

Corporate Criminal Liability for the Crime of Forgery of Export Documents According to Law of the Republic of Indonesia Number 17 of 2006 concerning Customs

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Abstract Customs 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. Based on this definition of customs, the Directorate General of Customs and Excise (DJBC) has a very strategic role in both supervision and service. Economic life between one country and another is increasingly interdependent so that legal provisions in the field of international trade and transnational business are increasingly necessary. As time goes by, the presence of corporations in the economy is like a double-edged sword. On the one hand, it can provide benefits for economic growth through state income in the form of taxes thereby increasing the country's foreign exchange and on the other hand, it can threaten state income because corporations often commit crimes to gain as much profit as possible by falsifying goods export documents. The 1945 Constitution of the Republic of Indonesia Article 1 paragraph 3 states that Indonesia is a legal state. In accordance with the concept of a rule of law, everything related to processes carrying out aspects of government power is based on law, including the law enforcement process in cases in the customs sector, especially in the export sector. This research uses normative legal research methods. Normative research is research carried out by examining library materials using data sourced from secondary data, namely primary legal materials, secondary legal materials and tertiary legal materials. Data collection in this research was carried out by document study and literature study. Then it is described qualitatively to make it easier to draw conclusions from the data. The aim of this research is to determine the factors that cause corporations to commit criminal acts of falsifying export documents and to find out what corporate criminal liability is for criminal acts of falsifying export documents according to Law of the Republic of Indonesia Number 17 of 2006 concerning Customs.

Keywords: Criminal Liability, Corporate, Crime, Document Falsification.

INTRODUCTION

Background

The activity of removing goods from the customs area or what we know as export as a whole is an international trade activity with a fairly high level of complexity. By maintaining the continuity of export activities, it means that a country is trying to achieve economic development through trade. With the hope that through export activities, Indonesia will obtain foreign exchange to promote national economic development. Some indications that a country's balance of payments is in surplus are if trade and investment funds are greater compared to the burden borne by the country and the value of imports is smaller than exports. This means that slow export activities are one of the factors inhibiting the achievement of national economic development in Indonesia . For this reason, it is important to maintain the continuity of a country's sustainable export activities in order to maintain domestic economic stability.

Considering that the size of the Indonesian customs area is as large as the sovereign territory of the Republic of Indonesia, it is impossible for the government to be able to place all officers from the Directorate General of Customs and Excise along the border lines throughout the customs area to monitor the entry and exit of goods in the context of export and import activities. Conditions like this provide an opportunity for smugglers to carry out activities related to imports and exports without paying import duties and taxes as well as export duties to the Directorate General of Customs and Excise. Smuggling activities like this certainly have a negative impact that is detrimental to the state's financial income which is quite large.

Economic progress and corporate competition in Indonesia are growing every year. So without us realizing that competition between corporations is one of the dominant factors causing crime. This is characterized by the large number of trading businesses for various products and services produced in corporate activities. It cannot be denied that the presence of corporations itself has positive and negative impacts. One of the positive impacts is that it contributes to the development of a country, especially in the state revenue sector from the customs sector, namely import or export duties and export or export duties.

On the other hand, the presence of corporations also has a negative impact on the country's economy, for example corporations often commit criminal acts or manipulate import and export duties, manipulate taxes, pollute and defraud consumers in unfair competition. This occurs in line with the increasing role of corporations in various fields, especially the economic sector, which creates a tendency for corporations to commit crimes in order to obtain maximum profits without thinking about the losses to society at large. By looking at the large number of crimes committed by corporations, strict attention and regulation of corporate activities is required by law.

Corporate crimes are divided into 2 (two) parts, namely crimes for corporations, namely violations of the law committed by corporations because their aim is to seek profit in any way and criminal corporations, namely the formation of business entities that are intended or intended to carry out evil acts. Meanwhile, the parties who are victims of corporations are *rival companies*, the state, employees, consumers and the *public*.

In the case of a crime of falsifying documents committed by a business entity or corporation, which is called a corporate crime, only the perpetrator can be punished, while the business entity is not criminalized because the Criminal Code (KUHP) does not recognize legal subjects as legal entities. However, in the development of criminal law, a legal entity can be punished if the legal act or corporate crime is violated or committed by company officials. This

is stated in Article 23 of the Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Corporate Crime Cases that "Judges can impose criminal penalties on the management or corporation or both." Even though there are regulations and penalties stipulated for this criminal act. However, in practice there are still many criminal acts of falsifying documents committed by corporations in order to facilitate their export activities.

