

LAW ENFORCEMENT AGAINST CRIME SMUGGLING OF USED CLOTHING IMPORTS (STUDY CENTER TANJUNG COURT RULING KARIMUN NUMBER 107 / PID.SUS / 2014 / PN TBK AND CAPE CENTER COURT RULING KARIMUN PID.SUS No. 217/2015 / PN TBK)

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ABSTRACT

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In this thesis, the author raised the issue of Law Enforcement Against the Crime of Trafficking Used Clothing Imports (Study District Court of Tanjung Balai Karimun No. 107 / Pid.Sus / 2014 / PN Tbk and the District Court's Decision No. 217 Tanjung Balai Karimun Pid.Sus / 2015 / PN Tbk). The theme selection triggered by the smuggling of used clothing was banned by the government, because it hurt the government in terms of revenue in the country, especially the loss of state revenues from customs duties and other charges which should have been received by the Director General of Customs and Excise. There are several options related to the crime of smuggling of used clothing, namely Law No. 17 of 2006 on the Amendment of Act No. 10 of 1995 on Customs, Trade Minister Regulation No. 51 / M-DAG / PER / 7/2015 on Prohibition of Import Used clothing, Trade Minister Regulation No. 54 / M-DAG / PER / 10/2009 on General provisions field of imports, and the Minister of Industry and Trade No. 642 / MPP / Kep / 9/2002 on the amendment Annex I to the Decree of the Minister of Industry and Trade No. 230 / MPP / Kep / 7/1997 on goods set import trade system. The author of this paper uses normative juridical method to approach law (statute approach) and the approach of the case (case approach). By using the above study, the authors obtained the answers to existing problems that the District Court of Tanjung Balai Karimun No. 107 / Pid.Sus / 2014 / PN Tbk and District Court of Tanjung Balai Karimun Pid.Sus No. 217/2015 / PN Tbk same - Same subject to criminal Article 102 (a) of Law No. 17 of 2016, with the sound: every person transporting imported goods that are not listed in Article 7A paragraph (2) had been convicted of smuggling in the field of import by sanctions imprisonment of a minimum of 1 (one) years imprisonment and a maximum of 10 (ten) years and fined at least Rp. 50.000.000, - (fifty million rupiah) and Rp. 5,000,000,000, - (five billion rupiah). But these two cases different sanctions imposed. The difference of the decision can be caused due to lack of unanimity view of the judges in assessing a case the same or equivalent. In addition the maximum limit and the minimum limit given discretion to judges to convict may also cause differences in punishment.

Keywords: Crime of Smuggling, Used Clothing Imports

I. INTRODUCTION

A. Background

Indonesia is a country geographically consists of the earth's surface area covering approximately 17,000 islands and is located between the Indian Ocean and the Pacific Ocean. Indonesia called archipelagic sea state directly borders with neighboring countries, so that the necessary supervision of the transport of goods transported by sea in the customs area to prevent smuggling in the transport mode between countries. Given the extent of the Indonesian customs area that is an area of the sovereign territory of the Republic of Indonesia, the government may not be able to put all the customs officers along the border throughout the customs territory of the Republic of Indonesia to monitor exit and entry of goods for export and import activities.¹

In general the types of smuggling can be divided into two types as follows:²

¹ Sunarno, *Sistem dan Prosedur Kepabeanan di Bidang Ekspor*, (Jakarta: Sinar Grafika ,2007), hal.

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² Djoko Prakoso, Bambang Riyadi Lany, Amir Mushsin, *Kejahatan-Kejahatan Yang Merugikan Dan Membahayakan Negara*, (Jakarta: PT. Bina Aksara, 1987), hal 64.



1. Import Smuggling, is an act to enter goods from abroad into the territory of Indonesia by not fulfilling the prescribed procedures for the importation of goods from abroad.
2. Export Smuggling, is spending goods from Indonesia abroad without going through the procedure for it.

The criminal act of smuggling of imported goods is of course very detrimental to the government in terms of revenue as well as a very disturbing state of society in terms of economic stability at the present time. Given the criminal offense of smuggling can sometimes be known by the authorities, but the culprit was not caught, and this reality is also increasingly alarmed the community. The act of smuggling an impact very negatively on several aspects of the survival of the nation and the state, directly resulting in losses in state revenues from customs duties and other charges that should be accepted by the government through the Directorate General of Customs and Excise, as well as losses namely direct cause congestion or obstacles of domestic production to the detriment of the government who produce it.³

Data obtained from the Directorate General of Customs and Excise (DJBC) mentions catches in an attempt of smuggling of used clothing in the country during the year 2013, noted as follows:⁴

1. 1 times the catch in the Regional Office of North Sumatra DJBC with the number of sacks 208
2. 6 times the catch in the Special Office of Riau Islands by the number of sacks 9675
3. 2 times the catch in the KPU Type B Batam with the number of sacks 486
4. 1 The first time catch in KPPBC Type A3 Nunukan with number 1 sack
5. 1 The first time catch in KPPBC TMP C Teluk Nibung with total catches 153 sacks.

