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**Law Enforcement Against Perpetrators of the Crime of Smuggling Imported Used Clothes  
According to Positive Law**

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**ABSTRACT**

Smuggling is an act that controls goods by stealth which certainly violates laws and regulations. Lately, the crime of smuggling imported used clothes often occurs in Indonesia. This is motivated by the Indonesian people who are more interested in foreign products and the price is sloping. So that these smuggling individuals are interested in taking greater advantage of this act of smuggling imported used clothes. On this occasion, the author uses a normative juridical method based on Indonesia's positive legal perspective. Then, this type of research uses qualitative descriptive with data analysis techniques derived from literature studies by reviewing books and involving literature related to the problems raised in this journal. Enforcement against the perpetrators of the crime of smuggling imported used clothes cannot be underestimated. The government together with law enforcement officials, especially customs, must be more responsive in monitoring the gaps in the entry of goods from abroad. Law enforcement against perpetrators must be dealt with firmly, considering that this smuggling has had a major impact on the country's income and progress. Various laws and regulations have long been present to maintain the smuggling attempt, only later the government and the government can carry out these regulations optimally.

**Keyword :** Smuggling, Secondhand Cltothing, Law Enforcement

**INTRODUCTION**

The influx of technology, values and fashion from abroad has strongly influenced Indonesian culture so that many have succeeded in interfering with the conditions of Indonesian society. The development of the times is increasingly forcing Indonesian people to always follow international lifestyles. Style in clothing is now the main target in influencing Indonesian society. People also think that clothes are one of the main attractions in their lifestyle. Recently, used clothing has become increasingly popular with the public because it presents brands that are well-known overseas and models of clothing that are different from Indonesian products. Imported used clothing is now also considered capable of answering people's concerns about the high cost of original Indonesian products. They admit that there is a change in their views regarding appearance, not only good but branded, even though they do not often buy branded clothes that are used every day.<sup>1</sup>

Seeing the large number of consumer requests related to used clothes, sellers have to rack their brains to continue to meet market needs. Sellers have begun to develop their products from initially selling local Indonesian second-hand clothes, now expanding to imported second-hand clothes. Sellers think that bringing in used clothes from abroad increases the potential for profits. They think that Indonesian people are more interested in buying imported second-hand clothes than local second-hand clothes. The Central Statistics Agency (BPS) wrote that shipments of used clothing to Indonesia would reach 26.22 tons with a valuation of US\$272,146 in 2022. This nominal value also increased by 230.40%

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<sup>1</sup> Setiadi, Elly M dan Ramdani, Alif Melky. "Pendidikan dalam pespektif post-modernisme sebuah kajian awal." Kencana 2020, hal 40.

compared to the previous year, which was 7.94 tons worth US\$44,136.<sup>2</sup>This is the main factor for sellers to smuggle used clothes from abroad. Bearing in mind that sellers should understand the laws regarding smuggling used clothes from abroad. The government, through the Minister of Trade, has issued Minister of Trade Regulation No. 40 of 2022 concerning amendments to Minister of Trade Regulation No. 18 of 2021 concerning goods prohibited from export and goods prohibited from import, which prohibits the import of used clothing.

According to a health perspective, importing used clothing threatens the health of the Indonesian people because used clothing can carry infectious diseases so it is feared that it could attack the wearer of the clothing. Based on observations of the experiments carried out, it was found that a dominant number of germs and microbes were shown from the Total Plate Number (ALT) experimental benchmarks and molds on all of them, for example used clothes which were quite expensive.<sup>3</sup>Likewise, outerwear also has a negative impact from an economic perspective because it damages the selling power of Indonesian products. Apart from the health and economic problems above, another effect that Indonesia also bears as a result of the influx of used clothes through other countries is the decline of the nation's character. Then in reality, our country wants to allow used clothes to be used by people from other countries. In fact, used clothes are actually domestic waste and are a problem for the country of origin.<sup>4</sup>In Law No. 7 of 2014 article 47, the government has regulated that importers are required to import new goods, although in certain cases the government can provide regulations regarding products sent in non-new condition. This act of smuggling imported second-hand clothing has become a habit for sellers because they see the opportunity to make a profit which sells well on the Indonesian market.

