

Analysis of Legal Protection for Business Actors in the Customs Law in The Event of a Force Majeure Condition

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Abstract

The main focus of this research is on the role of Law No. 17 of 2006 on amendments to Law No. 10 of 1995 on customs in regulating and enforcing customs functions in Indonesia during force majeure. Based on this rationale, the problem posed in this research is how far the role of Law 17 of 2006 in terms of legal protection for business actors in the customs sector in Indonesia, how to process documents in a force majeure condition and how to process the flow of goods in a force majeure condition. To answer and explain the problems above, this study uses qualitative analysis with a normative juridical approach and is equipped with theories of justice, authority, legal protection, and legal sociology. The inductive method will be used by researchers in assessing the problems at hand. Inductive language is carried out by examining empirical matters including fiscal law regulations which include customs law in them. Therefore, the author uses law as law in books while also seeing the other side, namely law as an action or Law in Action. The research results obtained in the formulation of the problem are as follows; enacted Law No. 17 of 2006 in an effort to better ensure legal certainty, justice, transparency and accountability of public services, to support efforts to increase and develop the national economy related to global trade, to support the flow of goods and to increase the effectiveness of monitoring the traffic of goods entering or leaving the Indonesian.

Keywords: Customs, CEISA, Force Majeure

A. Introduction

Article 33 Section 3 of the 1945 Constitution states that the earth and water and the wealth contained therein shall be controlled by the state and used for the greatest prosperity of the people. Thus, based on Article 33, it can be understood that all of Indonesia's homelands are under the control of the state, and as a consequence the state is obliged to use the homeland for the prosperity of its people. It is emphasized in the 1945 Constitution that Indonesia is a state based on law (rechstaat), not based on mere power (machsstaat), and a government based on a constitutional system, not absolute. This description can be interpreted that in the Republic of Indonesia, it is not based on mere power. Law displays its authority as a means to regulate all human behavior in order to bring order and prosperity in order to build a just and prosperous society.

Law as one aspect of human life develops along with the times and community life. The development of knowledge of science and technology in society will be in line with demands for legal reform efforts. Law enforcement is always consistent and consistent in order to avoid friction between groups. The law that is applied in the product of legislation must be implemented and obeyed which is a form of law enforcement. In carrying out the

function of the legislation itself, people who are competent in their fields are called law enforcers.

Shant (1998:32) Law enforcement is an effort to realize the ideas and legal concepts that are expected by the people to become a reality. Law enforcement is a process that involves many things. Rahardjo (1983:11) Law enforcement always involves humans in it and thus will involve human behavior as well. The law cannot be enforced by itself, meaning that it is unable to fulfill its own promises of the wills contained in the law (regulations), for example, is to give someone the right, to provide protection to someone, to impose a crime against someone that meet certain requirements and so on.

Force majeure in Black's Law Dictionary (2004) is an event that cannot be anticipated or controlled, including natural and human-caused events. (Simanjuntak, 2017:295) There are several expert opinions regarding force majeure, including the following:

1. According to Subekti, force majeure is a reason to be released from the obligation to pay compensation.
2. According to Abdulkadir Muhammad, force majeure is a condition in which the debtor's achievements cannot be fulfilled because an unexpected event occurs which the debtor cannot predict will occur at the time of making the engagement.
3. According to Setiawan, force majeure is a condition that occurs after an agreement is made which prevents the debtor from fulfilling his achievements, in which the debtor cannot be blamed and does not have to bear the risk and cannot predict when the agreement is made. Because all of that before the debtor failed to fulfill his achievements when the situation arose.

From the service provider in running services based on the Customs-Excise Information System and Automation (CEISA). CEISA is an integration system of all services of the Directorate General of Customs and Excise to all public service users so that all service users as users can access from anywhere, anytime with an internet connection. Therefore, CEISA can be referred to as a Customs and Excise foundation application.

In July 2021, a force majeure event occurred which resulted in customs activities, especially in the export and import sector, experiencing a national system disturbance. This has caused several parties involved to experience unprecedented conditions, so that many are affected by activities in the customs process, one of which is business actors in the field of customs business actors. In its application, the automation system is expected to provide convenience for customs business actors in completing their administration. But there are times when there are problems with the DJBC automation application, providing assistance regarding the flow of documents in a force majeure condition. So the problems in the research can be formulated as follows:

1. How is the role of Law No. 17 of 2006 in protecting business actors in the customs sector in Indonesia when a force majeure occurs?
2. How is the document process smooth in force majeure conditions?
3. How is the smooth flow of goods in a force majeure condition based on the principle of justice?

