

## INTERNATIONAL LAW OF SMUGGLING

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### Abstract

Smuggling is the act of carrying goods or people illegally and hidden, like out of a building, into jail, or through of border, Contrary to the law or other regulations. Smuggling encouraged various reasons. These include illegal trade, such as drugs, Immigration and illegal migration, avoid excise, Smuggling of illegal goods to prisoners, or smuggling stolen goods. Another example is the financial motive for it is not like bringing banned items past a security checkpoint (as in airfield) or removal of confidential documents from the state or government officials. Type the smuggling of goods, people and wild creatures.

Keywords: Goods; International Law; Smuggling.

### A. INTRODUCTION

The establishment of a state with the territory, the people, the government, and sovereignty of other countries. Country in its efforts for the welfare of the people requires no small cost. It required financial resources to finance the State. As one of the sources of these funds, derived from Customs levies and other charges that are legitimate. In its implementation, among other charges imposed on its own government officials, among others, the Directorate General of Customs and Excise under the Ministry of Finance.

From these limitations, the economic rate in Indonesia is very dependent on the business world, namely export and investment. In order to address economic growth and employment the Indonesian government has tried to attract foreign investors to invest in Indonesia. In fact, to overcome one of the problems in Indonesia, namely the problem of employment and unemployment, then what is needed is the investment or the move of the real sector where currently it is not seen any good prospects.<sup>1</sup>

Directorate General of Customs and Excise was given the task to regulate the entry of foreign goods into the country or imported and exit of goods from domestic to foreign or export. There is a tendency in economic activity for the pursuit of profit maximization is not impossible that there are irregularities in the export or import in order to avoid the customs charges and other levies. It is quite possible considering the geographical conditions of the State of Indonesia consists of tens of thousands of islands consists of islands large and small islands. Between these

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1 Arpangi, LEGAL PROTECTION ON INDONESIAN LABOR IN ABROAD, *International Journal of Law Reconstruction*, Volume II, Issue 1, March 2018, P.53-62

islands which lie within a wide range between one island to another island or between islands in Indonesia by island territory of another country.

Differences in closer proximity with overseas from trade center in the country, the price difference is striking between the price of goods in the country with the price of goods abroad, the mentality of certain elements, the weakness of infrastructure and the weakness of the administration in the form of convoluted bureaucracy so that it can deliver opportunities to the parties conducting import-export activities to deviations and violations. One form of the irregularities and instances of fraud is the crime of smuggling.

From the beginning people are always looking for ease in carrying out the activities in achieving life. It has been fulfilled with the advancement of technology. Nonetheless, people are still not satisfied, so always look for the possibility to easily meet their needs.<sup>2</sup> The criminal act of smuggling is a serious problem in the implementation of the country's economy, and this is because if smuggling is increasing with various forms of physical, or administrative, will lead to more money a country not picked by thus inhibits both the target set by the state through customs and excise levies which annually is expected to increase. Each year always occur losses due to smuggling which occur in Indonesia either by land, sea or air.

Since 1967 the President pursuant to Decree No. 73, has authorized the Attorney General to carry out the mission, the examination of those doing the smuggling. Ins-based instruction No. 009/JA/5/1990, dated May 7, 1990, the Attorney General has established a Prevention Team and Smuggling Case Management (TP4), TP4 area of level I and level II regions. Besides TP4, community participation in combating smuggling still needs to be improved.

## B. RESEARCH METHODE

This research method using qualitative research which the authors use the reference a literature study. This study uses normative legal research methods through a legal approach and conceptual approach. Accurate collection of data/information with primary data as supporting/supporting and secondary data from literature,<sup>3</sup> the writer's use some references from the Internet that can be accounted for the validity. A discussion of the crime of smuggling of goods exports and imports, types, factors and the negative impact of the smuggling of goods exports and imports. In addition, regarding the case of smuggling of goods exports and imports in Indonesia and international regulations regarding the crime of smuggling

## C. RESULTS AND DISCUSSION

International trade is the buying and selling of goods or services performed by two or more of a country in order to meet the collective needs. From the above we can take the conclusion that the activities in international trade is an activity of buying and selling goods or services abroad.

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2 Andri Winjaya Laksana, CYBERCRIME COMPARISON UNDER CRIMINAL LAW IN SOME COUNTRIES, *Jurnal Pembaharuan Hukum*, Vol V No.2 April-Agustus 2018, P.217-226.