Total catch of 10 523 sacks. While the case of catches in 2014 is much higher as many as 22 cases. However, from the number of sacks seized much smaller than in 2013 and, among other things:

1. 1 times the catch in the Regional Office DJBC NAD 280 sacks
2. 12 catches in 7486 as many sacks Riau Islands
3. The first time catches for 108 sacks d Tarakan
4. 5 times the catch in KPPBC Type Madya Belawan 211 sacks
5. The first time catch in KPPBC Type A3 Bitung 2,300 sacks
6. The first time catch in KPU Type B Batam with 22 sacks
7. 1 times catch by the Directorate General of Enforcement and Investigation as much as 95 sacks.

In total 10 502 sacks last fall compared to the year 2013 amounted to 10 523 sacks. The number of cases is greatest catches in Riau Islands 18 times during the period 2013 to 2014.⁵The case of smuggling of used clothing into the country in 2015 reached 563 cases. Modus, he added still the same, namely delivery by sea to the small ports on the East Coast of Sumatra and Sulawesi. A total of 2,300 Malaysian ball used clothing valued at USD 9.3 billion, which the officer confiscated DJBC.⁶

Based on the description that has been stated above it is important to do research thesis entitled "Law Enforcement Against the Crime of Trafficking Used Clothing Imports (Study District Court of Tanjung Balai Karimun No. 107/Pid.Sus/2014/PN Tbk and District Court of Tanjung Balai Karimun Pid.Sus No. 217/2015/PN Tbk). "

B. Problem Formulation

Based on the background that are at issue in this thesis is as follows:

1. How will the criminal offense of smuggling of used clothing in Indonesia?
2. How did the factors which led to the criminal offense of smuggling of used clothing?
3. How does law enforcement against criminal acts of smuggling of used clothing in Study District Court of Tanjung Balai Karimun No. 107 / Pid.Sus / 2014 / PN Tbk and District Court of Tanjung Balai Karimun Pid.Sus No. 217/2015 / PN Tbk?

³ Purwito M. Ali, *Kepabeanan dan Cukai Lalu Lintas Barang, Konsep dan Aplikasinya*, Cetakan Keempat, (Jakarta: Kajian Hukum Fiskal FHUI, 2010), hal. 5

⁴Penyelundupan Pakaian Impor Melonjak 100%, <http://finance.detik.com/read/2015/02/05/152259/2824675/4/kasus-penyelundupan-pakaian-bekas-impor-melonjak-100>, diakses pada tanggal 20 Maret 2016 pukul 13.20 WIB

⁵ ibid

⁶ <https://m.tempo.co/read/news/2016/01/08/092734433/tangani-10-ribu-kasus-bea-cukai-selamatkan-tp-3-7-triliun>, diakses pada tanggal 23 Maret 2016 pukul 10.00 WIB

C. Objective

Referring to the title and the problems contained in this research can be stated purpose of the study as follows:

1. To know and menganalisis legal arrangements relating to the criminal act of smuggling of used clothing in Indonesia.
2. To identify and analyze the factors which led to the criminal offense of smuggling of used clothing.
3. To identify and analyze the enforcement of laws against the crime of smuggling of used clothing in the District Court of Tanjung Balai Karimun No. 107/Pid.Sus/2014/PN Tbk and District Court of Tanjung Balai Karimun Pid.Sus No. 217/2015 / PN Tbk.

D. Benefits Research

This study has theoretical and practical benefits. As for both these purposes are as follows:

1. Theoretical

The benefits of this research are as material or data information in the field of legal science academicians to know the dynamics of society and the development of criminal law as well as managing and enforcing laws against the crime of smuggling of used clothing.

2. Practical

The results of this study would be useful to law enforcement officials in terms of formulation to be clear about the crime of smuggling of used clothing.