The practice of importing second-hand clothes is a real problem, namely second-hand clothes are products that are prohibited from being imported as stated in article 51 paragraph 2 of Law no. 7 of 2014 concerning trade and Minister of Trade regulation no. 51/M-Dag/Per/7/2015 regarding the ban on importing used clothing.<sup>5</sup>It is hoped that the policies issued by the government will make local products stronger in the role of domestic industry. These acts of smuggling of imported and exported goods are very detrimental to the country if they are not immediately handled more seriously. Individuals are now at a loss to find all the routes to smuggle used clothes. One way is to use sea routes as a way to smuggle used clothes. These individuals are willing to buy small boats that have been modified to be able to accommodate tons of clothes safely without being checked by customs authorities. In terms of used clothing, smugglers use the balpres or ballpress method. Balpres or ballpress is a term in the world of domestic trade that refers to the business of "importing" used clothing. Other terms commonly used are claws, rags, rags, or monza. Apart from used clothes, the term balpres is also used for new clothes that are not selling well but from a fashion perspective are no longer a trend. In the country of origin, used clothes and new clothes that are out of date are collected and packed in sacks after being compressed using a pressure machine, so that one sack can contain a lot of clothes.<sup>6</sup>

This problem is not only from sellers who are addicted to importing second-hand goods. However, Indonesian consumers are also less interested in Indonesian products. People think that using local products makes them less confident. From here, the government has the right to provide a firm policy to uncover smuggling cases, one of which is by imposing heavy penalties on sellers who continue to

<sup>2</sup> Finaka, Andean W. Nurhanisah, Yuli. Syaifullah, Ananda. "Impor Pakaian bekas, Boleh gak SIH?" diakses pada 2 Mei 2023, dari <https://indonesiabaik.id/infografis/impor-pakaian-bekas-boleh-gak-sih>.

<sup>3</sup> JELIRA, Silvester Dece; PURNAWATI, Andi; LESTIAWATI, Ida. Penerapan Sanksi Pidana Terhadap Pelaku Penyelundupan Import Pakaian Bekas (Studi Kasus Beberapa Putusan Pengadilan). *Jurnal Kolaboratif Sains*, 2019, 2.1.

<sup>4</sup> EDY SUPRAPTO, S. E.; SH, M. H. Peta Risiko Penyelundupan di Indonesia. *Elex Media Komputindo*, 2021. Hal 29.

<sup>5</sup> TAMBUNAN, Roberto; SUHATRIZAL, Suhatrizal; SIREGAR, Taufik. Penegakan Hukum Terhadap Tindak Pidana Kepabean Penyeludupan Pakaian Bekas (Putusan No. 237/Pid. B/2016/PN. Tjb). *JUNCTO: Jurnal Ilmiah Hukum*, 2019, 1.2: 158-165.

<sup>6</sup> EDY SUPRAPTO, S. E.; SH, M. H. Peta Risiko Penyelundupan di Indonesia. *Elex Media Komputindo*, 2021. Hal 28.

intensively import second-hand clothes. From the realm of regional governments, they must also frequently provide outreach on prevention and product selection related to the proliferation of used clothing exhibitions, many of which originate from the smuggling of imported used clothing. There are at least two paths that can be taken to form a community commitment to use more domestic products. These two paths consist of: (1) Aspects of nationalism in Indonesian society; (2) Aspects of rationalism in Indonesian society.<sup>7</sup>In the concept of national defense, it is often interpreted that efforts to defend the country can only be carried out by participating in military training to anticipate military attacks from abroad. In fact, using products made in Indonesia is a very basic effort to defend the country because it only involves buying local products and introducing them to wider circles without having to understand mandatory military training which takes energy and time.