3 Andi Aina Ilmih, A.Zulkarnain, IDEAL ELECTRONIC CONTRACT MODEL AS A FORM OF E-COMMERCE DISPUTES SETTLEMENT, *Jurnal Pembaharuan Hukum*, Volume VI No.1 Januari-April 2019, P.77-89.

Event buy goods from abroad are called import, whereas selling goods abroad called export. One type of international trade is smuggling trade (smuggling). This smuggling is an activity that is not good and is included in a criminal act. Smuggling itself is divided into 2 of the smuggling is done wearing smuggling illegal means full and administrative (custom fraud).

#### 1. Understanding the Smuggling of Goods Export-Import

Smuggling is derived from the word contraband. In Big Indonesian Dictionary, published the Ministry of Education and Culture, Balai Pustaka, 1989, said contraband interpreted, ducked, enter surreptitiously or illegally to avoid import duties or for smuggling contraband.

In Webster's Ninth New Collegiate Dictionary Smuggle word means "to import or export secretly Contrary to the law and especially without paying import duties or export something in violation of the customs law". (Imported or exported illegally, opposite or not in accordance with the law and in particular to avoid the obligation to pay on an import or export of which is a violation of customs regulations).<sup>4</sup>

In the Dutch-Indonesian dictionary, defined smuggling. Article 7 Duties Ordinance (OB) includes the word smuggling by "officials at authorities if the suspect a violation, right outside and at his position, check all the means of transport, goods loaded on it or in it and belongings goods being transported, ordered the ships anchored in the rivers and in lake, ordered the halt of transportation equipment other or people who are transporting, ordered to disassemble something means of transportation at the expense of the innocent, and use all the effort forced expedient to carry out checks in order to prevent smuggling. Researching the law, Presidential Decree No. 73 of 1967 contains the meaning of smuggling as follows.

#### 2. Types of Export-Import Goods Smuggling

There are 2 types of smuggling, namely:

##### a. Physical smuggling

Physical smuggling is any activity you insert or remove the goods (to / from Indonesia without documents).

Generally, scholars have agreed, that the definition of smuggling physical in Article 26b RO (Rechtenordonnatie, meaning Ordanansi Bea) is "the one who is importing or exporting goods or tries to import or export goods without regard shall the provisions of this ordinance and from element attached to it or the transport or the storing of goods contrary to the provisions laid something restrictions imposed by the second paragraph of Article 3.

Whereas Article 3 (2) OB designated Section 26b reads: "without prejudice to the provisions of this ordinance and element attached to him about transport to and from the port, the Minister of Finance with Minister of the Interior, has the right to appoint streets land or waters or areas, where goods in she pointed prohibited from

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<sup>4</sup> Leden Marpaung, Tindak Pidana Penyelundupan Masalah dan Pemecahan, Gramedia Pustaka Utama, Jakarta, 1991, P.32.

being transported and / or in a building or in the yard, if not protected by documents of employees of customs and excise or from the extension services of other designee.

b. Administration Smuggling

Administration Smuggling is any activity include or exclude items that exist papers but not according to the number / type or price of the goods contained therein. What is meant by Administration Smuggling is regulated in Article 25 paragraph (II) c OB is "Notifying wrong about the number, type or price of goods in the notifications of import, storage in port, shipments into or onto the curved area of customs or demolition or in something notification does not mention the goods are packed with other goods. If these items are still in the customs area, categorized as smuggling of administration, because that does not fit is the amount, type, or price of the goods were reported, and there is the possibility to repay in full the obligations to pay.

3. Export-Import Procedures

a) Procedures for Export

Generally governance apply temporary export, meaning that it can always be changed in accordance with the reality in the society and the Government's policies. Basically export goods exempted from customs examination. Export goods can be classified as follows:

- 1) Free goods exports;
- 2) Goods whose export is controlled;
- 3) Goods subject to export tax (PE) and / or additional export tax (PET).

