STATE’S AUTHORITY IN PROSECUTING ILLEGAL GOODS DISTRIBUTORS

Agung Rahmatullah

Faculty of Law Universitas Syiah Kuala
Putroe Phang Street No 1 Darussalam, Banda Aceh 23111
E-mail: agung1704@gmail.com; Phone Number: +6285360086353

Received: 12/12/2021; Reviewed: 15/12/2021; Accepted: 28/03/2021.

DOI: https://dx.doi.org/10.24815/kanun.v24i1.27033

ABSTRACT

This study aims to identify the types of state losses associated with the circulation of goods without a distribution permit and the state's authority to demand the return of state losses from dealers of goods without a distribution license. This is normative legal research based on the application of legal principles to the analysis of existing problems, legal analysis, and literature review. The results indicate that the circulation of various types of goods products without distribution permits causes losses, including harming the production and consumption of domestic goods products that already have a distribution license, which causes losses in the economic sector, decreased Non-Tax State Revenues from management, and disruption of public safety and health due to consumer goods without a distribution permit. Criminal law enforcement and Law Number 18, 2012, are the means for prosecuting vendors of goods without distribution permits.

Keywords: Goods; Authority; Distributor; Illegal.

INTRODUCTION

Recently, the variety of goods types is closely tied to scientific progress and advanced technology, which has greatly facilitated international trade. We are aware that the industrial and commercial sectors will grow by producing a variety of goods and services to meet the community's daily needs. (Setiadi, 2010). In
addition to clothing and shelter, one of the most essential things for human survival is goods (Nurhayati, 2009). In order to fulfill their daily needs, humans require the availability of healthy foods in sufficient quantities for proper consumption. Regarding the goods, Article 18 of Regulation No. 18/2012 stipulates the following. According to Article 1(1) of Regulation Number 18/2012, goods are defined as:

“Everything derived from biological sources of the agricultural, plantation, forestry, fishery, livestock, aquatic and water products that are designated as food or drink for human consumption, including food additives, food raw materials, and other materials used in the preparation, processing, and/or manufacture of food or beverages.”

The objective of Regulation Number 18, 2012 on Goods is to implement integrated Goods Safety along the goods supply chain, based on risk analysis, transparency, product traceability, standard harmonization, accountability, and integration between competent, consistent, and impartial parties. Considering the importance of goods in determining human life and obtaining the aforementioned benefits, there must be state-issued regulations to ensure that the goods acquired by people meet health standards and are safe to consume.

Concerning its development, the growth of goods and its issues are undergoing rapid and complex changes. This is the result of a combination of factors, including climate change, rapid population growth in terms of both numbers and shifting societal consumption patterns, a growing population, and limited land as a location to produce goods ingredients (Rahardjo, 2008).

Such conditions ultimately result in the satisfaction of consumer demands for goods and services. Depending on a person’s ability, more options for selecting various types and qualities of goods become available. In addition, a large number of individuals desire the product due to its low cost and high quality. However, the public’s desire to consume goods that are generally scarce or not widely available compels business actors or goods distributors to engage in the illegal importation of goods or services into Indonesian territory without a distribution license. Articles 2 and 3 of the Regulation of the Goods and Drug Supervisory Agency Number 30,
on the Supervision of the Importation of Drugs and Goods into the Indonesian Territory govern the importation of goods into Indonesia from a procedural standpoint.

According to the law, goods that circulate in Indonesia are required to obtain a distribution license from the government. If during its implementation it is discovered that violations were committed by those involved in the distribution chain of goods, both the producer and the distributor, they will be subject to administrative, civil, or criminal sanctions. Observing numerous items that lack a distribution permit causes a significant loss. These losses can have an effect on the social community, the state's economy, and most importantly, the health of the people who consume them. These losses are analyzed based on facts, such as those events that have occurred in the field or are still abstract, such as regulated in-laws and regulations, competent expert opinions, or writings on this topic that have been rigorously tested scientifically. Circulation of imported or domestic goods without a distribution license is subject to Article 142 in conjunction with Article 91 paragraph (1) of Law Number 18, 2012 concerning Goods, based on criminal sanctions. Article 142 of Law Number 18, 2012 regarding Goods states:

"Goods business actors who intentionally do not have a distribution permit for any Processed Goods made domestically or imported to be traded in retail packaging, as outlined in Article 91 paragraph (1), shall be punished with imprisonment for up to two years or a fine of up to four billion rupiahs (four billion rupiahs)."

