is in authoritarian rule, in an open and egalitarian society the law enforcement system will be different. Community members participate and are willing to realize true and fair law enforcement, so law enforcement is not solely the desire of law enforcement actors.<sup>14</sup> Law enforcement agencies play an important role in the functioning of the law, if the regulations are good but the quality of law enforcement is low then there will be problems. Vice versa, if the regulations are bad while the quality of law enforcement is good, it may cause new problems. Thus law enforcement has a major influence in the enforcement of a rule of law, the more professional law enforcers are in their duties, the easier the rules are to enforce. In this case, it is law enforcement in charge of supervising export-import activities that take place in Indonesia, namely the Directorate General of Customs and Excise.<sup>15</sup>

## RESEARCH METHODOLOGY

This research will be prepared using a type of normative juridical research, which is research focused on examining the application of rules or norms in positive law.<sup>16</sup> This type of research is normative legal research, in accordance with Soerjono Soekanto's opinion, that normative<sup>17</sup> legal research is research that includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research, in order to answer legal problems or issues to be studied. Normative legal research examines legal rules or regulations as a system

building related to a legal event. This research was conducted with the intention of providing legal argumentation as a basis for determining whether an event has been true or false according to law.<sup>18</sup>

This research uses various approaches, with the aim of obtaining information from various aspects of the issue under study. Therefore, to solve the problems that are the subject of discussion in this study, approaches such as: Legislation (*statute* approach) is an approach carried out by examining laws and regulations related to the legal issue being raised.<sup>19</sup> Conceptual *approach* is an approach that departs from the views and doctrines that develop in legal science.<sup>20</sup> Philosophically, the concept is a mental integration of two or more units isolated according to characteristics. The comparative approach is used with regard to comparative laws that discuss the import of goods or those related to the status of imported goods and their regulations in Indonesia.<sup>21</sup> document study will be carried out as a means of collecting data related to the problems raised, namely literature studies / document studies (*documentary study*), sourced from laws and regulations, books, official documents, publications and research results.<sup>22</sup>

## RESEARCH RESULTS

### **The existence of Customs as a regulator of the flow of imported goods while preventing the entry of illegal imported goods**

Many people prefer to briefly mention Customs. Actually, what is meant is the Directorate General of Customs and Excise (DJBC), or it could also be an employee of the DJBC. In international forums for Customs institutions, the term Customs Administration is used whose scope of duties includes customs and excise or just the customs field.<sup>23</sup>

Duty itself is an act of suspension from the government on export or import goods, while excise is a state levy on an item that has properties or characteristics that have been stipulated in the Excise Law. So, if Customs are combined, it has the meaning of a government levy action on export and import goods and an item that has special characteristics.<sup>24</sup>

The Directorate General of Customs and Excise in carrying out its mandate and authority has functions as a *revenue collector*, community protector, trade facilitator *and industrial assistant*). Broadly speaking, the four functions can be divided into 2 (two) major functions, namely the service function and the supervisory function. The Directorate General of Customs and Excise is required to carry out both functions at once, without reducing and sacrificing one function and the other. The service function is important to promote the general welfare while the supervisory function is also important to protect the public from the negative effects of international trade.<sup>25</sup>

The Directorate General of Customs and Excise is authorized to supervise these export and import goods without disrupting the smooth process. The purpose of the government in conducting supervision according to (Law Number 17 of 2006 Amendments to Law Number 10 of 1995 concerning Customs) is to increase the country's income or foreign

exchange, as a tool to protect domestic products and as a means of supervision so that not all goods can go in and out freely in the Indonesian market or customs area. To avoid this, it is to enter and exit goods through a port.<sup>26</sup> Based on Article 1 paragraph (1) of Law Number 11 of 1995 juncto Law Number 39 of 2007 concerning Excise, "Excise is a state levy imposed on certain goods that have the nature or characteristics stipulated in the excise law" is state revenue to realize the welfare of the nation.<sup>27</sup>

The management of customs notification of imported goods is carried out by the carrier/importer. In the event that customs management is not carried out alone, the importer can give his power of attorney to the Customs Service Management Entrepreneur (PPJK). In addition to being regulated in the Customs Law, PPJK is also regulated in the Regulation of the Minister of Finance Number 65 / PMK.04 / 2007 dated June 20, 2007 concerning Customs Service Management Entrepreneurs and Regulation of the Director General of Customs and Excise Number P-22 / BC / 2007 dated July 4, 2007 concerning Guidelines for the Implementation of Principal Number Granting and Supervision of Customs Service Management Entrepreneurs.<sup>28</sup>

Based on Customs Law Number 17 of 2006 which is a substitute for Law Number 10 of 1995, customs and excise have the authority to inspect goods in national and international trade. Inspection of goods includes the completeness of documents about the origin of the goods, the owner of the origin of the goods and the purpose of the new owner of the goods. Customs and excise as a supervisor of goods traffic is closely related to implementers in eradicating smuggling of both goods originating from outside and within the country. Based on Customs Law Number 17 of 2006, customs and excise have the authority to arrest smuggling perpetrators, confiscate contraband as evidence to be submitted to authorities such as the police for follow-up as a criminal offense.<sup>29</sup>

