

**ANALYSIS OF THE ENFORCEMENT OF THE REGULATION OF THE MINISTER OF
TRADE NUMBER 40 OF 2022 CONCERNING THE PROHIBITION OF IMPORTS OF USED
CLOTHING IN METRO, LAMPUNG**

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ABSTRACT

In the world of commerce, thrifting is the practice of trading second-hand goods, especially clothing, offered at more affordable prices. In some countries, importing used clothing or thrifting is considered illegal and prohibited. This is reflected in the Minister of Trade Regulation No. 40 of 2022, where the import of goods such as used clothing is considered an activity that has the potential to harm many parties. In the context of import regulation, second-hand clothing is considered a dangerous good that circulates without adequate supervision. The impact can be detrimental to consumers due to the quality of the domestic industry due to unfair competition, state revenue due to lost tax potential, and the country's economy as a whole. This research aims to answer about the regulation of criminal sanctions for the prohibition of imports of used clothing regulated in Minister of Trade Regulation Number 40 of 2022 and law enforcement against cases of prohibition of imports of used clothing regulated in Minister of Trade Regulation Number 40 of 2022 in Metro. The research method used in this research is empirical juridical by analyzing social facts using theory and applicable legal provisions. The specification of this research is descriptive analytical. This research indicates that the import and trade of used clothing in Indonesia is considered a criminal offense in the economic field and is subject to criminal penalties. Law enforcement for thrifting cases in Metro is constrained to be fined thrifting entrepreneurs in Metro are the second hand of the person who directly takes the used clothes. The relationship between the thrifting entrepreneur and the party is based on the sale and purchase agreement.

Keywords: Import, Industry, Used Clothing, Law enforcement, Thrifting.

INTRODUCTION

In Indonesia today, the phenomenon of austerity through the purchase of second-hand goods is widespread everywhere, although the activity of buying and selling second-hand goods has been around for a long time. This practice of austerity has come to the fore again when Indonesia is experiencing the Covid-19 pandemic. In the midst of the pandemic, everyone is expected to manage expenses wisely and find ways to earn income at the most efficient cost possible. Since then, second-hand buying has become popular again, especially among young people and students. The Central Bureau of Statistics noted that Indonesia's second-hand clothing imports reached 26.22 tons in 2022. Starting from the end of 2021 until today, the business of buying and selling second-hand goods continues to grow and increase. The prohibition against this practice is also based on the provisions in the Law of the Republic of Indonesia Number 22 of 2011 concerning "Management of Electronic Used Goods and Law Number 18 of 2008 concerning Waste Management". From this regulation, it can be seen that all used goods imported can only be done by companies with special licenses. The Ministry of Trade emphasized that all used goods sold through illegal imports must be destroyed. The regulation states that used clothing and other used goods fall under the category of goods prohibited from import under tariff heading or HS 6309.00.00, which includes used clothing and other used goods such as used bags, used sacks, and used clothing. The intention is to reduce the negative impact on the environment and public health caused by toxic e-waste.

The practice of thrifting has the potential to negatively impact the national textile industry, including in Metro. Thrifting is a form of commerce that falls within the purview of the Micro, Small, and Medium Enterprises (MSMEs) sector, which is highly sought after by the younger demographic. These MSMEs represent a crucial element of the economic landscape at the national and regional levels. The popularity of secondhand clothing among the general public, particularly the younger generation, is on the rise. The thrifting business can also be seen as a way to protect the environment by reducing the amount of second-hand clothing waste that is increasing significantly. The government should consider the impact of the ban on Micro, Small and Medium Enterprises businesses and understand the consequences well (Jejamo, 2023)

Imported second-hand clothing is considered an economical choice, although it does

not guarantee better quality. Nevertheless, imported second-hand clothing is still in demand by many people. Businesses continue to sell imported second-hand clothing because the capital required is relatively small, and there is high interest from various levels of society, especially the younger generation and the lower-middle economic group. On the other hand, consumers choose to buy imported secondhand clothing due to motivations stemming from a variety of cultural, social, personal and psychological factors. Given the interdependence between these two parties, it is no surprise that the thrifting business has survived and remains popular to this day.

