

Responsibilities The Directorate General of Customs and Excise for the Management of Confiscated Goods in Criminal Crime

(A Research in the Legal Area Directorate General of Customs and Excise Banda Aceh)

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Abstract: The development of international trade through imports and exports is currently experiencing a rapid progress. However, there are many practices in the field found one of them is related to the results of the management of confiscated goods that have not been able to provide optimal benefits to the state, especially to the people. Confiscated goods are not managed properly so that it harms the state and the people, where the state loses the opportunity to benefit from the confiscated goods. The purpose of this research is to find out and explain the form of responsibility of the Directorate General of Customs and Excise for the Management of Confiscated Goods which has been expiring quickly.

Authority is a concept of constitutional law and state administration which has influence, legal basis and legal conflagration. The meaning of authority over the component of influence in order to control the legal subject. The purpose of the law is to regulate the association of human life in peace, peace between humans must be maintained by legislation to protect the interests of all mankind, such as: welfare, prosperity, honor, soul, and property.

Related to the form of responsibility carried out by the Directorate General of Customs and Excise for the Management of Confiscated Goods which are easily damaged and expired is by destroying them and also partially giving them away. Considering that the management of the state's booty is wholly within the Minister of Finance, in this case the Directorate General of State Assets (DJKN), the authority of the Directorate General of Customs and Excise is only to supervise these goods so it is not justified to take a policy such as selling confiscated goods that are easily damaged or rotten. The authority to sell confiscated goods is based on Government Regulation No. 11 of 1947 where there is no regulation related to the management of State Property. The other reason that the goods were destroyed was because the Customs and Excise was worried that the goods would no longer meet health standards so that it would be detrimental to the community in terms of public health.

The Directorate General of Customs and Excise (DJBC) as the manager of state confiscated goods must play an active role in the management of seized goods resulting from the smuggling crime, so that the seized goods can be useful.

Key Words: Responsibility, Confiscated Goods Management, Directorate General of Customs and Excise.

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I. INTRODUCTION

The development of international trade through imports and exports is currently experiencing a rapid progress. The rapid progress of exports and imports made a country, especially Indonesia, required to form a customs system and procedure. The function of these systems and procedures is to help improve the smooth flow of goods and documents.

Government policies in terms of customs include the passage of the Customs Law, this is an anticipatory step by the government for strategic, substantive, and essential goals in the field of trade, and can minimize the challenges in the era of free trade that have often occurred. (Azmi Syahputra: 3).

The authorities carrying out the system and procedure of the mandate of the law are the Parties of the Directorate General of Customs and Excise as official government agencies that carry out customs duties in terms of supervision and inspection in the transportation of goods both from within and from abroad to exported and imported goods.

The existence of policies in carrying out the implementation in the field of supervision, enforcement and legal services, the task of the Customs and Excise apparatus is to develop domestic industrial growth in the

field of customs and excise. and protect the public through the supervision and prevention of the entry of imported goods or the exit of exported goods effectively and efficiently through the implementation of a reliable management system, such as the establishment of intelligence and better investigation in the more directed inspection and enforcement of customs.

One factor inhibiting national development is due to the smuggling of goods. Smuggling of goods in Indonesia is a problem that is already deeply ingrained and rooted, even some people consider that this is an ordinary act, such as littering.

Smuggling of goods is influenced by several factors such as the vast area in Indonesia, the lack of security along the border, the need for everyone to get natural resources at low prices as industrial raw materials, the weakness of domestic industrial centers, and the low participation of citizens in cooperating with apparatuses that have a causal relationship.

In carrying out its function as a community protector by maintaining security and order from the importation and distribution of illegal goods that violate the provisions in the excise field, smugglers in export and import are punishable by imprisonment for a minimum of 1 (one) year and a maximum of 10 (ten) year, and a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 5,000,000,000.00 (five billion rupiah). Whereas the smuggling criminal which results in disruption of the joints of the country's economy is imprisoned for a minimum of 5 (five) years, a maximum of 20 (twenty) and a minimum fine of Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 100,000,000,000.00 (one hundred billion rupiah). (Customs Law No. 17 of 2006).

Based on the contents of the article shows that the smugglers are given severe criminal sanctions, because they can harm and damage the stability and joints of the country's economy in terms of financing national development in order to prosper the people. Nevertheless, there are still many cases of smuggling in some areas, especially in Aceh.

Based on information from the Regional Office of the Banda Aceh Directorate General of Customs and Excise there were 5 (five) cases of violations in the customs sector from April 2018 to July 2019. The types of goods included were generally basic necessities such as shallots, green tea, orchid seeds , smuggling clothes, chickens, chicken food and medicines and mosquito nets.