II. THEORETICAL FRAMEWORK

The theory framework is a framework of thought or a grain of opinions, theories about the case or issue (problem) into consideration, theoretical grip.⁷ The theoretical framework is the cornerstone of thinking used to find solutions to problems. Each study requires a starting point to solve and discuss the problem, for it is necessary to develop a theoretical framework that contains the main ideas of which describe the problem observed.⁸

Theory and research should collectively serve to increase knowledge ilmiah a researcher of law, so it should not be separated from the reality, the facts of the existing law in the midst of society. Thus in conducting the study, a researcher of law must always base themselves on the existing theory, then the results of research conducted to support, expand or correct the theory.⁹ According to Lawrence M. Friedman, the law as a system or subsystem of the social system will serve well if the instrument is equipped with the implementation powers in the field of law enforcement, the legal system is composed of several subsystems that include, the legal structure (structure), substance law (substance), and the culture of law (legal culture).¹⁰

Criminal law as a consequence of human actions rather than commit a crime or a violation of the criminal law. So that the consequences suffered by the act for the person doing is legal sanction as the liability of any person to the community to restore the balance of good life and a form of order in society. Speaking about the sanctions of criminal law there are several theories that accompany the more commonly known as the theory of punishment, namely:

a) Absolute Theory or Theory of Revenge

Regarding the retaliation theory is, Andi Hamzah expressed as follows: Retaliation theory states that the criminal is not aimed at the practical, such as fixing a criminal. Crime itself that contains the elements to be dropped criminal, criminal absolutely no, because to do a crime. It is not necessary to think about the benefits of criminal punishment¹¹.

If the benefits of criminal punishment is not necessary to be considered as expressed by theorists of absolute or retaliation theory, then, the main target of this theory is revenge. By maintaining the retaliation theory which, in principle, adhering to the "criminal punishment", it will override the values of humanity. That is the theory of retaliation was not thinking about how to build the perpetrator.

⁷M. Solly Lubis, *Filsafat Ilmu dan Penelitian*, (Bandung: Mandar Maju, 1994), hal. 80

⁸ Hadari Nawawi, *Metode Penelitian Bidang Sosial*, (Yogyakarta: Universitas Gajah Mada Press, 2003), hal. 39-40.

⁹ Bahder Johan Nasution, *Metode Penelitian Hukum*, (Jambi: Mandar Maju, 2008), hal 139

¹⁰ M. Hatta, *Beberapa Masalah Penegakan Hukum Pidana Umum Dan Pidana Khusus*, (Yogyakarta: Liberti, 2009), hal. 1.

¹¹ Andi Hamzah, *Sistem Pidana dan Pemidanaan Indonesia*, (Jakarta: Pradnya Paramita, 1993), hal. 26.

There are several characteristics of a retributive theory as expressed by Karl O. Christiansen, namely:¹²

1. criminal purposes solely for retaliation;
2. retaliation is the ultimate goal, without containing the means for other purposes, such as public welfare;
3. the error is the only condition for the existence of a criminal;
4. the criminal must be adjusted to the manufacturer error;
5. criminal hindsight which is denouncing a pure and objective is not to improve, educate, or socializing back breakers.

The theory of absolute vengeance or retaliation is divided into subjective and objective retaliation. Subjective retaliation was retaliation against the perpetrators error. Retaliation objective is retaliation against perpetrators of what has been created in the outside world.¹³

b) Relative Theory or Interest

Interest criminal according to the relative theory is to prevent the order in society is not compromised. In other words, the sentence imposed on the offender not to take his crime, but to maintain public order.

English philosopher Jeremy Bentham (1748-1832), a figure that opinion may dijadikan cornerstone of this theory. According to Jeremy Bentham that human beings are rational creatures who would consciously choose pleasure and avoid pain. Therefore, a criminal should be established in each crime such that tribulation would be more severe than that caused by the crime spree.¹⁴

Furthermore, this theory explains that the purpose of criminal punishment is as follows:

1. The theory that is the goal of the criminal scary it is to scare someone, so do not do well against the perpetrators of criminal acts itself and to society (general prevention).
2. The theory is that by dropping the fix will educate criminal justice perpetrators of crimes to be a good person in society (special preventive).¹⁵

Furthermore, Van Hamel who support the theory of special preventive give details as follows:

1. Criminalization must contain an element that is scary so sipelaku not doing bad intentions.
2. Criminalization must contain an element that improves the prisoners that will require a reclessening.
3. Criminalization must contain an element to destroy the criminals who absolutely can not be repaired anymore.
4. The sole purpose of punishment is to maintain the discipline of the law.¹⁶