Globalization's effect on the circulation of goods without distribution permits, on the other hand, has resulted in enormous state income losses. The paradigm of economic development will unquestionably shift if business actors engage in these actions on a massive scale. Therefore, the State has the authority to enforce the law against those who distribute goods without distribution permits. This study will look into the types of state losses that are caused by the illegal circulation of goods and the state authority in returning state losses from illegal goods distributors.
RESEARCH METHOD

This is doctrinal legal research, which is conducted by researching relevant kinds of literature. This research employs an approach based on applicable legal provisions, then moves on to related theories and juridical explanations of Indonesian positive law in order to explain the object of study and books or literature pertaining to issues of state authority. Pursue goods dealers lacking distribution permits in court to recover state losses (Fajar & Achmad, 2017).

RESEARCH RESULTS AND DISCUSSION

1) Forms of State Losses on the Circulation of Goods Without a Distribution Permit

The dense population of Indonesia, which consists of 268,583,161 people and is growing each year, has a significant impact on the people's needs, one of which is goods. The ever-increasing diversity of people's needs drives them to compete with one another in their pursuit of reasonably inexpensive, high-quality goods. There are numerous necessities that Indonesians require, and some individuals are willing to profit by smuggling illegal goods into the country. Despite the fact that Indonesia has a Directorate General of Customs and Excise that oversees export and import activities, these elements are still able to successfully import illegal goods into the country, in addition to producing illegal goods locally.

It is unavoidable that the government's supervision and security measures have not effectively reduced the smuggling of contraband goods. Batam, located in the Riau Archipelago, has been identified by the Indonesian government as the location of the most significant instances of smuggling. According to data from Batam Customs and Excise KPU, the state has lost approximately Rp 67,013,897,509,000 in 2014-2015 due to illegal economic practices.

Therefore, it is not uncommon for such illegal trade to occur each year. In general, many people prefer to purchase illegal goods because it is more profitable, not to mention that the buyers are aware that the goods are illegal but still sell them at a reduced price. In the end, they will earn more money because they do not follow
the correct procedure, particularly regarding the addition of customs fees. As a developing nation, Indonesia wants to rely on its own industrial sector, but the industrial sector is still far from what is expected, whereas neighboring countries such as Singapore and Malaysia are already advanced in their industrial sectors, while others face challenges in marketing industrial products. Due to Indonesia's large population, neighboring developed nations are able to sell their products to Indonesia through a variety of marketing strategies, some of which are illegal, such as exporting goods from their country by providing false information when making documents; consequently, the goods can enter Indonesia, and some of them have even landed without incident (Purwito, 2007).

This smuggling crime, which involves the importation of illegal goods, is obviously detrimental to the Indonesian government in terms of state revenue and is extremely disruptive to the economic stability of the community today. In light of the fact that smuggling crimes can sometimes be detected by authorities, but the perpetrators were not apprehended, this causes people to be concerned. This act of smuggling has severe negative repercussions for the state and nation, either directly resulting in losses of state revenues from import duties and other levies that should be collected by the government through the Director-General of Customs and Excise, or indirectly by causing congestion or barriers to domestic production to the detriment of the government that produces it (Purwito, 2010).

Import smuggling and export smuggling are the two most prevalent types of smuggling. Import smuggling is the act of importing foreign-origin goods into the territory of Indonesia without following the procedures outlined for the entry of foreign-origin goods. In contrast, export smuggling is the release of goods from Indonesia to other nations without following the required procedures (Prakoso, 1987).