Based on formulation of the problem the purpose of this research is to find out how far the customs law regulation No. 17 of 2006 is able to encourage economic development

in Indonesia that is able to accommodate the interests of customs industry business actors if something unexpected happens. Seeing the law with the object or problem being targeted is not a causal relationship as is the case in the natural sciences or exact sciences, but also other factors that allow for change and are required by law, as a result of the influence of technological globalization and the principle of development. International customs, the following purposes can be withdrawn:

1. To find out and analyze the role and impact of the customs law in accommodating the interests of industrial business actors in national economic development from state revenues.
2. To find out and analyze the smoothness of the document process during a force majeure condition for business actors in the customs sector in Indonesia and how the solution was carried out by the DJBC as the service provider.
3. To find out and analyze the impact of the delay in the smooth flow of documents and goods during force majeure conditions in the loading and unloading process in the customs area.

Broader policies in achieving justice targets to protect domestic industrial business actors include several facilities provided by policy makers as stated in Law No. 17 of 2006. Provision of fiscal facilities such as not collecting or deferring import duties and taxes in the context of imports (PDRI) this is further regulated in the Regulation of the Directorate General of Customs and Excise No PER-9/BC/2021 concerning changes to the Regulation of the Directorate General of Customs and Excise No PER-19/BC/2018 regarding the management of bonded areas. Law Number 17 of 2006 concerning customs adheres to the separation of the sub-system of the process of releasing goods (Clearance of Imported Goods Process), administrative research in the context of state financial receipts (Revenue Collection Process) and the principle of supervision. This is separated to better ensure the smooth flow of goods, so that customs service users expect that there will be no more activities that cause high economic logistics costs. This step can be carried out jointly between the Directorate General of Customs and Excise (DJBC) and customs service users for the national interest. The Directorate General of Customs and Excise (DJBC) in carrying out its main duties has a function in preventing violations of customs laws and regulations. In addition, one of its functions is the prosecution and investigation of customs crimes in accordance with the applicable laws and regulations. The services of the Directorate General of Customs and Excise as a trade facilitator (Trade Facilitator) in customs are very helpful for service users to facilitate the flow of goods that occur at the port.

Based on the description above, in the context of this research, there are several theories that the researcher uses as a knife for analyzing the problems that have been formulated. The theories in question are Theory of Justice, Theory of Authority, Theory of Legal Protection, and Sociology of Law.

1. Theory of Justice

There are various theories about justice and a just society. These theories concern rights and freedoms, opportunities for power, income and prosperity. One of them is the authority to realize justice itself.

In legal philosophy, the theories of natural law from Socrates to Francois Geny, still maintain justice as the crown of law. Natural Law theory prioritizes "the search for justice" (Huijber, 1995:196). As also explained by Soekanto (1991:142).

Satjipto Rahardjo argues that in the world of science, theory occupies an important position because it provides a means for us to better summarize and understand the problems we are discussing. Things that initially appear to be scattered and independent can be put together and shown to be related to each other in a meaningful way. The theory thus provides an explanation by means of organizing and systematizing the problems being discussed.

In addition to the equality-based model of justice, Aristotle also proposes other justice models, namely distributive justice and corrective justice. Distributive justice is identical with justice on the basis of proportional equality. While corrective or remedial justice focuses on "correcting something wrong". If something is violated, or an error is committed, corrective justice seeks to provide adequate compensation for the injured party. Based on the explanations of the experts above, the theory of justice will be used as an analytical tool to examine the problem of justice for business actors who are obedient to taxpayers in their efforts to receive services and protection in return from the state.

2. Authority Theory

Authority has an important position in the study of constitutional law and administrative law. F.A.M. Stroink and J.G. Steenbeek, stated that *het begrip bevoegdheid is da nook een kembegrip in het staats en administratief recht* (Minarno, 2009:65). The Dutch term "bevoegdheid" is used both in the concept of public law and in the concept of private law, while in Indonesian law, the term authority or authority should always be used in the concept of public law (Hadjon, 2011:10).

(Hadjon, 2011:10) As a concept of public law, authority consists of at least three components, namely influence, legal basis and legal conformity. The influence component is that the use of authority is intended to control the behavior of legal subjects. The basic components of the law are that authority must always be able to designate its legal basis and legal conformity implies the existence of standards of authority, namely general standards (all types of authority) and special standards (for certain types of authority). In other words, authority cannot be separated from legal subjects which in this case are based on service providers or are mandated by the law itself.