The spread of this thrifting business is quite extensive in the Metro area. The number of thrifting businesses opens up job opportunities for the community. With prices ranging from IDR 5,000 - IDR 75,000, people can already get one piece of thrifting clothes or used clothes. With a capital of IDR 1,000,000 the seller can already get 50 pieces of clothes and the sellers are not the first party to get thrifting imports or used clothes from abroad, but they are the third hand and can be interpreted that they take the goods from other people who import used clothes. This research will discuss how legal arrangements and sanctions for the perpetrators of used clothing imports. In Indonesia today, law enforcement is interpreted as steps and processes aimed at tidying up the legal system with a focus on solving cases and applying the law.¹ Where in previous research that discusses the import of used clothing into Riau has explained that the implementation of the used clothing ban policy is a protection protection for domestic goods.² Indonesian consumers find it easier to obtain these imported products, which causes domestic producers to face increasingly fierce competition from domestic and foreign producers.³ So there must be restrictions on the import of these goods.

From the above background, the author is interested in further research related to *first*, the regulation of criminal sanctions for the prohibition of importing used clothing in Permendag No. 40 of 2022; and *second*, law enforcement against cases of used clothing import bans in Metro.

¹ Aulia Fitri, Polres Metro, Personal Interview, Metro, August 23, 2023, 10.30 am.

² Arifa Filza Yaneski, Implementasi Kebijakan Penanganan Penyeludupan Pakaian Bekas di Provinsi Riau Indonesia, *Journal of International Relations*, Volume 4, Nomor 2, 2018, page. 295-302.

³ Rima Berlian Pradesta, Pengaruh Etnosentrisme, Brand Image dan Product Knowledge Terhadap Keputusan Pembelian Produk Pakaian Jadi Impor, *Fakultas Ekonomi Manajemen, Universitas Muhammadiyah Surakarta*, 2014, page 1.

RESEARCH METHOD

The type of research conducted is empirical juridical research using descriptive analysis method. In this research, researchers collect data in accordance with the reality in the field. The data is then arranged, processed, and analyzed to provide an accurate picture of the problem being studied.

Empirical juridical research is an approach in legal research that focuses on the application or implementation of normative legal provisions directly in community life. This means that this research examines how existing legal provisions are implemented in every legal event that occurs in society. The descriptive analysis method is employed for the purpose of describing and analyzing the data that has been collected. The data encompass a range of elements pertinent to the research, including factual information, contextual details, and characteristics associated with the phenomenon under investigation. The results of this analysis offer a comprehensive representation of the situation under study, facilitating a more nuanced understanding of the existing problems.⁴ The place of this research was in Metro, Lampung and the research time was in August 2023.

RESULTS AND DISCUSSION

Arrangement of Criminal Sanctions for The Prohibition of Imports of Used Clothing in Regulation of the Minister of Trade Number 40 of 2022

Based on Article 47 paragraph 1 of Law Number 7 of 2014 concerning “Trade (Trade Law)” which has been amended by Article 47 of Law Number 6 of 2023 concerning “Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation” into law, every importer is obliged to import goods in a new condition. There are even threats of sanctions for importers who do not carry out these obligations as stipulated in Article 111 of the Trade Law, in the form of imprisonment for a maximum of 5 (five) years and / or a maximum fine of IDR 5,000,000,000 (five billion rupiah). This provision is strengthened by Article 51 paragraph (2) of the Trade Law as amended by Article 51 paragraph

⁴ Ishad, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis Serta Disertasi*, (Bandung: Penerbit Alfabeta, 2017), hal. 115.

(2) of Law Number 6 of 2023, which prohibits importers from importing goods that are designated as prohibited goods. Based on Article 112 paragraph 2 of the Trade Law, violation of these provisions is punishable by sanctions in the form of imprisonment for a maximum of 5 (five) years and/or a maximum fine of IDR 5,000,000,000 (five billion Rupiah).