Therefore, looking at the background of the phenomenon of widespread smuggling of imported second-hand clothing, the author was inspired to study it more intensively and comprehensively. The author believes that it is important to fight smuggling of imported used clothing which can be categorized as a criminal act. This smuggling can threaten the country's income from the sale of local products and hamper the creative spirit of local products because they lose competition with imported products. For the author, the government must act decisively to hunt down individuals who are still aggressively smuggling goods from abroad, especially used clothes. Positive law in Indonesia has many regulations regarding the prohibition of criminal acts of smuggling in the import of used clothing. So it would be a shame if these laws and regulations could not be implemented properly to ensnare perpetrators of criminal acts of smuggling. The rules give confidence to the actors who work and the fruits of the actions carried out. Law also bestows confidence and social order in the management of society.<sup>8</sup>

So on this occasion the author will write a paper entitled "Law Enforcement Against the Crime of Smuggling Imported Used Clothes According to Indonesian Positive Law.

## RESEARCH METHODS

The method that will be applied for this writing is the normative juridical method. The type of legal research carried out using normative juridical is normative juridical where the law is planned to be what is written in the statutory regulations (law in books) or the law is conceptualized into rules or norms which are a reference for human behavior that is deemed appropriate.<sup>9</sup>

## RESULTS AND DISCUSSION

### Law Enforcement for Perpetrators of the Crime of Smuggling Imported Used Clothes According to the Laws Applicable in Indonesia

Smuggling is importing or exporting outside the customs and excise area or importing/exporting into the customs and excise area, but also by removing goods in containers or false walls (concealment) or on people's bodies.<sup>10</sup>Law enforcement against criminal acts of smuggling must prioritize 3 aspects, namely providing criminal sanctions against perpetrators, returning assets resulting from criminal acts of smuggling and preventing attempted criminal acts of smuggling. Efforts to provide criminal sanctions have been widely regulated in Indonesian positive law. Various laws and regulations regulate prohibitions, procedures and prevention of criminal acts of smuggling of imported goods. Article 102

<sup>7</sup> SISWANTO, Siswanto. Mencintai Produk Dalam Negeri Sebagai Manifestasi Bela Negara Di Era Global. *Jurnal Pertahanan & Bela Negara*, 2017, 7.3: 67-88.

<sup>8</sup> SUMAYA, Pupu Sriwulan. Relevansi Penerapan Teori Hukum Dalam Penegakan Hukum Guna Mewujudkan Nilai Keadilan Sosial. *Jurnal Hukum Responsif*, 2019, 6.6: 55-66.

<sup>9</sup> ASIKIN, Zainal. Amiruddin. Pengantar Metode Penelitian Hukum. Jakarta: Raja Grafindo Persada, 2004. Hal 118.

<sup>10</sup> RAMADHAN, Citra, et al. *Pertanggungjawaban Pidana Dalam Tindak Pidana Penyelundupan Ballpress (Pakaian Bekas) Di Wilayah Perairan Selat Malaka Di Sumatera Utara*. 2021. PhD Thesis. Universitas Medan Area.

letter e of Law No. 17 of 2006 states that "concealing imported goods unlawfully" will be punished in accordance with article 102 "being punished for smuggling in the import sector with a minimum prison sentence of 1 (one) year and a maximum prison sentence of 10 (ten) years and a fine of at least IDR 50,000,000.00 (fifty million rupiah) and a maximum of IDR 5,000,000,000.00 (five billion rupiah)." This chapter can ensnare perpetrators of criminal acts of infiltration of imported used clothes who often deceive customs authorities in various ways and of course this is an act against the law.

These individuals have not only carried out smuggling once but have done so many times so they know the loopholes for more violations. However, from a criminal law perspective, criminal acts committed repeatedly can make the perpetrator's sentence more severe. Government Regulation in Lieu of Law no. 21 of 1959 concerning increasing the threat of punishment for economic crimes. Promulgated on November 16 1959, LN 1959 No. 130. "That is, if a criminal act is committed that can cause chaos in the economic sector in society, then the offender will be punished with the death penalty or life imprisonment or a temporary prison sentence of twenty years."<sup>11</sup> Meanwhile in Law no. 7 of 2014 article 111 states "Every importer who imports goods that are not new as intended in article 47 paragraph (1) shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of IDR 5,000,000,000.00 (five billion rupiah)" refers to article 47 of Law no. 7 of 2014, the Minister of Trade issued PERMENDAG RI No. 40 of 2022 which contains a ban on imported goods. The Republic of Indonesia Minister of Trade Regulation prohibits the import of used clothing of any type.