The crime of falsifying documents is a disturbing crime and has a serious impact on society. The perpetrator of this crime intentionally creates, changes or falsifies documents with the intention of defrauding or obtaining illegal benefits. The main elements in this criminal act include the act of forgery and the specific intent possessed by the perpetrator. In the context of Indonesian law, regulations related to the criminal act of falsifying documents can be found in various laws, namely Article 263 of the Criminal Code and Article 264 of the Criminal Code.

According to R. Soesilo, a letter is said to be forged if:

1. Give rise to rights, for example diplomas, entry tickets, contribution letters, etc.;
2. Issuing an agreement, for example a receivables agreement, sale and purchase agreement, rental agreement and so on;
3. Issue a debt release such as a receipt or the like; And
4. Letters that are used as information for an action or event, for example birth certificates, postal savings books, cash books, ship diaries, transport documents, bonds and so on.

This regulation provides a legal basis for law enforcement to take action against perpetrators of criminal acts of document falsification. The criminal threat for perpetrators of the crime of falsifying documents varies depending on various factors, including the type of document being falsified and the amount of loss caused. In general, perpetrators of this criminal offense can be threatened with imprisonment and/or fines in accordance with the provisions of the applicable law. This criminal threat aims to provide a deterrent effect for perpetrators and prevent similar criminal acts from occurring in the future.

Customs crimes are acts that are prohibited by Law of the Republic of Indonesia Number 17 of 2006 concerning Amendments to Law of the Republic of Indonesia Number 10 of 1995 concerning Customs. One of the customs crimes is falsifying export documents as regulated in Article 103 which carries a penalty of five years' imprisonment and/or a maximum fine of IDR 250,000,000.00 (Two Hundred and Fifty Million Rupiah).

The rise of criminal acts related to customs carried out by corporations and the absence of legal firmness that can be enforced to eradicate crimes by corporations, means the author is interested in discussing this further in this scientific work entitled **"Corporate Criminal**

Responsibility for the Crime of Falsification of Export Documents According to the Law of the Republic of Indonesia Number 17 of 2006 concerning Customs."

Formulation of the problem

Based on the background description, the problem in this research can be formulated as follows:

1. What are the factors that cause corporations to commit criminal acts of falsifying export documents?
2. What is the criminal responsibility of corporations for criminal acts of falsifying export documents according to Law of the Republic of Indonesia Number 17 of 2006 concerning Customs?

RESEARCH METHODS

This research is normative legal research, namely research that covers legal principles, norms, rules of legislation, court decisions, agreements, and doctrine. This research was conducted by examining crimes that are closely related to corporations. Those who take a statutory approach and a conceptual approach. The data collection comes from secondary data, which consists of primary legal materials, secondary legal materials and tertiary legal materials. The technique for collecting legal materials is carried out by means of document study, literature study and internet study. The data analysis technique uses a qualitative descriptive method, namely explaining secondary data obtained from library research to obtain a conclusion as an answer to the problem formulated.

DISCUSSION

Factors that cause corporations to commit criminal acts of falsifying export documents

The rapid development of the implementation of national development in national life, especially in the economic sector, is one of the practices of international trade. International trade is a buying and selling activity carried out by two individuals or a company across countries, which by mutual agreement is carried out to meet needs in a country that are not available or not met in that country. The practice of organizing international trade activities has been regulated by the Government in Law of the Republic of Indonesia Number 17 of 2006 concerning Amendments to Law of the Republic of Indonesia Number 10 of 1995 concerning Customs.

According to Law of the Republic of Indonesia Number 17 of 2006 concerning Customs, what is meant by Customs is everything related to the supervision of the flow of

goods entering or leaving the customs area as well as the collection of import and export duties, as well as ensuring legal certainty in a fair manner, transparency and accountability of public services. The customs area itself has also been described in Law of the Republic of Indonesia Number 17 of 2006, namely the territory of the Republic of Indonesia which covers land, water and air space above it. Apart from that, customs areas include certain places within the Exclusive Economic Zone (EEZ) and the continental shelf to which this law applies.