Legal Basis:

- 1) Act 17 of 2006 on Amendment Act 10 of 1995 on Customs
- 2) Minister of Finance Regulation No. 145 / PMK.04 / 2007 concerning Customs Provisions in the Export Sector
- 3) Regulation of the Director General of Customs and Excise No. P-40 / BC / 2008 jo. P-06 / BC / 2009 jo. P-30 / BC / 2009 jo. P-27 / BC / 2010 on Customs Procedures in the Export Sector
- 4) Regulation of the Director General of Customs and Excise No. P-41 / BC / 2008 on Export Customs Declaration

b) Import Procedures

1) Legal Basis

[a] Act No. 10 of 1995 on Customs, as amended by Act No. 17 of 2006;

[b] Regulation of Minister of Finance No. 453 / KMK.04 / 2002 on customs procedures in the import field as already amended by Decree. Minister of Finance No. 112 / KMK.04 / 2003;

[c] Regulation of DJBC No. KEP-07 / BC / 2003 on Guidelines for the Implementation of Customs Procedures in imports which has been amended by Regulation DJBC No. P-06 / BC / 2007.

2) Exceptions In Import Procedures

Imported goods that receive exceptions are:

[a] Goods diplomatic;

[b] Goods moving;

[c] Crude petroleum oil;

[d] Explosives and others;

[e] Goods imported under Article 23) B;

[f] Goods grant;

[g] The merchandise has a value fob (free on board = free up on the boat) is less than US \$ 5,00.00. But limit these items still apply the provisions of inspection by Customs and Excise).

4. Deeds-deeds which includes smuggling of goods export-import

Acts categorized as a criminal offense of smuggling in Act No. 5 of 1995 include:

- a) Submit a customs declaration and / or customs documents and / or provide information orally or in writing false or falsified used for the fulfillment of Customs Duties.
- b) Remove the imported goods from Customs Area or Bonded Hoarding, without the approval of Customs and Excise officials with the intent to evade payment of duties and / or other state levies on import.
- c) Create, approve, or participate in the addition of false data into a book or record.
- d) hoard, store, possess, buy, sell, exchange, acquire, or provide goods imports originating from criminal acts of smuggling.
- e) Transporting goods originating from criminal acts of smuggling.
- f) Destroy, modify, cut, hide, or remove books or records that should be kept under Customs Act.
- g) Eliminate, approve, or participated in the removal of information from customs declarations, customs documents, or records.
- h) Storing and / or provide a blank invoice trademarks of companies domiciled abroad who are known to be used as a complete customs declaration under the Customs Act.
- i) Dismantling of imported goods in places other than the place specified by the Customs Act.
- j) Without permission to open, remove, or break the lock, seal, or safety pins have been installed by Customs and Excise officials.
- k) Do not bring imported goods to the Customs Office first goal through a set path and arrival is not notified by the transporter.
- l) The carrier has not reported the demolition of prior import goods to the nearest customs office.

- m) The amount of goods unloaded less or more than that notified in the customs declaration and can not prove that the error occurred beyond their means.
  - n) Removing goods from Customs Area before being given approval by Customs and Excise officials.
  - o) The carrier that does not communicate with the removed items to a destination outside the Customs Area by using customs declarations.
  - p) Goods are removed not get to the destination or the amount of goods after arriving at the destination is not in accordance with the customs declaration, and can not prove that such errors occur beyond his ability.
  - q) Do not hand over the goods to be checked, opening a carrier or parts thereof and do not open any package or packaging to be checked by Customs and Excise officials.
  - r) Do not meet the demand of Customs and Excise officials to carry out inspection of export and import goods.
  - s) One notify the type and / or quantity of goods in customs declarations on imports and exports.
5. Causes of Smuggling Attempts existence Export-Import Goods
- a) Many factors contribute to the effort to smuggle goods from the country to the outside Indonesia or otherwise as commodities including crude oil, among others:
  - b) Because there is a difference between the striking price of goods in the domestic price of the product abroad. For example, in Indonesia buy premium fuel difference of Rp 4,000 cheaper than in the Timor-Leste, they are interested in smuggling. Characteristics of smuggled goods is usually because there is a sharp difference in price.
  - c) Goods that are prohibited, such as in Atapupu (NTT), if the Timorese people to buy fuel subsidies in Indonesia banned, so there are unscrupulous smuggling.
  - d) Tariffs import / export, the higher rates of import / export, the more likely a smuggled goods, such as mobile phones that high import tariffs so high risk smuggled into the country. Related to the case of mobile phones, the mode by separating the delivery of mobile products with the packaging.
6. Negative Impact of Trafficking Efforts Export-Import Goods
- a) Smuggling existence of an adverse impact to the nation, the impact of smuggling, among others:
  - b) Inhibiting the national development and detrimental to the State.
  - c) Potential State Tax missing.
  - d) Creating a nation embarrassed because there are people who cooperated with criminals from abroad or can be said to betray the country.
  - e) Acceptance and reduced foreign exchange.