In the view of modern, preventive as the purpose of punishment is the primary target will be achieved because the purpose of criminal intended to pembinaan or treatment of the prisoners, meaning that the criminal punishment that the convicted person must be nurtured so that after undergoing the sentence, he will be a better person than before undergoing a criminal.¹⁷

c) Combined Theory

In addition to the theory of absolute and relative theory there is also a third theory is called the theory combined. This theory emerged as a reaction to a previous theory that less can be satisfactorily answered about the purpose of a criminal prosecution. The main character who proposed the theory of this combination is the Pellegrino Rossi (1787-1848). This theory is rooted in thinking is contradictory between the theory of absolute with relative theory. The combined theory seeks to explain and provide a justification of punishment from various perspectives, namely:

1. In order to determine the correct and whether or not the principle of retaliation, require that every error must be repaid by mistake, then they have reviewed the importance of a criminal from the point of community needs and the principle of truth.
2. A criminal act creating rights for the state to impose criminal and sentencing is a liability if it has had the desired destination.
3. The basis for the justification of crime lies in factors that maintain law and order purposes.¹⁸

¹² Muladi dan Arief, *Op. cit.*, hal. 17.

¹³ Andi Hamzah, *Asas-Asas Hukum Pidana*, (Jakarta: Rinneka Cipta, 1994), hal. 31.

¹⁴ *Ibid.* hal. 30-31.

¹⁵ Ruslan Saleh, *Stelsel Pidana Indonesia*, (Jakarta: Aksara Baru, 1983), hal. 26.

¹⁶ Djoko Prakoso, *Op, Cit*, hal. 23.

¹⁷ *Ibid.*, hal. 23.

¹⁸ Muladi, *Op, Cit*, hal 19.

III. RESULTS AND DISCUSSION

A. Setting Crime Smuggling Used Clothing

Law No. 17 of 2006 on the Amendment of Act No. 10 of 1995 on Customs

In Act No. 17 of 2006 on the Amendment of Act No. 10 of 1995 on Customs organizing and establishing procedures or obligations that must be met if a person importing or exporting goods. In the case of a person importing or exporting goods without megindahkan provisions or procedures established legislation may be punishable by the form of imprisonment and fines. On the crime of smuggling of used clothing imports normally sentenced punishment as contained in Article 102 of Law Number 17 Year 2006 on the Amendment Act No. 10 of 1995 on Customs, which reads:

Any person who:

1. Transporting imported goods that are not listed in the manifest as referred to in Article 7A paragraph (2);
2. Dismantling barang imports outside the customs area or elsewhere without the permission of the head of the customs office;
3. Unload imported goods that are not listed in the customs declaration referred to in Article 7A paragraph (3);
4. Dismantling or stockpiling of imported goods that are still under customs supervision in a place other than the destination specified and / or permitted;
5. Concealing unlawfully imported goods;
6. Issuing import goods unsettled obligations or customs of the customs area of the landfill bonded or from any other place under the supervision of customs officials without consent bead clearance resulting fulfillment not take state by this Act;
7. Transporting goods imported from a temporary reservoir or landfill are not up to bonded customs offices with the aim san can not prove it beyond their means; or
8. By deliberately inform the type and / or amount of imported goods in notifying customs wrongly, had been convicted of smuggling in the field of import by imprisonment for a minimum of 1 (one) year and a maximum imprisonment of ten (10) years of imprisonment and a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and most banak Rp. 5,000,000,000.00 (five billion rupiah).

Transporting imported goods that are not listed in the manifest as referred to in Article 7A paragraph (2) stipulates that:

"The carrier is a means of transportation of entering the customs area shall include the items referred to in paragraph (1) in manifestnya."

Trade Minister Regulation No. 51 / M-DAG / PER / 7/2015 on Prohibition of Import of Used Clothing A ban on imports of used clothing explicitly mentioned in Article 2 which states that: "Used clothing banned from being imported into the territory of the Republic of Indonesia".

Used clothing is forbidden to enter Indonesia for reasons of health harm as defined in point (a) Regulation of the Minister of Trade No. 51 / M-DAG / PER / 7/2015 on the prohibition of the import of used clothing that:

"Used clothing imported potentially harmful to human health and unsafe to be harnessed and used by the community".

The action to be taken if a used clothing goes to Indonesia after the entry into force of this regulation is the destruction of the old clothes as stipulated in Article 3 which states that:

"Used clothing that arrives in the territory of the Republic of Indonesia on or after the date of this Regulation applies shall be destroyed in accordance with the legislation".