Based on Article 1 number 3 of Law of the Republic of Indonesia Number 17 of 2006 concerning Amendments to Law of the Republic of Indonesia Number 10 of 1995 concerning Customs, what is meant by customs area is an area with certain boundaries at sea ports, airports or other places which is determined for goods traffic which is fully under the supervision of the Directorate General of Customs and Excise. Every person or legal entity who wishes to fulfill customs obligations is required to register with the Directorate General of Customs and Excise to obtain an identity number for customs access, for example registration as an importer, registration as an exporter and registration as a customs services operator (PPJK).

Forgery of documents always begins with malicious intent in order to reduce export duties on goods. The criminal act of falsifying customs documents is sometimes known by the authorities, but the perpetrators are not arrested, so this crime becomes increasingly widespread, ultimately causing public anxiety. because it has indirectly resulted in congestion or obstacles to domestic production which is detrimental to the government that produces it.

According to Marshall B. Clinard, corporate crime is white collar crime that is organized in the context of a more complex and deep relationship between an executive leader, manager in one hand or a family company. However, corporate crime is divided into 2 (two) parts, namely organized crime *and* crime by organizations. Corporations are associations of people who have interests where these people are members of the corporation which has power in corporate governance in the form of member meetings as supreme power in corporate regulations.

The crimes committed by corporations are so serious that they have attracted the attention of the state. The factors that cause a corporation to falsify export documents in the customs sector are:

- a. Indonesia's Strategic Geographical Location. Indonesia, which is located between 2 (two) continents with a wide coastline and developed countries, provides opportunities or opportunities for individuals or groups on behalf of a business entity to falsify the contents of documents for goods leaving Indonesia;

- b. The existence of business competition. To face business competition, corporations are required to innovate such as discovering new technology, marketing techniques, and efforts to control or expand markets
- c. Loose Supervision. Lack of accuracy of customs officers and other law enforcement officers when carrying out supervision and inspection of goods entering and leaving Indonesia;
- d. Pressure or threats. In fact, a person realizes that the act of forgery and smuggling of documents is contrary to applicable law and his own conscience. However, because he was afraid of pressure or threats from other parties, he was forced to do it;
- e. The perpetrator did not know that he had committed a crime. Usually in this case a person is not aware that he has committed a criminal act because he is lulled by the large results; And
- f. Because he was trapped. It is very likely that this person was tricked into committing a dangerous crime.

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The era of globalization where borders between countries are becoming increasingly blurred has caused the role of customs and excise to become increasingly important. The soaring competitiveness of a product in the international market is determined by the efficiency and effectiveness of customs services. If during the inspection process goods are found that are strongly suspected of causing violations as stated in the law, then customs officials have the right to take action against these goods in accordance with Minister of Finance Regulation Number: 161/PMK.04/2007 concerning Supervision of Imports or Exports Prohibited and/or Restricted Goods, which are contained in Article 3, namely in the case of supervision of goods which are prohibited or restricted for import or export, there are differences in interpretation, in order to fulfill customs obligations, the head of the customs office shall carry out deterrence of the imported or exported goods in question and/or means of transport.

Export supervision carried out by customs officers is carried out with the principle of supporting and supporting the export activities carried out so that it does not complicate the export activity process. Export control is carried out for certain matters only, namely: Examination of documents carried out thoroughly to form a picture of the exporter, the goods being exported or the export destination countries which are considered prone to violations;

- a. Conduct an in-depth study of the prohibitions and restrictions that apply to the types of goods to be exported along with permits from the relevant technical agencies and ministries; And
- b. Physical inspection of goods based on strong suspicion that the notification was given incorrectly as explained in the two points above.

The imposition of criminal liability on corporations is still limited to regulating the separation between corporate responsibilities as corporations and corporate accountability through their management. With In this condition, there are still few corporations that can be punished. Corporations can be criminally liable if the business activities carried out by the corporation harm or endanger the interests of society and there are victims. This occurs because there are issues regarding when a corporation commits a criminal act, who should be responsible and what sanctions are appropriate to impose on the corporation.