## 7. Smuggling Case Goods Export-Import Existing in Indonesia

Customs Bust Smuggling Plastic Seed, Directorate General of Customs and Excise to thwart the smuggling of illegal plastic pellets weighing 240 750 kilograms of Saudi Arabia. According to the Acting Head of the Regional Office of Directorate General of Customs and Excise Agus Yulianto in the office of Customs and Excise, the potential losses to the state amounting to Rp 443 million. Importer company in Gresik violated the rules of use of the facilities of the Investment Coordinating Board (BKPM). The firm allegedly selling seed materials, disguised as a clear plastic process. The company sells plastic pellets directly to another company in Sidoarjo. Supposedly, after imported plastic pellets are processed into finished goods prior to shipping. So that the two companies have violated the rules. Customs also seized three trucks carrying plastic pellets was in the Port of Tanjung Perak, Surabaya. Importing companies will be subject to administrative sanctions, fines of at least 100 percent and a maximum of 500 percent of import duties and operating license may be revoked. Customs are still examining the case. Losses to the state of the case is likely to rise much.

Directorate General (DG) of Customs and Excise Ministry of Finance states, smuggling of food commodities and products is rife in Indonesia during the fasting month and led. Goods-contraband The results of the illegal importation from abroad because of the high demand in the country. Deputy Director of Communications and Publications Directorate General of Customs and Excise, Denny Surjantoro revealed within a few months into the month of fasting, the Customs together with related parties have foiled several smuggling of illegally imported food from various countries, such as onion, rice, and sugar. In March, a total of 1,000 sacks of rice from Singapore, 500 sacks of sugar and thousands of bottles of alcoholic beverages was foiled in the waters of Tanjung Pinang. Securing one after another freighter 50 tons of smuggled onions from Malaysia with the objective of Kuala Langsa in April. The discomfiture of Customs jointly conducted the Navy. Also recently, Dumai Customs managed to foil the smuggling of 15 tons of sugar from Malaysia with a value of approximately USD 150 million. Police also has recently been secured two vans containing 10 thousand units of various brands of smart phones, including the iPhone and Xiaomi contraband. "Ahead of Ramadan, we have a lot to thwart the smuggling of strategic food from abroad, such as onion, rice, and white sugar. Indeed, many due to high demand for food. But if the new phones today we find again his smuggling," said Denny when contacted Liputan6.com, Jakarta, Monday (06/13/2016). He estimated state losses due to smuggling of illegal imported goods reached billions of rupiah. For example, 10 thousand cases of contraband cell phones. When prices averaged at \$ 2 million per unit, multiplied by the obligation of import duties and other taxes by about 40 percent, then around Rp 800 thousand per unit should go into state revenue. But since passed the examination and not depositing duties and taxes, then multiplied by 10 thousand, the state lost about Rp 8 billion.

"But it is not yet fixed numbers. Because being researched and investigated by the police for smuggling 10 thousand units of mobile phones. So the position of Customs is awaiting the results of the police investigation," he said. Denny admitted illegal goods or contraband usually enter through the ports of mice that many in Indonesia. This condition makes overwhelmed customs officers. Based on data from the Ministry of Commerce, there are 43 entrances unofficial in Batam, and on the East coast of Sumatra there are 100 doors unofficially. "Not possible via large ports and airports. But a lot of the port mice no officers," he said. Therefore, do not want to miss, the Directorate General of Customs to improve and tighten supervision of patrol and inspection of goods imports and exports. Earlier, Director General of Customs, Ministry of Finance (MoF), testifying Heru said the government needs to anticipate the possibility of the entry of illegally imported goods. "Definitely incoming goods through unofficial channels, improve supervision of physically passing patrol the harbor and outer harbor, for example the East Coast of Sumatra. While the examination of documents in the main harbor and internationally in more detail," he stated. Customs, he added, would maximize surveillance to prevent rampant smuggling imported goods. Only he could not guarantee the absence of smuggling illegal goods into Indonesia. "But there must have been smuggling for a while," he said. (Fik / Ahm)