There are several forms of state losses from the goods circulation without a distribution license:

1. Lack of State’s Participation in the Circulation
Despite the fact that the state has the authority to regulate all its citizens in order to achieve justice and prosperity, this concept is known as the rights and duties of the government. It is the responsibility of the government to achieve objectives through proper implementation. The functions and responsibilities of the state vary, as suggested by experts, but in general, each state has several functions, including establishing order, promoting welfare, providing defense, and upholding justice. The state must also take full responsibility for all implemented policies. The proliferation of illegal goods cases muddies the State's responsibilities. State institutions such as BPOM, Customs, and the Agricultural Quarantine Agency are responsible for monitoring and pursuing all criminal offenses involving the circulation of goods without a distribution license.

In spite of this, criminal offenses involving the distribution of goods without a distribution permit still occur on occasion as the volume of traffic and trade with various modes of transportation increases. Increasing entry/exit points along land and sea borders, as well as population growth in border regions, indicate that the demand for goods has increased. While the region's goods supply from the nearest province is still insufficient and there is a lack of public awareness regarding agricultural quarantine. It is an opportunity for widespread violations, such as the importation of illegal goods from abroad through border regions. Due to crop failure, illegal imports of goods pose a threat to the goods self-sufficiency program (https://karantina.pertanian.go.id, 2020). Therefore, despite the best efforts of several state institutions, the act of illegal goods entering Indonesia has resulted in state losses. Thus, the has lost its function in controlling individuals who violate Indonesia's illegal distribution of goods.

2. Decreasing Non-Tax State Revenue from Controlling and Issuing Distribution Permits for Goods

Indonesia is a legal state. Obviously, all things and activities conducted by its citizens must comply with and adhere to the law and regulations. For
example, building structures, purchasing vehicles, and establishing businesses and corporations each have their own rules. A regulation applies without exception to the distribution, sale, and purchase of goods as well as goods. Permit processing results are a form of Non-Tax State Revenue (later called as PNBP), and discussion of the distribution permit is also related to the procedures outlined in the BPOM agency's regulations.

In accordance with Law Number 17, 2003, the PNBP is defined as all non-tax revenues and grants collected by the government. PNBP is divided into four major categories. (www.pom.go.id, 2020):

a) Natural Resources Revenue; namely Revenue from oil and gas and non-oil and gas natural resources.

b) Revenue from the profit share of SOEs; namely this income is a reward to the central government as a shareholder of SOEs.

c) other PNBP; namely, Revenues collected by the State Ministries/Institutions for service products provided to the public, levies made by the Government Agencies which are carried out based on Government Regulations concerning Types and Tariffs for Types of Non-Tax State Revenues at certain K/L.

d) Public Service Agency (BLU) Revenue; i.e. other PNBP, but the income obtained through this BLU mechanism can be directly used by certain agencies.

In carrying out its duties and responsibilities, the Goods and Drug Supervisory Agency collects PNBP from users of public services, such as registration and evaluation service activities, inspection service activities for imported product production facilities, testing service activities, calibration, laboratory training, proficiency testing services, sales of comparison standards and test animals, and research.

According to the descriptions, it is clear that the procedure for processing distribution permits for goods entering Indonesia has a significant
impact on PNPB, whose management is directly related to the BPOM agency. If the cases persist, the results of PNPB will be impacted and diminished.

3. Disrupting the State's Duty in Ensuring the Safety and Health of the People

The recognition of Indonesia as a state of law entails that all activities conducted by the government and its citizens must adhere to the applicable laws and regulations (Hadad & AZ, 2001). As stated in Article 28 letter H of the 1945 Constitution, which also serves as the constitutional basis for health, "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, to have a good and healthy environment, and to have access to health services." Then, according to Article 34, Section 3 of the 1945 Constitution, "the state is responsible for providing health service facilities and adequate public service facilities."

Health is one of the human rights, and it is the responsibility of every government to ensure the right to health. Medicine is one of the essential elements and components of health services. A drug is a component or combination of substances used in the diagnosis, prevention, reduction, treatment, and eradication of disease in living organisms (Amelia, 2020).