Trade Minister Regulation No. 54 / M-DAG / PER / 10/2009 on General Provisions on Imports In the Decree of the Minister of Trade is allowed to conduct activities in textile imports is a company that already has Figures Introduction Importers (API) and the exclusion of goods or companies that import goods.

article 1

1. Import activities to supply goods to the customs area.
2. Goods are any objects both tangible and intangible, whether movable or immovable, can be spent and can not be spent, which can be to be traded, used, used, or exploited.
3. Importer is an individual or business entity, whether incorporated or not a legal entity, which perform import.
4. Importer Identification Number hereinafter abbreviated as API, is the identification as an importer.
5. Setting import is that import activities governed exclusively by the Minister.
6. Minister is the minister and responsibilities in the field of trade.

In Article 3 of the Decree of the Minister of Trade No. Trade Minister Regulation No. 54 / M-DAG / PER / 10/2009 About Import General Provisions states that:

- (1) imports can only be done by importers who have API.

- (2) certain importers can import without API based on the considerations and reasons set forth by the Minister.
- (3) The provisions and procedures of ownership API by importers who will import as referred to in paragraph (1) as well as the provision of import without ownership API referred to in paragraph (2) shall be governed by the regulations of the Minister

Article 6

- (1) Goods imported must be in new condition.
- (2) In certain circumstances, the Minister may assign the imported goods in old conditions by:
 - a. Legislation;
 - b. The authority of the Minister; and / or
 - c. Proposed or technical considerations from other government agencies.

Minister of Industry and Trade No. 642 / MPP / Kep / 9/2002 on the amendment Annex I of Decree of the Minister of Industry and Trade No. 230 / MPP / Kep / 7/1997 on goods subject to import regulations.

Minister of Industry and Trade No. 642 / MPR / Kep / 9/2002 dated September 23, 2002 on the Prohibition of Imports of used clothing is not just about economic aspects. Measures taken by the also health concerns.

article 1

1. Change the sequence number 108 Appendix I Decree of the Minister of Industry and Trade No. 230 / MPP / Kep / 7/1997, the original:

NO.	NOMOR HS	URAIAN BARANG	TATA NIAGA IMPOR
108	ex. 6310.90.000	Gombal baru dan bekas	IU LIMBAH

So :

NO.	.NOMOR HS	URAIAN BARANG	TATA NIAGA IMPOR
108	ex. 6310.90.000	Gombal baru dan bekas	DILARANG

2. With the enactment of this Decision, the:
 - a. All other provisions contained in the Decree of the Minister of Industry and Trade No. 230 / MPP / kep / 7/1997 shall remain valid;
 - b. Appendix I of the serial number 16, the Minister of Industry and Trade No. 231 / MPP / kep / 7/1997 on Procedures for import of waste are no longer valid.
3. Import the rags that L / C is opened prior to the date of enactment of this decree, they can be implemented with the provisions of rags imported already arrived at the port of destination no later than 15 (fifteen) days from the date of stipulation.

B. Factors That Encourage Rise To Crime Of Smuggling Of Used Clothes

1. Geographical Factors

The breadth of the archipelago which consists of thousands of large and small islands, flanked by two great continents, namely Asia and Australia and very closely with the neighboring countries, which had already made progress, both in perekomonian and industry opportunities or chances or it can even stimulate entrepreneurs (local and foreign) to do the smuggling of used clothing. This situation eg mainly exploited by the smugglers around Riau, Aceh (as in Lhokseumawe, Sabang, Langsa and others), North Sumatera (Belawan, Tanjung Balai Asahan and Pangkalan Brandan), North Sulawesi, Central and Southeast and East Asia, Maluku and other coastal areas.¹⁹

¹⁹ Soufnir Chibro, *Pengaruh Tindak Pidana Terhadap Pembangunan*, (Jakarta: Sinar Grafika, 1992), hal. 1

In addition to the Riau archipelago, there are also lines of smuggling of used clothing that is expected to occur frequently along the coast that are included in the territorial waters of Aceh, North Sumatra, Kalimantan, Sulawesi, Maluku and others. In the region of North Sumatra is one area that is often seen doing illicit activities, which are directly shipped from overseas, for example with the lines: Korea-Singapore-Malaysia and sent immediately to areas such as Medan, Batam, Tanjung Balai Asahan, and other areas.