#### 8. Smuggling Crime Legislation

In-Act No. 17 of 2006 on Amendments to the Law of the Republic of Indonesia Number 10 Of 1995 concerning Customs (State Gazette of the Republic of Indonesia Number 2006 Number 93, Supplement to the State Gazette of the Republic of Indonesia Number 4661). Had organized smuggling criminal sanctions as stipulated in Article 102, Article 102 A and Article 102 B of Act No. 17 of 2006, particularly the crime of smuggling in the field of import, namely:

- a) Criminal minimum imprisonment of one (1) year and a maximum imprisonment of ten (10) years.
- b) Criminal minimum fine of Rp50,000,000.00 (fifty million rupiah) and at most Rp 5,000,000,000.00 (five billion rupiah).

While the crime of smuggling in the export sector, namely:

- a) Criminal minimum imprisonment of one (1) year and a maximum imprisonment of ten (10) years.
- b) Criminal minimum fine of Rp50,000,000.00 (fifty million rupiah) and at most Rp 5,000,000,000.00 (five billion rupiah)

For the crime of smuggling that resulted in disruption of economic foundations in the country, namely:

- a) Criminal minimum imprisonment of 5 (five) years and a maximum imprisonment of 20 (twenty) years.



- b) Criminal minimum fine of Rp 5,000,000,000.00 (five billion rupiah) and Rp. 100,000,000,000.00 (one hundred billion).

The formulation of criminal sanctions smuggling as stipulated in Article 102, Article 102 A, and Pasa I102 B Act No. 17 of 2006 mentioned above essentially apply criminal sanctions such as imprisonment and criminal fines is criminal sanctions are cumulative (combined) by prioritizing the application of criminal sanctions in jail first and then followed with a cumulative fines to criminal sanctions. Formulation application of criminal sanctions such as these show that the criminal smuggling of dual criminal sanctions severe enough, namely imprisonment applied sanctions on the one hand and at the same time a witness subject to criminal penalties. However, if the penalty can not be paid by a subsidiary to Article 30 of the Criminal Code it is very detrimental to the state.

The philosophical basis of the application of criminal sanctions smuggling in the form of criminal sanctions cumulatively, for the crime of trafficking is a form of "crimes or offenses which harm the interests of state revenues, undermining the stability of the country's economy or the decimation of the country's economy, and detrimental to the potential state revenue needed to finance national development in the framework of the welfare of the masses ". Therefore, against criminal smuggling need to be sanctioned alternative character that the Customs Act is implemented and adhered to increase revenue and foreign exchange.

In Article 29 of the Law on Tariff never apply declared although already in the stage of investigation and prosecution of the Minister of Finance still can request the termination of the investigation and prosecution of cases of smuggling along the suspect / defendant perform its legal obligations, that is paying off duties to be paid by the suspect or defendant to state. Things like this are not formulated in the Customs Amendment Act applies.

#### D. CONCLUSION

Smuggling is importing or exporting illegally, opposite or not in accordance with the law and in particular to avoid the obligation to pay on an import or export of which is a violation of customs regulations. Smuggling is composed of two types, physical smuggling and smuggling of administration. Laws and regulations regarding the crime of smuggling contained in Act No. 17 of 2006 on Amendments to the Law of the Republic of Indonesia Number 10 Of 1995 concerning Customs (State Gazette of the Republic of Indonesia Number 2006 Number 93, Supplement to the State Gazette of the Republic of Indonesia Number 4661). Had organized smuggling criminal sanctions as stipulated in Article 102, Article 102 A and Article 102 B of Act No. 17 of 2006, particularly the crime of smuggling in the field of export and import. Supposedly the parties responsible for or associated with the field of customs and excise should be more selective in checking goods exports and imports that occurred in Indonesia. Because the export and import activities in Indonesia is very high. Can happen anytime and anywhere. In addition, the export and

import activities will greatly affect the development or activities inside the country. Penyalahgunaan If that happens, there will be also a loss that would be obtained by the various parties could even be affected even this state losses. Therefore, let us all who want to live the import-export activities and in particular to the parties concerned will export and import activities, do these activities in accordance with the provisions that already exist in this country.

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