As for the focal point in this research is related to the responsibility for the management of confiscated goods in criminal cases. This is motivated by the fact that in practice there are still many damaged, rotten, confiscated confiscated goods which are caused by a lack of optimal management, so based on the data above, the related parties take more policy to destroy the confiscated goods.

Destruction of evidence is based on the transfer of status to State Property (BMN) originating from confiscated objects or evidence that has been determined to be state property based on court decisions that have obtained permanent legal force. (Article 1 number 4 of the Regulation of the Minister of Finance Number 62 / PMK.04 / 2011 concerning Settlement of Goods That Are Not Possessed, State-Owned Goods, and State-Owned Goods).

The purpose of the country is to destroy the smuggled goods because they can have a material and immaterial impact that disrupts the stability of the domestic market, especially products of the same type which are destroyed. Even though the procedure for destroying confiscated goods is regulated in the legislation, if the goods are damaged or rotten under the supervision of related parties, then it is necessary to be held responsible for the confiscated goods.

The problem of confiscated goods management is very interesting to study considering that until now the problems related to the results of confiscated goods management have not been able to provide optimal benefits to the state, especially to the people. Confiscated goods that are not managed properly so that the relevant parties take the policy to carry out annihilation is an act that has harmed the country and the people, where the state loses the opportunity to benefit from the confiscated goods (opportunity loss).

Based on the description above and given the rampant cases of smuggling of goods that occurred, as well as the lack of government attention in the management of confiscated goods, then the formulation of this writing problem is what is the form of responsibility of the Directorate General of Customs and Excise for the Management of confiscated Goods that quickly expire?

II. MATERIAL AND METHODS

Authority is a concept of constitutional law and state administration which has influence, legal basis, and legal conformity. The meaning of authority over the component of influence in order to control the legal subject. Authority to the group is the legal basis that contains an understanding of the cause of a policy that can clearly be appointed to its legal basis. Whereas the authority over the component of legal conflict consists of general standards and special standards, or in other words general authority and for special authority. (Hench Van Maarseveen in Philip M. Hadjon, 1998: 1).

According to Prajudi Admo Sudirdjo, authority is different from rights, authority can be interpreted as a power that can be exercised to carry out all actions in public law, while rights are a power that can be exercised in terms of private law. (Prajudi Admo Sudirdjo in Manan Bagir, 1998: 9).

Based on the main pillar of the rule of law, namely the principle of legality (*legaliteits beginselen*, or in other words *wetmatigheid van bestuur*), which states that the authority of the government refers to the legislation. In addition, the government in carrying out its work must be guided by legal authority. Without legitimate authority, the government in this case the person who has been given a position cannot carry out the deeds he wishes to carry out. (Nur Basuki Winarno, 2008: 70).

In administrative law there are 3 (three) ways to obtain legitimate authority. First, attributes, namely officials or bodies that have been given an authority based on statutory regulations to be responsible and accountable for a job in its main duty and function. The two delegates, namely the delegation of authority based on laws and regulations from governmental organs to other organs, in this case those who have the right to be responsible and accountable, that is, those who have received the transfer of authority. The third mandate, namely the delegation of authority from officials or higher bodies to lower officials or bodies, in this case the ones responsible and accountable, namely the two parties.

The purpose of the law is to regulate the association of human life in peace, peace between humans must be maintained by legislation to protect the interests of all mankind, such as: welfare, prosperity, honor, soul, and property. (Van Apeldoorn L.J., in Kansil, C.S.T, 1989: 41-42).

Jeremy Bentham states that the purpose of law is merely to realize utility (in other words called the greatest happiness of the greatest number (the most important thing in law can make many people happy), happiness means pleasure and not miserable. (Achmad Ali, 2012: 273).

According to John Stuart Mill who agrees with Jeremy Bentham who states that an action aims to obtain happiness. Happiness comes from human instincts that can think to accept or reject an act that can damage a legal system, so that the nature of the legal goal for the welfare of all human beings can be achieved.

Every person basically wants and hopes that the implementation of a law enforcement can provide great benefits to avoid unrest in the community. (Yohana Puspitasari, 2015: 7). In the case of confiscation of goods resulting from the smuggling of criminal acts by the Directorate General of Customs and Excise prior to destruction, it should be reviewed first whether the goods are beneficial to the community or not, so that the main purpose of the law for the welfare of the community can be implemented.

III. THE RESPONSIBILITY OF THE DIRECTORATE GENERAL OF CUSTOMS AND EXCISE FOR THE MANAGEMENT OF EXPIRED CONFISCATED GOODS

According to Hans Kelsen in his theory of legal liability stating that a person is legally responsible for a particular act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the case of a contradictory act. The concept of legal responsibility is closely related to the concept of rights and obligations. The concept of rights is a concept that emphasizes the notion of rights which is paired with an understanding of obligations (Satjipto Rahardjo, 2000: 55). The general opinion is that the rights of a person are always correlated with the obligations of others.