2. The Condition of Domestic Industry

Secondhand clothing imports was not entirely used, because there are some of them which are clothes from retail outlets are already out of fashion, after not sell even with a substantial discount. Then it is only natural that local products can not compete with imported products is at least due to three factors:

- a) Raw materials are now relatively expensive;
- b) labor wages are quite high and bloated operating costs (overhead) such as: basic electricity tariffs, phone bill and fuel oil;
- c) Not to mention the cost of nontechnical certainly weighed heavily on national employers so that their products can not compete with imported products.²⁰

As it is known that not all imports of used clothing Used contents there are also clothes that are new. When the price is much cheaper than imported goods with local goods for example: shoes, bags and clothing, imported products are offered at a cheaper price while with the same brand and size of the domestic production is offered at a price that is much more expensive.

As an example of one of the perpetrators of smuggling of used clothing. Profits from the business of secondhand clothing imported from Pasir Gudang Malaysia, is very tempting. With little capital, profits doubled ascertained. However, the risk faced is certainly not too small like apparatus caught in the sea. One bale press was purchased at a price of approximately USD 1-2 million. At the destination smuggling, such as in Tanjung Balai Karimun or Tembilahan, one bunch bale press was sold to a fence at a price doubled. From Tanjung Balai Karimun and Tembilahan it, used clothes it dropped again to a few cities, such as Medan and Jakarta.²¹

Circumstances like these illustrate that domestic production is still not able to compete with goods imported production. Given the price disparity between local products with imported products opens the possibility smugglers action.²²

3. Excess Production

In countries that have developed and established industrial sectors and economies sometimes have excess production (over production), for example, states adjacent to our country, such as Japan, Taiwan, South Korea, Hong Kong, Singapore, and others. Where these countries kadang sometimes have difficulty in memasarkanhasil-products. This situation by entrepreneurs who are not responsible for and used for the benefit and profit as much as possible in a way that unauthorized / illegal, that is trying to enter their merchandise to other countries including Indonesia with smuggling.

Even some countries do politics dumping, resulting in the arrival of imported goods to countries that have not stabilized production experienced a turmoil-turmoil faces competition production goods imports. This can happen because besides the ex-imported goods are good quality and prices are sometimes much better and much cheaper than domestic production. And if this situation occurs, it is for society itself, regardless of whether the goods were bought legally incorporated or not, let alone the people's purchasing power is still low.

4. Mentality

As we already know that the earth and the natural resources we are quite rich in natural resources, and also the skill and diligence of our nation has been tested since the colonial era to the era of the development today. However questionable the extent of our mental workers in the face of temptations and trials rogue elements who want to smuggle in our country. We can not generalize these mental workers, even we can not ignore the mental attitude of some unscrupulous officers involved in peyeludupan second-hand clothes and officials are not responsible for cooperating with smugglers. The perpetrators or the mastermind of the smuggling is generally not the people or

²⁰ http://www.textile.web.id/article/article_detail.php?art_id=348, diakses pada tanggal 26 Agustus 2016 Pukul 11.21 WIB.

²¹<http://209.85.175.104/search?q=cache:pmgZzRBLQzwJ:legalitas.org/%3Fq%3Dnode/37+tinda+k+pidana+penyeludupan&hl=id&ct=clnk&cd=3&gl=id>, Diakses pada tanggal 26 Agustus 2016 pukul 12.00 WIB.

²² Sofnir Chibro, *Op.Cit*, Halaman 36.

businesses small capital, but those who have capital. So if we mentally officials can not cope persuasion and seduction elements smugglers so of course it became fodder for smugglers who has a brain shrewd and cunning.

5. Community

In the efforts to address the crime of trafficking is often perceived less provide citizen participation, meskipun mass media has been quite vigorous contains news on combating smuggling and often exposes the negative impact of smuggling for the country's economy. Perhaps this is because citizens feel fortunate to be able to buy used clothes overseas origin seludupan because these items have a low price and has a high quality than domestic products.²³

Besides, it also, very favorable import secondhand clothes of the lower class and the middle bit, because the illegal goods are much cheaper and help people to more easily own clothes. Therefore most of the people we prefer buying used clothing is quality, not inferior to the quality of new clothes. This situation can be seen and witnessed in the traditional markets, where many foreign clothes sold at much cheaper prices to the prices in the market. This is due to citizens hungry for market-grade goods, while the purchasing power of the community itself is still low

C. Enforcement Action For Smuggling Used Clothes

1. The District Court of Tanjung Balai Karimun No. 107 / Pid.Sus / 2014 / PN Tbk

Position Case:

At first Friday, April 11, 2014 The ship KM SAPOKAT headed from SS Envy Tanjung Balai Asahan not carry charge at all towards Port Klang Malaysia, then the next day before heading back from Port Klang Malaysia to Tanjung Balai Asahan, SAFARI as the defendant ordered the crew to perform loading used clothing as much as ± 979 Ball into KM SAPOKAT, and on Wednesday, April 16, 2014 KM SAPOKAT departed from Port Klang Malaysia to Tanjung Balai Asahan. When the cruise exactly the waters of the island basking islands Aruah Asahan, North Sumatra prevented by Tim Patrol BC-8005, when conducted checks on KM SAPOKAT does not have a mailing documents kelengkapan ship and cargo of used clothing as much as ± 979 Ball is not equipped / protected a legal document in accordance with the provision of customs / manifest. And accordingly, KM SAPOKAT along with the charge brought to the dock Special DJBC Riau Islands, Tanjung Balai Karimun for further processing.

Indictments and demands:

Prosecution filed SAFARI as a defendant in court Tanjung Balai Karimun with committing a criminal act of Article 102 (a) of Law Number 17 Year 2006 regarding Amendment to Law Number 10 Year 1995 regarding Customs with the demands of transporting imported goods that are not listed in the manifest as referred to in Article 7A paragraph (2) of Law No. 17 of 2006 ± 979 Ball in the form of used clothing coming from Port Klang Malaysia.

2. The decision of the District Court of Tanjung Balai Karimun No. 217 / Pid.Sus / 2015 / PN Tbk

Position Case:

Starting on Thursday, 25 June 2015 Ships KM King Imelda dinahkodai defendant Bibul Hadad Bin Baharudin departed from Tanjung Balai Asahan towards Port Klang Malaysia without bringing charges later on July 11, 2015 Habibul Hadat ordered the crew ships for the load of used clothing as much as ± 88 Ball next day, KM King Imelda departed back from Klang port of Malaysia towards the headland hall Asahan, at the time of shipping precisely in the waters of the island Arua District shavings intercepted by Tim Patrol BC-5002 and at the time of inspection of cargo KM King Imelda form of used clothing as much as ± 88 Ball no legal documents in accordance with the notice Pabeanan (manifest).

Indictments and demands:

Prosecution filed SAFARI as a defendant in court Tanjung Balai Karimun with committing a criminal act of Article 102 (a) of Law Number 17 Year 2006 regarding Amendment to Law Number 10 Year 1995 regarding Customs with the demands of transporting imported goods that are not listed in the manifest as referred to in Article 7A paragraph (2) of Law No. 17 of 2006 in the form of ± 88 Ball used clothing coming from Port Klang Malaysia.

Analysis of both cases:

Judging from the two decisions mentioned above, have the differences in terms of criminal penalties where the District Court of Tanjung Balai Karimun No. 107 / Pid.Sus / 2014 / PN Tbk, the defendant in this case Safari Bin Alm. Udin shall be punished by a fine of Rp.50.000.000, -

²³ Ibid, hal 42.

(fifty million rupiah) whereas the charge that captured more of that as much as ± 979 (nine hundred and seventy-nine) ball while in the District Court of Tanjung Balai Karimun No. 217 / Pid.Sus / 2015 / PN Tbk with Habibul Haddad Bin Baharuddin defendant shall be punished by a fine of Rp. 200.000.000, - (two hundred million) when the defendant only smuggling of used clothing as much as ± 88 (eighty eight) ball.

The difference of the decision can be caused due to lack of unanimity view of the judges in assessing a case the same or equivalent. It also shows that among the judges themselves there is a difference of views on an assessment of the data in case the same or comparable.

In addition the maximum limit and the minimum limit memberikeleluasaan judge to convict. This has caused differences in punishment or which causes a disparity of sentences. One of the causes of the disparity of sentences is basically starting from the law itself, where the law opens up opportunities for their criminal minimum and maximum limits of punishment, so the judges are free to move to get a proper criminal in the opinion of the judges themselves.

The judge in deciding a case, pay attention to several aspects, among others:²⁴

a) Juridical Aspects

Juridical aspect is an aspect first and foremost by sticking to the laws in force. On the crime of smuggling of used clothing imports normally diajtuhi punishment as contained in Article 102 (a) of Law Number 17 Year 2006 on the Amendment of Act No. 10 of 1995 on Customs declare that:

Every person transporting imported goods that are not listed in Article 7A paragraph (2) had been convicted of smuggling in the field of import by imprisonment for a minimum of 1 (one) year and a maximum imprisonment of ten (10) years of imprisonment and a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and Rp. 5,000,000,000.00 (five billion rupiah).