Furthermore, Article 36 of the Trade Law also prohibits business actors from selling products that are not allowed in Indonesia. Based on Article 110 of the Trade Law, violations of these provisions are punishable by a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp5,000,000,000 (five billion rupiah). In line with Article 36 of the Trade Law, Article 8 paragraph (1) letter a of Law Number 8 Year 1999 on “Consumer Protection (Consumer Protection Law)” also prohibits business actors from trading goods that do not meet or do not comply with the required standards and provisions of laws and regulations. Imported used clothing falls into this category and is therefore prohibited from being traded. Based on Article 62 paragraph (1) of the Consumer Protection Law, the sanction for violators of Article 8 paragraph (1) letter a is a maximum imprisonment of 5 (five) years or a maximum fine of IDR 2,000,000,000 (two billion rupiahs) (Media Indonesia, Imports of Used Clothes Back Rampant in 2024).

In Indonesia, there is a ban on importing used clothing which is regulated in several regulations that prohibit the import of used clothing, not a ban on importers alone.⁵ In essence, the business of importing used clothing (thriftling) is a criminal offense. The law has prohibited the import of used clothing. Even the ban is accompanied by the threat of sanctions. According to Kanter and Sianturi, sanctions function as: 1) a means of coercion, encouragement, or guarantee that legal norms are obeyed by everyone; and 2) legal consequences for someone who violates legal norms (What is Sanction? without year). Sanctions are expected to encourage everyone to comply with the provisions of the ban on imports of used clothing, think twice if they are going to violate it, and cause a deterrence effect for violators so that they will not repeat their actions. In connection with this, an important effort that needs to be made is to carry out strict law enforcement for violators. Related to this, the Ministry of Trade in 2023 has destroyed used clothing and footwear of imported origin worth IDR 174.8 billion.

⁵ Yanuar Ika Safitri, *Aspek Hukum Impor Pakaian Bekas Berdasarkan Peraturan Perundang-Undangan*, *Jurist-Diction* Vol. 6 No. 2, 2023, hal. 381.

Most recently, the government seized illegally imported used clothing worth nearly IDR 50 billion (around IDR 49.951 billion) (Purwantono, 2024). The destruction of the goods in question is in accordance with the provisions set forth in Article 100, paragraph (4), of the Trade Act, which authorizes the inspecting officer to recommend the withdrawal of the goods from circulation and/or their destruction when violations in trade activities are suspected. Furthermore, business players are also involved in smuggling practices through two types of ports, namely rat ports and official ports. A rat port refers to an unofficial port that is located in a remote location and rarely monitored by officials, so it is often used as a route for illegal activities such as smuggling wildlife or illegal agricultural products.

In the context of criminal acts, the importation of used clothing is included in the category of commission offenses and special offenses in the field of business crimes. In the case of importing used clothing through official ports, business actors tend to use tricks to trick officers, such as packing goods in the form of balpres and using places that have official import stamps, as well as mixing illegal goods with legal goods. In addition, businesses also engage in administrative and physical smuggling by falsifying documents, such as making discrepancies between the stamp on the document and the actual contents inside the package.⁶

The trade of imported used clothing has been subject to a variety of legal regulations. In accordance with the most recent regulatory measure, specifically the Regulation of the Indonesian Minister of Trade No. 40/2022 concerning Amendments to the Regulation of the Minister of Trade No. 18/2021 concerning “Export Prohibited Goods and Import Prohibited Goods.” Furthermore, additional regulations govern the trade activities pertaining to imported used clothing. The imported used clothing item enumerated in Appendix II, Number IV of the Minister of Trade Regulation No. 40 of 2022 is classified as a prohibited import good. However, even so, because it is considered to provide a large profit for traders, they continue to practice import trading without official channels or by smuggling so as not to be confiscated by the government. This means that the goods cannot be utilized, sold, or have economic value. Therefore, the goods must be destroyed in accordance with the provisions stipulated in Permenkeu No. 178/PMK.04/2019 concerning “Settlement of Goods that are declared not

⁶ Febrianti, D., Nisyak, H., dan Abror, M. Y. (2021). Analisis Dampak Impor Pakaian Bekas Ilegal Indonesia Periode 2015-2020. Doctoral Dissertation, Sriwijaya University.

under Control, Goods under State Control, and Goods that become State Property”. So it can be understood that the trade in imported second-hand clothing is prohibited, and these goods may not be owned or utilized by anyone.