Criminal liability by corporations based on the amended law on customs states that parties can be held criminally liable if a criminal act of smuggling occurs which includes:

- a. Individuals are regulated in Articles 102, 102A, 102B of the Customs Amendment Law;
- b. Officials are regulated in Article 102C, Article 113A up to Article 113C of the Customs Amendment Law;
- c. Transporters of goods are regulated in Article 102D, Article 104, Law on Customs Amendments;
- d. Customs Services Management Company (PPJK) is regulated in Article 107 of the Customs Law; And
- e. Legal Entities, Companies, Corporations, Associations, Foundations, Cooperatives are regulated in Article 108 of the Law on Amendments to the Customs Law.

Law enforcement is an attitude of action as a series of values elaboration at the final stage to create, maintain and maintain social life in accordance with the law in order to protect human interests. In enforcing the law, there are 3 (three) elements that must be considered, namely legal certainty, expediency and justice. If we relate it back to Article 103 letter a of Law of the Republic of Indonesia Number 17 of 2006 concerning Customs, it is written that every person who submits a customs notification and/or customs supplementary documents that are false or falsified may be subject to criminal charges. Exporters or importers who use PPJK services will not be directly subject to criminal penalties because the person who submits the customs notification or complementary customs documents is PPJK as a goods handling service for export or import. And of course PPJK often falsifies existing import and export

documents, for example falsifying data in goods import notification documents (PIB) or goods export notifications (PEB).

From the description above, we can see that when a corporation commits a customs crime, those held responsible are the management of the corporation and this is regulated in Article 108 paragraph 1 of the customs law. In Article 108 paragraph 1 of the Customs Law, it is explained that the administrator of a legal entity is a person who gives orders, a person who acts as a leader or a person who neglects to prevent the occurrence of a customs crime.

The only sanction that can be imposed on a corporation proven to have committed a crime or violation is a criminal fine. The position of criminal fines as the main criminal punishment for corporations means that criminal fines must be able to prevent corporations from committing crimes or prevent crimes from occurring. We need to know that one way to prevent or minimize corporate crime is by imposing fines that are greater than the results or profits obtained by the corporation.

A customs crime is deemed to have been committed by a corporation if these people have an employment or other relationship. According to Article 52 of the Criminal Code, if a person commits a criminal act based on the position he holds, the criminal must be aggravated by adding 1/3 (one third) of the sentence imposed. Provisions for criminal sanctions for corporations are regulated in fines if the criminal act is punishable by imprisonment and a fine Article 108 paragraph 4 of the customs law which reads "For legal entities, companies or companies, associations, foundations or corporations that are punished with the criminal penalties as intended in this law, the main penalty imposed is a fine of a maximum of IDR 1,500,000,000.00 (one billion five hundred million rupiah). If the crime is punishable by imprisonment, the penalty is not abolished."

Apart from fines, the penalties that can be imposed on corporations are additional penalties as contained in Article 10 of the Criminal Code, namely revocation of certain rights, confiscation of certain goods and announcement of the judge's decision. The legal rules governing corporate responsibility in statutory regulations for falsifying export data are:

- a. Law of the Republic of Indonesia Number 1 of 1946 concerning the Criminal Code;
- b. Emergency Law Number 17 of 1951 concerning Stockpiling of Goods; And
- c. Law of the Republic of Indonesia Number 17 of 2006 concerning Amendments to Law of the Republic of Indonesia Number 10 of 1995 concerning Customs.

CONCLUSION

Based on the research results and discussion of several problem formulations above, the following conclusions can be drawn:

1. The factors that cause corporations to commit criminal acts of falsifying export documents are Indonesia's strategic geographic location, business competition, lax supervision, pressure and threats, perpetrators who do not know that they have committed a crime with the promise of large profits and because they are trapped into wanting to do it. commit a criminal act.
2. Corporate criminal liability for criminal acts of falsifying export documents according to the Law of the Republic of Indonesia Number 17 of 2006 concerning Customs, namely being subject to a criminal sanction of a fine under Article 108 paragraph 4 of the customs law which reads "For legal entities, companies or companies, associations, foundations or corporations who are punished with the crime as intended in the law. under this law, the main penalty imposed is a maximum fine of Rp. 1,500,000,000.00 (one billion five hundred million rupiah). If the crime is punishable by imprisonment, the penalty is not abolished

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