Wiyanto revealed that this responsibility is the ability to make appropriate and effective decisions. Appropriate means setting the best choice within normal social boundaries and the general expectations given, to enhance positive human safety, success, and their own welfare. This responsibility can also be said as the ability to establish an attitude towards an act carried out and the ability to assume the risk of an act committed.

A concept related to the concept of legal liability is the concept of legal liability. That a person is legally responsible for certain actions or that he bears legal responsibility, means that he is responsible for a sanction if his actions are contrary to applicable regulations. (Hans Kelsen, 2006: 95).

Based on Article 1 number 10 of Act No. 17 of 2006 concerning Customs, the Directorate General of Customs and Excise is an element of implementing the main duties and functions of the Ministry of Finance in the field of customs and excise. The Directorate General of Customs and Excise is an agency that has an important enough role from the state in carrying out its duties and functions to:

- Protect the public from the entry of dangerous goods;
- Protect certain domestic industries from unfair competition with similar industries from abroad;
- Eradicate smuggling;
- Carrying out entrusted tasks from other agencies with an interest in goods traffic that goes beyond national borders;
- Collect import duties and taxes in the framework of imports to the maximum for the benefit of state financial revenues.

Government's policy with the ratification of Law No.10 of 1995 concerning Customs which was effective on April 1, 1997, which has been revised with Law No. 17 of 2006 concerning changes to the Customs Law, is clearly an anticipatory step that touches on the strategic, substantive, and essential dimensions in the

field of trade, and is expected to be able to face challenges in the era of free trade that has been on the verge of being approached. The enactment of Law No.10 of 1995 concerning Customs has also given logical consequences for the Directorate General of Customs and Excise in the form of increasingly greater authority as a Government institution to be able to play its role in accordance with the scope of duties and functions carried out, where this greater authority is basically is the desire of international service users. In carrying out their duties, of course the Directorate General of Customs and Excise is also given responsibility, one of which is in the management of confiscated and obsolete Goods which have often been a problem in the field.

The form of responsibility undertaken by the Directorate General of Customs and Excise for the Management of Confiscated and Damaged Goods that are expired is by destroying them and also partially giving them away. Considering that the management of the state's booty is wholly within the Minister of Finance, in this case the Directorate General of State Assets (DJKN), the authority of the Directorate General of Customs and Excise is only to supervise these goods so it is not justified to take a policy such as selling confiscated goods that are easily damaged or rotten. The authority to sell confiscated goods is based on Government Regulation No. 11 of 1947 where there is no regulation related to the management of State Property. The other reason that the goods were destroyed was because the Customs and Excise was worried that the goods would no longer meet health standards so that it would be detrimental to the community in terms of public health. Although in practice there are also a number of grants made for seized items which are easily damaged and expired, but not much because the Directorate General of Customs and Excise must follow the procedures of the applicable law.

As for goods that are not controlled, it is done by auctioning them. This is usually done on customs which are not settled after a period of 60 days from being stored at the Customs Piling Place or other place functioning as a Customs Piling Place determined to be auctioned by the Head of the Customs Office. This is also in accordance with the provisions in Article 4 paragraph (2) Regulation of the Minister of Finance No. 62 of 2011. These provisions are exempted for goods that are restricted to be imported or exported and goods referred to in Article 3 paragraph (1) of Finance Regulation 62/2011 which states that Goods which are declared Uncontrolled are:

- a. rotten, immediately destroyed;
- b. because of its nature:
 1. durable, among other things that quickly rot, for example fresh fruit and fresh vegetables;
 2. damage, including sulfuric acid and sulfur;
 3. dangerous; or
 4. the management requires high costs, immediately auctioned by notifying the owner in writing, as long as it is not a prohibited and / or restricted item for import or export

Based on the sounds of the above articles, imported goods resulting from enforcement are placed in a Temporary Piling Place, then if the customs affairs are not settled, they will be placed in Goods that are declared Uncontrolled. If the imported goods have not been settled customs affairs, then the goods can be auctioned depending on the type of related goods.

The auction is regulated in the Minister of Finance Regulation Number 27 / PMK.06 / 2016 2016 concerning Guidelines for Implementing Auctions (Minister of Finance Regulation 27/2016). Auction for goods which are declared to be uncontrolled or goods controlled by ex customs and excise countries are one type of execution auction. (Article 6 letter I of the Minister of Finance Regulation No. 27 of 2016). The place of auction is located in the working area of the Office of State Assets and Auction Services (KPKNL) or the position of the Class II Auction Officer where the goods are located. (Article 22 of the Minister of Finance Regulation No. 27 of 2016). Further procedures regarding the auction can be seen in Minister of Finance Regulation No. 27 of 2016. In addition to the local KPKNL, the Ministry of Finance is also pushing for the auction of all state confiscated goods to use e-Auction through <https://lelang.go.id>.