Law Enforcement on The Case of Used Clothing Import Ban in Metro

The trade of imported used clothing in Metro, which is located in several places in Metro, has become a spotlight for the government and local authorities. Data obtained from field research through the use of interview methods with traders of imported used clothing showed that the traders explained that there had been socialization conducted by the Metro Police to them. Despite this, imported used clothing remains abundant in the Indonesian textile market. This draws attention to the fact that the provisions prohibiting the import of used clothing are clearly stipulated in several legal regulations. Significant penalties are also imposed on importers who are desperate to carry out illegal imports, including imprisonment of up to 5 years and a maximum fine of IDR 5 billion.

Law enforcement for thrifting cases in Metro has experienced obstacles, one of which is because thrifting entrepreneurs are difficult to impose fines because thrifting entrepreneurs in Metro are the second hand of the person who directly takes the used clothes. The relationship between thrifting entrepreneurs and parties is based on a sale-purchase agreement. This means that thrifting entrepreneurs in Metro are not the party that directly buys the used imported clothes.

Based on previous journals that have been read by researchers, Regulation of the Minister of Trade No. 40 of 2022, which is an amendment to Permendag No.18/2021 concerning “Goods Prohibited from Export and Goods Prohibited from Import”, was implemented due to the consideration that Regulation of the Minister of Trade No. 18/2021 is in accordance with current conditions. It explains what products cannot be bought and sold in Indonesia without a license. As explained in Annex II Number IV, used clothing is included in the category of goods that are prohibited to be imported. Therefore, for business actors who violate will face applicable legal consequences (Soeroso, 2006; 295).

According to Regulation of the Minister of Trade No. 22/M-DAG/PER/3/2016, a business actor is defined as an individual Indonesian citizen or a business entity that can take the form of a legal entity or non-legal entity operating in the jurisdiction of Indonesia and

engaging in trading activities. In this context, traders and importers of imported used clothing fall under the category of business actors in accordance with these provisions. Importers carry out activities to import used clothing from abroad, then the goods are sold by traders in the market.

CONCLUSION

Law enforcement against smuggling of imported used clothing in Lampung Province has not been optimal even though the rules regarding the prohibition of imported used clothing have been strictly regulated along with the sanctions. Challenges in law enforcement against smuggling of imported used clothing in Lampung Province lie in several factors, including legal issues, lack of human resources in law enforcement, high public interest in imported used clothing, and lack of public understanding of the negative impacts caused by the use of imported used clothing.

Although criminal sanctions against the prohibition of imported used clothing are regulated in the Minister of Trade Regulation No. 40 of 2022, law enforcement against violations of the prohibition of imported used clothing in Metro is still not effective. This is due to the inability to impose fines on thrifting businesses, as they are second only to the person who directly imports the used clothing.

The prohibition on the importation of secondhand clothing is based on the rationale that the previous regulatory framework is no longer aligned with the prevailing circumstances. The current regulatory framework provides a comprehensive list of products that are prohibited from sale and purchase. This includes secondhand clothing, which falls under the category of goods that are prohibited from importation. The objective of this prohibition is to safeguard the well-being of the Indonesian people from potential adverse impacts. Therefore, used clothing has been banned from import, and if there are still imports of used clothing, the items will become state property and must be destroyed in accordance with applicable regulations.

SUGGESTION

To law enforcement more precisely in Metro in order to provide socialization to thrifting entrepreneurs in Metro who are the second hand of the person who directly takes the used clothes, where even though there is a relationship between the thrifting entrepreneur and

the party based on the sale and purchase agreement, there must still be the imposition of fines. Strengthen the sanctions or penalties for the perpetrators involved in the thrifting.

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