In connection with the problem to be studied, the theory of authority will be used to examine the formative authority of making laws and regulations by the agency or agency that has the authority to make legislative products. The authority to make laws that is owned by the relevant agency that is given the authority to serve, namely in this case is the Director General of Customs and Excise (DJBC) as well as the authority of judges to examine cases and impose administrative sanctions on convicts is an attributive authority because it has been regulated in law.

3. Legal Protection Theory

Regarding the theory of legal protection, there are several experts who explain this discussion, including Fitzgerald, Satjipto Raharjo, and Lily Rasyidi. Fitzgerald quotes the term legal protection theory from Salmond that the law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can be done by limiting various interests on the other hand. The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection is born from a legal provision and all legal regulations provided by the community which are basically an agreement by the community to regulate behavioral relations between community members and between individuals and the government which are considered to represent the interests of the community (Rahardjo, 2007)

This research was conducted to determine the impact of force majeure on customs business actors that occurred in July 2021 in the national customs process. that in accordance with the Regulation of the Director General of Customs and Excise Number PER-18/BC/2018 concerning the delivery of customs notification and/or excise notification in a state of force majeure, a Memorandum of Service of the Director of customs and excise information number ND-3077/BC.07/2021 dated 09 July 2021 regarding notification of manual service implementation (force majeure). This situation caused the automation system of Customs and Excise services to experience a down system, and made DJBC issue a Decree to handle this issue so that the Export and Import process mechanism continued and did not hamper the national and international trade process for industrial business actors.

4. Sociological Theory of Law

Achmad Ali (1998:9), the study of the sociology of law is a study whose object is legal phenomena, but uses the topic of social science and sociological theories. This sociological study of law is included in an empirical study, which in this study views law as a reality that includes social reality, cultural reality and others, or it can also be said that empirical studies examine law in action where the world is actually happening in reality. Society or reality and not what it should be (das sollen).

As for the usefulness of the sociology of law in reality, according to Soekanto (2003:26-27); a.) Sociology of law is useful for providing skills for understanding law in a social context. b.) Mastery of the concepts of sociology of law can provide the abilities to conduct an analysis of the effectiveness of law in society, both as a means of social control, suggestions for changing society and a means to regulate social interaction in order to achieve certain social conditions. c.) Sociology of law provides possibilities and capabilities to evaluate the effectiveness of law in society.

B. Method

This research was conducted using a qualitative research approach such as legal research in general which took place in a natural setting. The main instrument of this

research will be to analyze the data in an inductive-qualitative manner based on cases that occur in the community. The researcher uses qualitative research methods because the method was developed in the field of legal science to examine human life in limited cases but has a deep (In Dept) and comprehensive (Holistic) nature. Conceptually, the exclusive symptom-sorting aspects are referred to as variables. Another consideration for the researcher is the selection of qualitative methods because it relates to the problem to be studied, namely to find answers to the symptoms that occur in society.

The inductive method will be used by researchers in assessing the problems at hand. The inductive discussion is carried out by examining empirical matters including fiscal law regulations which include customs law in them. Inductive analysis is used based on reasoning and elaboration of standard ideas about law in the form of applicable legal principles, while in accordance with the discussion and problems to be discussed in this study, this research was carried out with normative juridical research (normative legal research method). In order to provide useful results for the general public, the normative juridical research method is carried out by examining library materials or secondary data, supplemented by the answers obtained.

The normative juridical research as mentioned above is a research by analyzing the problems in the research through an approach to legal principles and refers to the legal norms contained in the legislation. This research can be used to draw out legal principles in interpreting laws and regulations. In addition, this research can also be used to find legal principles that are formulated both implicitly and explicitly (Sunggono, 2003:27-28).

This research was conducted in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject matter. The scope of this research will be research by drawing on legal principles, which are carried out on written and unwritten positive laws.

According to the discussion and the place that has been prepared by the researcher in conducting his research from the beginning, namely, as initial informants are stakeholders involved in the customs field and Customs and Excise officers as customs service providers. The initial informants were the Customs and Excise Supervision and Service Officer (KPPBC) of Tanjung Perak Surabaya Customs Middle Type and the research at the Customs and Excise Service and Customs Supervisory Service Office of Middle Type B Gresik. Meanwhile, to clarify the researcher's understanding, the next informant followed the snowball principle until he concluded that there was no further information that could be extracted.

The research location is a place or object for conducting a research. Researchers took samples in the National Strategic Area in the area of Roomo Village Street, Manyar District, Gresik City, East Java. This is taken because it considers researchers who carry out mobility in the area.

