

Investigation System Reform in Settling Smuggling Crime

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Abstract. Indonesia has governed smuggling crime in the provisions of Articles 102, 102A and 102B of Law Number 17 of 2006 about the Amendment to Law Number 10 of 1995 about customs. To lower the smuggling rate, sanction reformulation is required in the attempt of recovering the state's financial loss and/or being partial to the state's financial interest. Criminal sanction of smuggling is led to the attempt of recovering the state's loss rather than sentencing imprisonment. This research aimed to find out and to analyze the reason why the reform of smuggling crime investigation system needs to be done. This study was a non-doctrinal law research; techniques of collecting data used were interview, document study, and Focus Group Discussion; data analysis was conducted using an interactive model of analysis. The result of research showed that the factors encouraging the reform of smuggling crime investigation system to be done were legal substance related to regulations about prohibited and restricted products and imprisonment criminal sanction that were ineffective, with elaborate legal structure or bureaucracy and executorial function imposed to the investigators constituting Civil Servant Officials in Directorate General of Customs, and legal culture, in which the main actor had never been found, people's livelihood source coming from smuggling, and low support among institutions to smuggling crime overcoming.

1 Introduction and literature review

Government policy related to customs - the enactment of Law Number 10 of 1995 about customs that was amended with Law Number 17 of 2006 (Customs Law)—is an anticipative measure involving strategic, substantive, and essential dimensions in international commerce, expected to be able to deal with globalization and internal commerce challenges.

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The infringement of customs, according to *WCO Handbook for Commercial Fraud Investigators*, can be divided into sixteen main types: smuggling, incorrect product elaboration, product value infringement, product origin state statement, infringement of import custom relief over the processed product, temporary import infringement, import/export license infringement, product transit infringement, incorrect notification of product content number, use purpose infringement, product specification and consumer protection infringement, product infringing the intellectual right, black transaction, customs return infringement, fictitious business, and false liquidation [1].

Many attempts have been taken to lower smuggling rate, one of which is to improve infrastructure in the attempt of supporting the investigator's role in overcoming smuggling crime. Just like what occurring in South Africa, the infrastructure development in this state borders can help prevent smuggling from occurring, such as in Beitbridge Border Post constituting a strategic entrance port to Zimbabwe and South Africa [2].

Indonesia has governed the criminal sanction against smuggling in the provision of Articles 102, 102A and 102B, particularly smuggling crimes in import and export sectors, and smuggling crime harming the State's economic elements.

Customs Law has firmly prohibited anyone from doing import and export smuggling, and instructed the judge all at once to sentence criminal sanction when some members of community do such deed. However, the formulation of Article 102 of Customs Law does not govern grimly the concept of State's loss recovery. Thus, any time smuggling crime occurs, the state is always harmed. On the contrary, the state's loss recovery concept is governed firmly in Singapore and Malaysia's Customs Laws, stating that when the state's loss is not paid completely, criminal sanction of imprisonment will be imposed based on the state's loss size scale. It indicates that the legislator of Customs Law in Indonesia has not had concept yet prioritizing the payment of loss for the state's interest in governing criminal sanction for the formulation of smuggling crime [3].

Smuggling crime investigation is governed in Articles 112. Meanwhile for the state's revenue interest, investigation can be ceased as governed in Article 113. Considering the elaboration in Article 113, it can be seen that there is "a space" to settle the smuggling criminal case out of the court, although explicitly the settlement using restorative manner has not been governed yet.

In Indonesian Positive law, criminal case cannot be settled out of the court, although in certain matters it can be likely settled out of the court. However, law enforcement practice in Indonesia including criminal case is often settled out of the court through law enforcers' discretion, reconciliation mechanism, custom institution, and etc. The practical implication of case settlement out of the court so far is that there is no formal legal foundation, so that some cases have been commonly settled informally through reconciliation with customary law mechanism, but they remain to be processed in the court corresponding to the enacted positive law [4].