The Directorate General of Customs and Excise (DJBC) as the manager of confiscated state goods must play an active role by referring to the Minister of Finance Regulation No. 8 / PMK.06 / 2018 concerning Management of State Property originating from State Raid and Gratification. In the regulation, it is stated that the settlement of state booty covers the administration and management. This is not in line with Government Regulation Number 27 of 2014 related to Management of BMN / D, which in this provision is not known by the word "management", only management that has a broader meaning is known.

Furthermore, a common problem faced by related parties today is the limited supporting facilities such as storage of confiscated goods that are not in accordance with the standards and the budget related to the maintenance of confiscated goods which are relatively small, so that the effects of these 2 (two) can make goods easily damaged and rotten.

Management of booty requires synergy and alignment of steps so that it can provide great benefits to the country. Each related party cooperates with each other and collaborates by carrying out the functions as well

as possible related to confiscated goods management. Optimal management of confiscated goods will provide several benefits including:

1. Can maintain the value of state confiscated goods so as to minimize damage and loss;
2. The State receives income from the sale or use of assets;
3. Cost savings in terms of usage (cost saving) and maintenance;
4. Can provide transparency in the management of state confiscated goods to the public.

IV. CONCLUSION

Related to the form of responsibility carried out by the Directorate General of Customs and Excise for the Management of Confiscated Goods which are easily damaged and expired is by destroying them and also partially giving them away. Considering that the management of the state's booty is wholly within the Minister of Finance, in this case the Directorate General of State Assets (DJKN), the authority of the Directorate General of Customs and Excise is only to supervise these goods so it is not justified to take a policy such as selling confiscated goods that are easily damaged or rotten. The authority to sell confiscated goods is based on Government Regulation No. 11 of 1947 where there is no regulation related to the management of State Property.

The Directorate General of Customs and Excise (DJBC) as the manager of confiscated state goods must play an active role in managing confiscated goods resulting from the smuggling. In addition, before the destruction is carried out, it should be reviewed first whether the goods are beneficial to the community or not, so that the main purpose of the law for the welfare of the community can be implemented. It also requires the awareness and awareness of related parties to play an active role in managing confiscated goods so that they can optimize the benefits of the goods without having to be destroyed.

RERERENCES

- [1]. Azmi Syahputra, *Pertanggungjawaban Pidana Terhadap Tindak Pidana Penyeludupan*, Jurnal Ilmu Hukum, Volume 3 No. 1, 3.
- [2]. Pasal 102, 102 A, dan Pasal 102 B Undang-Undang No 17 tahun 2006 tentang Kepabeanan).
- [3]. Pasal 1 angka 4 Peraturan Menteri Keuangan Nomor 62/PMK.04/2011 tentang Penyelesaian Terhadap Barang yang Dinyatakan Tidak Dikuasai, Barang yang Dikuasai Negara, dan Barang yang Menjadi Milik Negara.
- [4]. Hench Van Maarseveen dalam Philipus M. Hadjon, *Tentang Wewenang*, Surabaya, Fakultas Hukum UNAIR, 1998, 1.
- [5]. Prajudi Admo Sudirdjo dalam Manan Bagir, *Dasar-dasar Perundang-undangan Indonesia*, Hill Co, Jakarta 1992, 9.
- [6]. Nur Basuki Winarno, *Penyalahgunaan Wewenang dan Tindak Pidana Korupsi*, Yogyakarta, Laksbang Mediatama, 2008, 70.
- [7]. Van Apeldoorn L.J., dalam Kansil, C.S.T, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Cet. 8, Jakarta, Balai Pustaka, 1989, 41-42.
- [8]. Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-undang (Legisprudence)*, Ed. I, Cet. 4, Jakarta, Kencana, 2012, 273.
- [9]. Yohana Puspitasari Wardoyo, *Kepastian Hukum, Kemanfaatan, dan Keadilan Terhadap Perkara Pidana Anak, Kajian Putusan Nomor 201/Pid.Sus/2014/PN.Blt*, Naskah, 1 Desember 2015, 7.
- [10]. Satjipto Rahardjo, *Ilmu Hukum, Bandung*, PT. Citra Aditya Bakti, 2000, 55
- [11]. Hans Kelsen, *Teori Umum tentang Hukum dan Negara, Bandung*, PT. Raja Grafindo Persada, 2006, 95

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