C. Results And Discussion

From the results of interviews by the Head of the Office represented by the Head of the Data Processing and Administration Section, Mr. Bambang Eko Cahyono, which was carried out by question and answer and also research at the Customs and Excise

Supervision and Service Office of Customs B Gresik as an informant from the Customs and Excise officer from the Customs and Excise Section. The investigation and investigation of Mr. Bayu Prasetyo, as well as literature review as supporting data.

Analysis in terms of foreign exchange, general foreign exchange earnings are obtained from export sales and transfers donated from business actors which are very meaningful for national development. From the acquisition of foreign exchange imports in accordance with Law No. 17/2006, the following results can be obtained:



Picture 1. KPPBC Tanjung Perak Import Report 2020/2021

Table 1. PDRI Receipt Report (PPN and Import PPH) KPPBC Gresik 2020/2021

No.	Month	PDRI	
		2020	2021
1	Januari	162.709.804.000	213.410.215.920
2	Februari	173.100.028.000	180.797.670.955
3	Maret	157.253.352.000	178.797.585.000
4	April	259.594.764.000	255.108.557.515
5	Mei	157.967.086.000	199.427.341.000
6	Juni	145.107.114.749	237.568.694.280
7	Juli	130.464.195.000	340.020.910.000
8	Agustus	130.288.290.000	225.623.799.375
9	September	165.065.898.400	308.876.126.000

10	Oktober	147.006.534.000	402.121.549.450
11	November	144.133.235.750	348.509.177.000
12	Desember	156.194.313.000	419.022.904.033
Total		1.928.884.614.899	3.309.284.530.528

From the data above, it can be concluded that business actors, especially customs service users, are one of the contributors to foreign exchange to the country in the form of taxes paid, both in the form of excise and import duties. In that case, the state needs to be present in formulating the right protection to ensure the smooth flow of domestic business so that it remains stable in the event of a force majeure condition. The author sees several aspects that need attention for the government, especially in this case the Directorate General of Customs and Excise as the service provider, namely;

1. Ease of licensing in the customs process when the customs automation system experiences force majeure. This is necessary in order to provide a stimulus for business actors to be able to compete in the global trading system.
2. It is necessary to formulate regulations in force majeure conditions quickly and safely in order to keep the traffic process of commodity goods from stagnation which can pollute the environment and other losses for the community.
3. The amount of free foreign exchange for imported goods during the enactment of Law No. 17/2006 requires proper protection in the event of force majeure to show that many imported goods/raw materials receive facilities that will be used to produce export-oriented goods.

Picture 2. Report on Realization of Growth of Import and Export KPPBC Tanjung Perak

No.	Jenis Penerimaan	Target 2021	Realisasi 2021		Realisasi 2020		Pertumbuhan	
			s.d. Des	Capaian	s.d. Des	Nilai	%	
1	2	3	4	6 (4/3)	7	8 (7-4)	9 (8/7)	
1	Bea Masuk	3.402,54	3.678,48	108,11%	3.279,16	399,32	12,18%	
2	Bea Keluar	30,57	320,26	1047,63%	61,83	258,43	417,98%	
TOTAL		3.433,11	3.998,74	116,48%	3.340,99	657,75	19,69%	

In relation to these developments, the policy of reducing import duties on imports of certain goods as stipulated in the Decree of the Minister of Finance No. 294/1997 will continue to be implemented. The revenue target managed by the Directorate General of Customs and Excise (DJBC) in the 2021 fiscal year reaches IDR 213.4 trillion. This figure is up 3.7% from last year's target in Presidential Regulation No. 72/2020 which amounted to IDR 205.7 trillion. The Directorate General of Customs and Excise continues to make efforts to increase import duty receipts, including by continuing to intensify supervision in the

context of preventing and eradicating smuggling. To provide an overview of the target of domestic non-oil and gas revenues and the import duty sector set in the 2020 State Budget with the 2021 RAPBN.

Law Number 10 of 1995 concerning Customs which came into full force on April 1, 1997 which was amended by Law Number 17 of 2006, which made the legal basis for customs stronger, for this reason in relation to one of the functions of customs, namely the receipt of import duties optimally, there are several things that are inevitable, namely the consequences of international trade barriers, both in the form of tariff and non-tariff barriers, which will be reduced, and it is hoped that in the next decade they can be gradually eliminated. The trend towards lower tariffs is a consequence of the free trade era which in turn will affect the potential for import duty revenues in 2020/2021.