### **Trade Regulation on Import of Goods**

*Free Trade Zone (FTZ) is a concept in international trade whose regulation is carried out by the world customs institution called the World Customs Organization (WCO) which is regulated in Chapter 2 Specific Annex D of The Revised Kyoto Convention (RKC) 1999 which is called the Free Zone: "Free zones means a part of the territory of a Contracting Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory", is generally regarded as being outside the Customs area). This Free Zone scheme in various countries is referred to by many terms other than Free Trade Zone, such as: foreign-trade zones, duty free export processing zones, export free zones, export processing zones, free export zones, industrial free zones, investment promotion zones, maquiladoras (Mexico), free ports, and special economic zones.*<sup>30</sup>

This FTZ is actually an area located in the territory of the Unitary State of the Republic of Indonesia (NKRI) but is given an exemption (dispensation) by the State for the non-enactment of the Customs Law, the Tax Law specifically for taxes in the context of imports, and the Excise Law on the entry and expenditure of goods to and from the area.

The dispensation granted in the FTZ area is conditional, where the right of the State is not levied as long as the goods are used up or used only within the FTZ area or issued outside the customs area after undergoing a process of improving the quality of goods. State rights will be levied on the goods in question if these conditions are not met. Given the potential for State revenue, supervision of the traffic of goods entering and leaving the FTZ area is needed to secure State rights.

The laws and regulations governing the FTZ scheme have also undergone changes following the development of domestic conditions and international trade and the last regulation of the FTZ scheme is the promulgation of Law Number 44 of 2007 concerning the Stipulation of Government Regulations in Lieu of Law (PERPU) Number 1 of 2007 concerning Amendments to Law Number 36 of 2000 concerning the Determination of PERPU Number 1 of 2000 concerning Free Trade Areas and Free Ports Become law (FTZ Act). In this regard, there are substantial changes to the latest FTZ Law, namely the determination of an area to become an FTZ area carried out using a Government Regulation which originally used the Law. Areas in Indonesia that are FTZ areas until 2018 as the results of the search for laws and regulations are in 4 (four) regions, namely: FTZ Sabang, FTZ Batam, FTZ Bintan, and FTZ Karimun.<sup>31</sup>

Import Governance, Legal basis: a) Law Number 10 of 1995 concerning Customs, as amended by Law 17 of 2006; Kep. Menkeu No. 453/KMK.04/2002 concerning Customs Management in the Field of Imports, as amended several times most recently by Kep. Menkeu No. 112/KMK.04/2003; b) Kep. DJBC No. KEP-07 / BC / 2003 concerning Guidelines for the Implementation of Customs Management in the Field of Import which has been amended several times most recently by DJBC Regulation No. P- 06 / BC / 2007. Exceptions in import management. The imported goods that are exempted are: 1) Diplomatic goods; 2) Moving goods; 3) Crude petroleum; 4) Explosives and others; 5) Imported goods under Article 23) B; 6) Grant items; 7) Merchandise that has a value of f.o.b. (*free on board = free to arrive on board*) less than US\$ 5,00.00. But the limit of such goods still applies the provisions of inspection by Customs and Excise).<sup>32</sup>

The Export Destination Import Facility (KITE) in the Decree of the Director General of Customs and Excise Number KEP-205 / BC / 2003 concerning Guidelines for the Implementation of Import Facilities for Export Destinations and its Supervision was last amended by the Regulation of the Director General of Customs and Excise Number PER-9 / BC / 2011 defined as granting exemption and / or return of Import Duties (BM) and / or Excise and VAT and PPnBM are not levied on the import of goods and / or materials to be processed, assembled, or installed on other goods whose output is primarily for export purposes.<sup>33</sup>

In Law No. 17 of 2006 concerning customs, it is stated that used imported goods are controlled by the state because they are goods prohibited by the state to be imported. The effects caused by the import of used goods can disrupt the domestic garment and textile industry, which also has an impact on foreign exchange recipients of export goods from the tax and levy sector. While on the other hand, the existence of imported used

clothes is a solution for the lower middle class to get clothing needs (clothes) with good quality and relatively affordable prices. Even today using used clothes (thrift) has become a trend among young people. The implementation of enforcement of the rules of the Ministry of Trade Regulation No.51 of 2015 concerning the Prohibition of Import of Used Goods is currently under the auspices of Customs and Excise which is a vertical agency of the Ministry of Finance to carry out enforcement and confiscation to become State Property (BMN). One of the prohibitions on the import of used goods is used clothing.<sup>34</sup>