Smuggling is a special crime related to state finance (state economy) resulting in the state financial loss using restitutive investigation system. Thus, a reform should be conducted in smuggling crime investigation system in the attempt of recovering the state's financial loss.

2 Objective of the study

The smuggling crime investigation with restitutive system is considered as not beneficial to the state financial revenue because it cannot recover the state financial loss due to smuggling crime. Thus, a reform should be made on the smuggling crime investigation system. This

research aimed to find out and to analyze the factors encouraging the reform of smuggling crime investigation system to be done.

3 Methodology

This study is non-doctrinal law research; primary data source was obtained from interview with investigators constituting Civil Servant Officials in Directorate General of Customs, North Sumatera Regional Office, Special Region Office of Riau Islands, Batam General Service Office, and Eastern-Part Borneo Region Office; and Focus Group Discussion; meanwhile, secondary data source was obtained from literatures; techniques of collecting data used were interview, document study, and Focus Group Discussion; all of data collected were then analyzed using an interactive model of analysis.

4 Discussion

4.1. The cause of smuggling crime

There are some factors encouraging the smuggling crime in Indonesia, geographic factor, production market and Indonesian people that are still international minded [5], tariff burden, elaborate rule of law, low education level of people, corruption [6], local customary law, and people habit [7]. Meanwhile, the attempt taken to lower the smuggling rates to improve the people's wellbeing and to engage the people more in informal economic activity [6].

In investigating smuggling crime, several constraints are found: inadequate Human Resource of Civil Servant Officials, limited fund, and no Memorandum of Understanding (MOU) between Customs Directorate General and Republic of Indonesia's Police and Navy in the attempt of overcoming smuggling crime [8].

4.2. The factors encouraging the reform of smuggling criminal investigation system to be done necessarily

Some factors encouraging the reform of smuggling crime investigation system to be done necessarily are explained as follows. From legal substance aspect, smuggling occurs because there is a regulation about prohibited and restricted product. As we know, Indonesia is an archipelagic state that is still inhibited with transportation vehicle problems; in addition, central government has not been able yet to meet the people's food need from domestic farmer producers' harvest. Thus, the high demand gives the smugglers the opportunity of committing smuggling crime. Ineffective imprisonment sanction, sanction reformulation, and smuggling crime delict formulation, in fact, do not exert deterrent effect on smuggling crime perpetrator, because these impose more cumulative criminal sanction than prioritize the state loss recovery.

Viewed from legal structure aspect, not all ministries have reformed the elaborate and intricate bureaucracy making the people contacting the government's bureaucracy reluctantly, and illegal levies practice eventually impacting on the people's low legal consciousness. Executorial function is also imposed to the investigators constituting Civil Servant Officials in Directorate General of Customs. In addition to functioning as investigators, the Civil Servant Officials of Directorate General of Customs are also imposed with executorial duties, due to the Attorney Generals' reluctance to make execution.

Viewed from legal culture, the main actor has never been found. Ship's captain always protects the owner of ship making the main actor of smuggling crime to be never been found. People's livelihood source comes from smuggling makes the smuggling crime difficult to settle because of the people's extraordinary support to smugglers so that they attempt to protect the smugglers as much as possible. The legal culture of law enforcers who care inadequately about each other results in ineffective law enforcement.

Smuggling is a complex problem to Indonesian government, as it harms the nation's principles such as ideology, politics, economics, social, and defense and security sectors. Particularly, in politic sector, smuggling will harm the state's economic/commercial and monetary order, in which the state's revenue needed for development purpose comes from both smooth and steady domestic and foreign commercial activities, not harmed with smuggling resulting in damaged market, due to unhealthy competition, death of reliable and honest company, domestic industrial destruction, increased unemployment rate, and disrupted security [9].

The increased intensity of smuggling crime reveals that the sanction imposed has not been effective yet. Achmad Ali says that to measure the effectiveness of a norm of law implementation, the extent to which a rule is obeyed or not obeyed should be found out [10]. If the rule of law is obeyed by all subjects becoming the target of regulation, the regulation can be considered as effective, and vice versa.