Table 2. Report on the Realization of Receipt of Import Duties and Export Duties KPPBC Gresik 2020/2021

No	Month	Export Duties		No	Month	Import Duties	
		2020	2021			2020	2021
1	Januari	201.758.000	32.648.464.000	1	Januari	4.018.366.000	13.463.284.460
2	Februari	365.857.000	11.044.299.000	2	Februari	10.820.184.000	23.668.934.478
3	Maret	1.786.506.000	38.125.230.000	3	Maret	22.289.460.000	13.348.200.000
4	April	251.737.000	37.237.566.000	4	April	23.741.850.000	2.690.889.258
5	Mei	131.240.000	21.978.208.000	5	Mei	23.652.427.000	17.473.224.000
6	Juni	331.040.000	28.205.968.000	6	Juni	8.053.738.618	37.200.660.640
7	Juli	224.033.000	19.525.494.000	7	Juli	24.842.221.000	23.134.856.000
8	Agustus	304.585.000	56.112.021.000	8	Agustus	1.221.690.000	5.979.439.150
9	September	277.221.000	46.050.914.000	9	September	15.452.820.200	5.614.801.000
10	Oktober	781.858.000	43.123.103.000	10	Oktober	20.022.254.000	21.632.364.238
11	November	813.942.000	44.409.191.000	11	November	27.859.399.875	13.981.183.760
12	Desember	24.464.049.000	50.863.040.000	12	Desember	11.981.179.000	23.917.428.376
Total		29.933.826.000	429.323.498.000	Total		193.955.589.693	202.105.265.360

As the function of the customs law number 17 of 2006 which focuses on matters in the economic field, including the forms of practice of organizing international trade activities that continue to develop and anticipating protection for domestic products from economic globalization. Specifically, those relating to criminal provisions in the articles governing the customs law indicate the direction of reforming Indonesian criminal law. The regulation is inseparable from the legal politics implemented by the Indonesian government to carry out legal reforms in line with the development of world trade, both in terms of science and technology that continues to develop.

The government earns income in the form of foreign exchange needed by the Indonesian state to finance development in all fields for economic equality. Customs activities are related to the country's foreign exchange earnings. From the export process carried out by business actors in the customs sector, they contribute foreign exchange for the country. In the results of the research focused on the Office of Supervision and Service of Customs and Excise Tanjung Perak Surabaya and the Office of Supervision and Service of Customs and Excise Gresik.

The smooth flow of goods is supported by several basic principles of customs systems and procedures in Law No. 17 of 2006 which adheres to several principles related to inspection, namely: 1.) The principle of selective inspection, 2.) The principle of inspection through the green line and the red line, 3.) Principles of Later Examination (Post entry Audit), 4.) Inspection speed principle through advanced X-ray container technology, 5.) The principle of separation between the process of releasing imported goods with the Revenue Collection process as well as the supervision process. To increase the effectiveness and efficiency of the smooth flow of goods, Law no. 17/2006 is known as selectivity check.

D. Conclusion

According to the results of interviews obtained from Tanjung Perak Customs and Excise officers and Gresik Customs and Excise in July 2022, they found that foreign exchange during the period when the force majeure occurred had decreased but accumulated in the next period so that it had no effect on an annual basis. In Law Number 17 of 2006 it is stated that the submission of customs documents through an electronic data exchange system or the so-called Electronic Data Interchange (EDI) under normal circumstances, but in the case of force majeure, export and import customs documents can be submitted manually using the form regulated in PER- 18/BC/2018 regarding the delivery of customs notification in a state of force majeure. In Law Number 17 of 2006 it is regulated in terms of providing opportunities to file objections and appeals. As regulated in Article 16 of the Customs Law, Customs and Excise officials determine customs tariffs and values for calculating import duties on customs documents (PIB) submitted by importers. Such determination may result in underpayment or overpayment of import duties. force majeure process in accordance with article 6 paragraph 1 (1) that the Submission of Customs Declaration and/or Excise Notification in a Forced State through electronic storage media as referred to in Article 4 paragraph (2) is carried out if the PDE process either directly or through a Third Party cannot be carried out, but SKP can still operate. In normal cases, the delivery of Customs and/or Excise Notification is done through electronic storage media. The use of the service submits a softcopy flat file that has been stored in electronic storage media to the head of the customs and excise office as further regulated in the DJBC regulation PER-18/BC/2018 article 6 section 3. Related to Law No.17/2006 article 5 states that compliance Customs obligations are carried out at the customs office or other places that are equivalent to the customs office by using a customs notification. For the implementation and supervision, it is regulated in Article 5 section 3 that the implementation and supervision of the fulfillment of customs obligations, a customs area, customs office, and customs control post are determined.

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