Goods that are circulated without a valid permit from the competent authority can also be harmful to public health if they do not meet the regulations' requirements and are used improperly. In the past and even now, there are still many individuals who do not comprehend the distribution of goods. With the allure of such low prices, many business actors trade goods without a distribution permit and without a proper distribution permit from BPOM. Distribution permits are issued for goods that meet safety and quality requirements. Therefore, the government must ensure a complete and consistent flow of goods in order to protect consumers from unsafe products and drugs that are harmful to their health. Aside from ensuring the quality and safety of a product, a distribution license can also boost consumer confidence, thereby expanding the market and boosting sales (Yulianti & Mustarichie, 2017).
Based on the aforementioned losses, it concludes that the phenomenon of crime in the customs area, particularly the smuggling of imported goods without a distribution permit, is a crime that must be eradicated and investigated seriously by the relevant agencies, in this case, the Directorate General of Customs and Excise, in addition to those produced within the country by the BPOM and the police in terms of enforcement. As for these institutions, regional offices and service offices that have been dispersed throughout various regions on the territory of the Republic of Indonesia will be able to form sections or specialized units to handle cases of illegal distribution of goods. The enforcement of the law must be carried out as firmly and impartially as possible, taking into account the damages caused by the act. If law enforcement is negligent in addressing criminal offenses involving goods circulating without a distribution permit, then other nations and the general public will have no qualms about producing and trading goods without a distribution permit.

2) The Authority of the State to Require the Return of State Losses from Illegal Goods Distributors

In order to eradicate business actors who, distribute goods without a distribution permit, the government must be capable of acting decisively, and judiciously, and enforcing the law in response to multiple problems involving illegal goods circulating without a distribution permit. In addition to domestic business actors, or what can be termed the goods import mafia, want our country to fall into the goods trap, which is partially the result of policy decisions that lead to an import-dependent goods supply. The goods trap in question is a condition in which a country is extremely dependent on imports of goods. This goods trap can also be interpreted as the inability of domestic goods production facilities and infrastructure to compete with imported goods products, resulting in a loss of government authority in determining national goods policies and a failure to realize the ideals of goods sovereignty in Indonesia (Oktaviani, 2015).
In relation to the authority of the state in prosecuting distributors of goods without a distribution permit whose actions have resulted in losses to both the community and the state, such as the spread of disease among consumers and economic losses for the state. Businesses or individuals who have distributed illegal goods to Indonesia without a distribution permit must be pursued by law enforcement. If this case is left unchecked, it is certain that the Indonesian government will suffer a substantial loss, particularly on an economic level.

Because it is not specifically regulated in Law Number 18, 2012 Concerning Goods, namely through stages, law enforcement against goods traffickers without distribution permits, both domestic and foreign, continues to be governed by Indonesia’s Criminal Procedure Code (later called as KUHAP). The systematic stages of criminal justice are the Investigation stage by the Police or Civil Servants Investigators, the Prosecution stage by the Prosecutor, the Examination stage in the Court by the Judge, and the Execution stage by the Prosecutor's Office and Correctional Institution if the defendant is convicted and sentenced to imprisonment.

Article 142 of Law Number 18, 2012 on Goods stipulates that a Goods Business Actor who intentionally does not have a distribution permit for any Processed Goods made domestically or imported to be traded in packaging retail as specified in Article 91 paragraph (1) shall be sentenced to a maximum of two years in prison or a maximum fine of four billion rupiahs (four billion rupiahs). In addition, Article 91 paragraph 1 of the law stipulates that, in terms of safety, quality, and nutrition supervision, every Goods Business Actor who manufactures or imports processed goods for sale in retail packaging must have a distribution license.

On the basis of the criminal provisions regarding violations of distribution permits in Goods Law Number 18, 2012, it can be concluded that there are alternative criminal sanctions, namely an alternative to imprisonment for a maximum of 2 (two) years and a second alternative, namely a fine of a maximum of Rp. 4,000,000,000,000 (Four billion rupiah). The consequence of this alternative
form of punishment is that the judge can choose only one of the penalties to be imposed on the offender, whether it be imprisonment or a fine, based on the circumstances and evidence presented at trial. The author will then determine, based on the criminal provisions, whether the sentence imposed can effectively and measurably recover the losses incurred by the state as a result of the illegal distribution of goods.