The rise in smuggling of imported second-hand clothing has the impact of muddying the branding of domestic products and of course reducing the income figures for domestic products. This action could be an assessment by other countries that Indonesia is a country lacking in innovation. Because goods often come in from abroad, especially used clothing. Therefore, perpetrators of criminal acts need to be punished as severely as possible considering the impact of large losses. Starting from damaging the country's interests, crippling the country's economy, reducing state income, even though the function of this income is to build infrastructure, people's welfare programs. If necessary, assets owned by those carrying out criminal acts of smuggling used clothing must be confiscated. So the perpetrator cannot enjoy the proceeds from the criminal act of smuggling imported used clothing. The imposition of criminal witnesses is considered very important for perpetrators of the crime of smuggling imported used clothing. The perpetrator can be charged with cumulative sanctions because this is in accordance with article 102 of Law no. 17 of 2006. The use of cumulative sanctions can have a deterrent effect on perpetrators by having their right to freedom taken away through imprisonment while at the same time providing losses from smuggling to the government through fines.

For example, there is an example of a case that the author explains in February 2018, namely the case of Ridwansyah bin Palewi in the excerpt from decision number 390/Pid.B/2017/PN Pal, Captain KM Mega Buana, the defendant in the case of smuggling used clothes from Malaysia amounting to 480 (four hundred eighty) bale. Sentenced to 1 (one) year and 6 (six) months and then fined Rp. 200,000,000 (two hundred million rupiah) as well as the case of Burhanuddin Bin Kasim in the excerpt of decision Number: 508/Pid.B/2017/PN.Pal, Captain KM Rizki Abadi, the defendant in the case of smuggling used clothes amounting to 1000 (one thousand) balls. Sentenced to 1 (one) year and 3 (three) months and then sanctioned in the amount of Rp. 50,000,000 (fifty million rupiah).<sup>12</sup> Action against perpetrators of the crime of smuggling imported used clothing can only be carried out by government officials, in this case one of which is customs. In this case, the customs authority has the authority to carry out arrests carried out by customs investigators. Looking at the case examples above, there are many opportunities for criminal smuggling from abroad, often via sea routes. The government in its sphere of action has the right to know and protect the sea area from any action. Because the government has various institutions

<sup>11</sup> FITRI WAHYUNI, FITRI. *Dasar-Dasar Hukum Pidana di Indonesia*. 2017.

<sup>12</sup> JELIRA, Silvester Dece; PURNAWATI, Andi; LESTIAWATI, Ida. Penerapan Sanksi Pidana Terhadap Pelaku Penyelundupan Import Pakaian Bekas (Studi Kasus Beberapa Putusan Pengadilan). *Jurnal Kolaboratif Sains*, 2019, 2.1.

that can monitor all movements in the sea area. Law enforcement agencies in Indonesia that guard maritime areas include the Indonesian Navy; POLRI-Directorate of Water Police; Ministry of Transportation-Director General of Transportation; Ministry of Maritime Affairs and Fisheries-Director General of PSDKP; Ministry of Finance-Director General of Customs; Bakamla, as well as the Task Force for Eradicating Illegal Fishing (later called Task Force 115).<sup>13</sup> These institutions will then work together and further strengthen their efforts to protect maritime areas, especially to guard against criminal acts of smuggling used clothing through maritime areas.

Considering that this criminal act of smuggling is included in the customs crime. Customs based on the definition contained in Law Number 10 of 1995 as amended by Law Number 17 of 2006 is everything related to the supervision of the traffic of goods entering or leaving the customs area as well as the collection of import and export duties.<sup>14</sup> Customs civil servant investigators have the authority based on PP No. 55 of 1996 concerning the investigation of criminal acts in the field of customs and excise article 1 paragraph (1) which reads "Investigations of criminal acts in the field of Customs and Excise are carried out by Civil Servant Investigators from the Directorate General of Customs and Excise." This foundation really strengthens the field of customs movement to fully eradicate criminal acts of smuggling from abroad, especially the import of used clothing. Customs and Excise is not only authorized to carry out investigations into customs crimes but can also carry out confiscations as an investigator, this is in accordance with article 1 paragraph (16) of the Criminal Procedure Code which states "Confiscation is a series of actions by investigators to take over and/or keep under their control movable objects or immovable, tangible or intangible for evidentiary purposes in investigations, prosecutions and trials." From this authority, customs can investigate and develop criminal cases of smuggling of imported used clothing. So that later it can provide legal consequences for the perpetrators of criminal acts of smuggling which is expected to ensure compliance with law enforcement based on the laws and regulations in force in Indonesia.