Philosophical Aspects

Philosophical aspect is the core aspect of the truth and justice. Justice law (legal justice) is a justice based on law and legislation. With the power behavior of a law, the judge in the verdict of punishment should not only be based on the law is written, but also must consider the consequences that arise from the existence of a criminal act, whether it was due to come to or arising directly arise with such criminal acts

b) Sociological Aspects

Sociological aspects are aspects to consider cultural values that live in the community. As is known by the public that people tend to buy goods selecting items with good quality and reasonable price regardless of these goods illegally or legally get. That way it will be the more smuggling of used clothing. Therefore, should in imposing sanctions criminal in the crime of smuggling of used clothing, judges should not only pay attention to the rules in the Act or the regulations the Minister only, but also consider the impact of its actions and the way it is done by the actors in doing the crime of smuggling that expected the crime of smuggling of used clothing imports will be reduced in Indonesia.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

Based on the discussion that has been described in the chapters before, so in this chapter will describe some of the conclusions of the study and a review / discussion of theory / materials that do. The conclusions of the discussion above is as follows:

1. There are several settings associated with the crime of smuggling of used clothing, namely Law No. 17 of 2006 on the Amendment of Act No. 10 of 1995 on Customs, Trade Minister Regulation No. 51 / M-DAG / PER / 7/2015 concerning prohibition of Import of Used Clothing, Trade Minister Regulation No. 54 / M-DAG / PER / 10/2009 on General provisions on Imports, and Ministry of Industry and Trade No. 642 / MPP / Kep / 9/2002 on the amendment Annex I to the Decree of the Minister of Industry and Trade No. 230 / MPP / Kep / 7/1997 on goods set import trade system.
2. The factors which led to the criminal offense of smuggling of used clothing among others, include geographic factors, the condition of the domestic industry, excess production, mentality and society.
3. The District Court of Tanjung Balai Karimun No. 107 / Pid.Sus / 2014 / PN Tbk and the decision of the District Court of Tanjung Balai Karimun No. 217 / Pid.Sus / 2015 / PN Tbk equally subject to the criminal act of Article 102 paragraph (a) of the Act number 17 of 2006 on the amendment of Law No. 10 of 1995 on Customs with the demands of transporting imported goods that are not

²⁴ Achmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, (Jakarta : Sinar Grafika, 2011), Hal. 126

listed in the manifest. However, the District Court of Tanjung Balai Karimun No. 107 / Pid.Sus / 2014 / PN Tbk imposed a lighter penalty to the defendant in this case Safari Bin Alm. Udin punished by a fine Rp.50.000.000, - (fifty million rupiah) whereas the charge that captured more of that as much as ± 979 (nine hundred and seventy-nine) ball while in the District Court of Tanjung Balai Karimun No. 217 / Pid.Sus / 2015 / PN Tbk with Habibul Haddad Bin Baharuddin defendant shall be punished by a fine of Rp. 200.000.000, - (two hundred million) when the defendant only smuggling of used clothing as much as ± 88 (eighty eight) ball. The difference of the decision can be caused due to lack of unanimity view of the judges in assessing a case the same or equivalent. In addition the maximum limit and the minimum limit memberikeleluasaan judge to convict may also cause differences in punishment. In addition to using the basic legal basis as outlined dalama to Section 102 (a) of Law Number 17 Year 2006 on the Amendment of Act No. 10 of 1995 on Customs, the sanctioning judges also consider the mitigating circumstances and issues aggravating circumstances of the accused.

B. Suggestions

Based on some of the conclusions that have been described above, it is essential to look for the most appropriate steps to address or solve the various problems that have been described previously. To that end there are suggestions that may be implemented to overcome these problems, the suggestions are as berikut:

1. There should be a new law that should be established to replace Law No. 17 of 2006 on the Amendment of Act No. 10 of 1995 on Customs which set out the specifics of the prohibition of the crime of smuggling of used clothing. This is because the import of used clothing potentially harmful to human health and unsafe to be harnessed and used by the public
2. Given the many factors that led to the crime of smuggling of used clothing presumably Directorate General of Customs and Excise in his duties should be assisted by the authorities in that regard, and also aided by the participation of people in this highly needed by the way not to buy more used clothing, used clothing considering the potential harm to human health and unsafe to be harnessed and used by the community.
3. May the application of the sanction on the criminal smuggling of used clothing to be more firm in order to conduct smuggling can be avoided or at least to reduce the occurrence of acts smuggling of used clothing.

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