The government banned the import of second-hand clothing through the establishment of various policies. These policies include Regulation of the Minister of Trade of the Republic of Indonesia Number: 54/M-DAG/PER/10/2009 concerning General Provisions in the Field of Imports, Law of the Republic of Indonesia Number 7 of 2014 concerning Trade, and Regulation of the Minister of Trade of the Republic of Indonesia Number 51/M-Dag/Per/7/2015 of 2015 concerning the Prohibition of Import of Used Clothing. The used clothing business then became an illegal business. The importation of second-hand clothing was then assessed as a transnational crime as it was related to smuggling. In its implementation, the import of used clothing becomes illegal and must be handled in accordance with Law Number 10 of 1995 concerning Customs.<sup>35</sup>

### **Harmonization of regulations in regulations relating to the status of imported goods**

Sea transportation is a means of transportation that connects one region to another. What is often used by service users to do business, especially dangerous goods business in areas that use sea transportation, but service users do not see the importance of safety sailing in waters, so there is a need for supervision at ports to avoid service users who want to transport dangerous goods using passenger ships.<sup>36</sup>

Based on the Regulation of the Minister of Trade entrusted to Customs contained in the Regulation of the Minister of Trade of the Republic of Indonesia Number 48 / M- DAG / PER / 7 / 2015 concerning General Provisions in the Field of Import which states that imported goods must be in a new state. Imported goods sent by *shippers* from abroad are submitted in the Inward Manifest document filled in by the carrier in this case the voyage. In PMK Number 158 / PMK.04 / 2017 concerning the Procedure for Submission of Notification of the Plan of Arrival of Transportation Facilities, Manifest of Arrival of Transportation Facilities and Manifest of Departure of Transportation Facilities Article 1 paragraph 14 explains that Inward Manifest is a list of commercial goods transported by Transportation Facilities by sea, air, and land when entering the Customs Area or other places after obtaining permission from the Head of the Customs Office who supervises the place.<sup>37</sup>

The Directorate General of Customs and Excise plays an important role in supervising the traffic of imported goods because all types of goods entering the city of Batam are required to go through the DJBC. The purpose of going through the DGCA is that every incoming item must make a notification of import of goods (PIB) and the customs officer

will check the type of goods and quantity imported, whether it is in accordance with customs regulations or not. For the issuance of imported goods, they must also have a goods issuance order (SPPB) from the customs and excise officer. For imported goods that are not in accordance with the regulations or do not have permission from the relevant agency for lartas goods, the imported goods will not get SPPB and cannot enter the city of Batam, then the importer must apply for export cancellation, re-export, or destruction of the imported goods under the supervision of customs and excise officers.

All prohibited or restricted goods that are not eligible for import or export, if notified by customs notification, at the request of the importer or exporter cancelled export, are re-exported. Or destroyed under the supervision of customs officials, unless the goods are otherwise stipulated based on applicable laws and regulations. If the importer wants to enter lartas goods without fulfilling the required licenses or conditions, the importer will carry out fraudulent activities in the form of manipulating the data of imported goods, entering lartas goods secretly without reporting, hiding imported lartas goods unlawfully, not being notified or incorrectly notifying imported lartas goods and other forms of fraudulent activities.

These fraudulent activities are called smuggling and based on the provisions of Law number 17 of 2006 concerning amendments to Law number 10 of 1995 concerning customs, that smuggling activities in the import sector will be subject to imprisonment and fines. In the event that the importer who smuggles imported goods is a legal entity, then based on article 108 paragraph 1 of the Customs Law, criminal sanctions will be imposed on, legal entities, companies or companies, associations, foundations or cooperatives, and/or, Those who give orders to commit such criminal acts or who act as leaders or who neglect to prevent them."

The method of customs inspection based on governing regulations also provides an opportunity for importers to manipulate data and enter imported goods that are not allowed and cause harm to society and the country. This is because customs inspection is carried out by means of document research and physical examination, and physical examination is carried out selectively. Import Paths consist of two types, namely red import lines and green import lines. For importers who import with red import channels, every entry of imported goods will be carried out document research and physical examination. For importers who import with the green line, the entry of imported goods will only be carried out document research, while physical examination is not always carried out and selected selectively.

Thus, violations of customs regulations in the field of import or smuggling of imported goods are difficult to overcome completely and cannot know how many violations of customs regulations in the field of imports and the number of smuggling of imported goods because not all customs violations and smuggling of imported goods are successfully prevented or known.

## CONCLUSION

The results showed that;

- a. Duty is an act of suspension from the government on export or import goods, while excise is a state levy on an item that has the nature or characteristics that have been stipulated in the Excise Law. So, if Customs are combined, it has the meaning of a government levy action on export and import goods and an item that has special characteristics.
- b. *Free Trade Zone* (FTZ) is a concept in international trade whose regulation is carried out by the world customs institution called the *World Customs Organization* (WCO) which is regulated in Chapter 2 *Specific Annex D of The Revised Kyoto Convention* (RKC) 1999.
- c. Based on the Regulation of the Minister of Trade entrusted to Customs contained in the Regulation of the Minister of Trade of the Republic of Indonesia Number 48 / M-DAG / PER / 7 / 2015 concerning General Provisions in the Field of Import which states that imported goods must be in a new state

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