### **Efforts to Prevent the Crime of Smuggling Imported Used Clothes**

Law enforcement through efforts to prevent criminal acts of smuggling of imported used clothing is considered very important. Because efforts to prevent smuggling that has not yet occurred can eliminate losses or sanctions from the occurrence of smuggling. The government, especially customs, must be responsive to attempts to smuggle used clothing in order to prevent the proliferation of smuggling and prevent smuggling. The government and law enforcement officials need to formulate appropriate steps to prevent criminal acts of smuggling of imported used clothing. Looking at Indonesia's geographical situation, which is so wide and has many islands, it makes it vulnerable to the entry of illegal goods. According to Zulkifli, Indonesia's vast geographical conditions are an obstacle in cracking down on smugglers who operate through the many routes in various regions, such as Sumatra, Java and Kalimantan. Therefore, cooperation between law enforcement officials and local governments is urgently needed to have a deterrent effect.<sup>15</sup>

In order to prevent smuggling of imported second-hand clothing, clear regulations need to be made so that later business people can know that the act of importing second-hand clothing is a criminal act of smuggling in the economic sector. Submission of this information must also be accompanied by the legal basis and the impacts on the perpetrators of the crime of smuggling imported used clothing as well as the negative impacts on the country. So these business people will think again if they have plans to import used clothes. There are several concrete efforts that can be taken by the government and related law enforcers to prevent criminal attempts and smuggling of used clothing. Starting from: First, providing outreach regarding the prohibition on importing used clothing. From here the government can provide

<sup>13</sup> BIRAHAYU, Dita. Penegakan Hukum terhadap Penyelundupan Pakaian Bekas. *Perspektif Hukum*, 2020, 156-167.

<sup>14</sup> SURONO, S. *Konsep Dasar Kepabeanan*. 2015.

<sup>15</sup> Dewi, Mis Fransiska. "Pencegahan impor baju bekas butuh dukungan daerah." Diakses pada 5 Mei 2023, dari <https://www.kompas.id/baca/ekonomi/2023/03/28/berantas-pakaian-bekas-ilegal-di-tingkat-hulu>

information to the public, especially clothing businesses, regarding the ban on importing used clothing. The government can provide information through customs social media accounts or through direct outreach by customs in districts and regions. Second, carry out supervision over the movement of business people in managing clothing businesses and the entry and exit of goods in Indonesia. This effort is considered effective because customs can directly monitor movements in the field to see whether they comply with statutory regulations. Can also check transportation vehicles entering Indonesian territory. So that you can take immediate action if there are suspicions about certain actions. It is hoped that customs will always prioritize preventive efforts so that suspicious matters can still be resolved without entering the realm of litigation.

### CONCLUSION AND SUGGESTION

Maintaining the law for those involved in criminal acts of infiltration of used clothes is very important, considering the large number of losses experienced by the state due to the rampant smuggling of imported used clothes. It is hoped that the government and law enforcement authorities will not take this case lightly. The various regulations that have been passed are none other than of course to prevent smuggling and also to take action against the perpetrators. It is very unfortunate that the existence of regulations only serves to disburse the budget for preparing regulations without any supervision in implementing these regulations. It is truly ironic that this act, which in fact could thwart the progress of the country's infrastructure, delay the welfare of the Indonesian people and stall the nation's economic growth, turns out to be one of the causes of this criminal act of smuggling used imported clothing.

The suggestions that the author can convey are: 1. Take firm action against perpetrators of smuggling imported used clothing. 2. Punish according to the perpetrator's actions so that it can have a deterrent effect on the perpetrator and confiscate the assets produced by the perpetrator. 3. Maximize preventive efforts to prevent criminal acts of infiltration of imported used clothes.

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