To asses a norm of law's effectiveness, the law should be viewed as a system unity, in which one subsystem is interrelated to another and runs well. The successful law enforcement, according to Lawrence M. Friedman, is dependent on three elements: legal structure, legal substance, and legal culture. Those three sub systems are an intact unity rather than separated parts [11]. Meanwhile, according to Soerjono Soekanto, the effectiveness of law enforcement is affected by some factors: law, law enforcer, infrastructure or facility, society, and culture [12]:

4.3.The reform of restitutive to restorative system

In Indonesia, the settlement of smuggling crime still uses restitutive system. This system needs reform, as it will be more beneficial to the state's revenue interest than punishing the perpetrator with physical crime such as imprisonment.

The formulation of criminal sanction emphasizing more on criminal sanction of imprisonment than on that of fine has harmed the state's finance. Such the policy encourages the smuggling crime perpetrators (employers) to take any attempts in order not to be the accused or the defendant, even they will make collusion with law enforcers, if necessary [3].

Therefore, an appropriate policy oriented to the attempt of recovering the state's financial loss and/or being partial to the state's financial interest. For that reason, criminal sanction against smuggling crime should be directed more to the attempt of recovering the state's financial loss than to sentencing the imprisonment sanction.

5 Conclusion

The factors encouraging the reform of smuggling crime investigation system to be done necessarily are, among others: legal substance (the presence of ineffective regulation about prohibited and restricted product and imprisonment criminal sanction), legal structure (elaborate bureaucracy and executorial function imposed as well to the investigators

constituting the Civil Servant Officials of Customs Directorate General), and legal culture (the main actor had never been found, people's livelihood source coming from smuggling, and low support among institutions to smuggling crime overcoming). Not only sanction but also investigation system should be reformed from retributive system emphasizing more on imprisonment punishment to restorative one oriented to the recovery of state's financial loss. Therefore, the smuggling crime investigation system that is restitutive in nature so far should be reformed into the restorative one.

References

1. A. Sutedi, *Aspek Hukum Kepabeanan*, (Sinar Grafika, Jakarta, 2012)
2. W. Munyanyi, *Is Infrastructure Upgrading An Antidote for Smuggling? Evidence From Beitbridge Border Post, Zimbabwe*, WCJ, **9**, 1 (2015).
3. Y. W. Sukinto, *Tindak Pidana Penyelundupan di Indonesia*, (Sinar Grafika, Jakarta, 2013)
4. L. Mulyadi, *Mediasi Penal dalam Sistem Peradilan Pidana Indonesia*, (Alumni, Bandung, 2015)
5. A. Purwito, *Reformasi Kepabeanan: Undang-Undang Nomor 17 Tahun 2006 Pengganti Undang-Undang Nomor 10 Tahun 1995 tentang Kepabeanan*, (Graha Ilmu, Yogyakarta, 2007)
6. Z. Wajid, B. Aziz, Z. Iqbal, *Smuggling Around the World: An Empirical Investigation of Causes and Indicators*, FJoES, **10** (2014).
7. G. Basu, *Combating Illicit Trade and Transnational Smuggling: Key Challenges for Customs and Border Control Agencies*, WCJ, **8**, 2 (2014).
8. D. W. Ramadhani, *Kewenangan Penyidikan oleh PPNS DJBC dalam Tindak Pidana di Bidang Kepabeanan*, JLR, **2**, 1 (2013).
9. Direktorat Jenderal Bea dan Cukai, *Pertumbuhan dan Perkembangan Bea dan Cukai dari Masa ke Masa*, Jilid II, (Yayasan Bina Ceria, Jakarta, 1995)
10. A. Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, (Kencana, Jakarta, 2012)
11. L. M. Friedman, *The Legal System: A Social Science Perspective*, (Russel Sage Foundation, New York, 1975)
12. S. Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, (Raja Grafindo Persada, Jakarta, 2014)