The enforcement of criminal law against the distribution of goods without a distribution license is governed by Law Number 8 of 1981 on KUHAP. Article 65 of KUHAP states that the suspect or defendant bears no burden of proof, so the public prosecutor bears the burden of proof automatically. Furthermore, Law Number 18, 2012 concerning Goods does not require the public prosecutor to prove the consequences of the act, i.e., the loss suffered by the state; prosecution is only possible if the act has violated the provisions of the law (formal offense). Such a circumstance inevitably results in disregard for the repercussions of one's actions, which in this case are losses to the victim nation.

The imprisonment punishment outlined in Article 142 of Law Number 18, 2012 concerning Goods does not meet the objective requirements for detention outlined in Article 21 paragraph (4) of the Criminal Procedure Code, so it is feared that criminals may repeat their crimes, destroy evidence, and flee. In this case, there must be an improvement in the legislative regulation of imprisonment, so that there is at least an additional maximum penalty and a particular minimum sentence for the perpetrator in order to achieve the goals of the sentence itself, as described previously.

Pursuant to the criminal fine that is threatened in Article 142 of Law Number 18, 2012 Concerning Goods, which is a maximum of Rp. 4,000,000,000.00 (four billion rupiahs), but the minimum fine is not regulated, the maximum fine that can be imposed is Rp (four billion rupiahs). In the criminal justice system, the prosecuting authority is vested in the public prosecutor, whose role is to represent the state in prosecuting parties who have committed criminal acts, or acts against the law governing the public interest (public law). With this authority, it is the
responsibility of the public prosecutor to prove in court a criminal act as described in his indictment. Given that the crime of distributing goods without a distribution permit has resulted in losses to the state, the prosecutor should consider these losses when evaluating the evidence presented at trial. This can be accomplished by presenting experts who are qualified to calculate state losses resulting from the distribution of goods without a distribution permit, so that this calculation can serve as the basis for prosecution, i.e., by requesting that the judge impose a criminal fine on the offender that includes compensation for state losses. distribution of goods without a distribution permit.

When referring to the criminal provisions governing goods without a distribution permit, it is not regulated that the public prosecutor must prove the existence of state losses; if changes are made to these provisions, the legislative authority is responsible. However, as the party gives the authority by the state to prosecute those who violate public law and harm the state, it is appropriate for the public prosecutor to consider and prove the aspects of state losses. This is not contrary to the provisions of the criminal procedure law; rather, it strengthens the argument for the claim for a fine submitted by the public prosecutor in his letter of claim, so that the judge will consider it when imposing a criminal fine on distributors of goods without a distribution permit.

Thus, there will be a deterrent effect on the perpetrators of the crime because the punishment imposed is proportional to the consequences hence the perception of a criminal fine that has been imposed in the past without clear justification can be refuted and others will be discouraged from committing similar offenses.

**CONCLUSION**

The circulation of various types of foreign and domestic goods is evidence that Indonesia continues to practice illegal importation of goods. In other words, the smuggling of contraband without a distribution permit that complies with the Republic of Indonesia's laws and regulations. The distribution of goods without a distribution permit is a violation that harms the government, particularly in terms
of state revenue, and disturbs the consumers. This action has direct or indirect negative effects on several aspects of the nation's and state's survival. Unlicensed distribution of goods has caused state losses. This has brought economic losses by harming the production and consumption of domestic goods that already have a distribution permit, it has reduced PNPB from the administration and distribution of goods distribution permits, and it has disrupted public safety and health when goods are consumed without a distribution license.

KUHAP and Law Number 18, 2012 have outlined the mechanism for prosecuting goods smugglers without a distribution permit to recover state losses, with the Public Prosecutor having the authority to prosecute smugglers without a distribution permit. In practice, however, state losses are still disregarded in the prosecution of these crimes, and the obligation of the Public Prosecutor to prove aspects of state losses in the crime of illegally distributing goods has not been codified in law.

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