



Indonesian Law on Customs

Considering:

- a. that the implementation of the national development has already demonstrated a rapid progress of all aspects of national life particularly in the economy, including activities in international trade;
- b. that in efforts to keep the performance of the development in line with the national development policies as referred to in the Guidelines of State Policy and to establish legal certainty and administrative facilities concerning Customs aspects of international trade activities that have been continuously developing and also to anticipate economic globalisation, reformation is considered necessary;
- c. that the provisions of the prevailing Customs Regulations are not in line with the national economic development related to international trade;
- d. that for the realisation of the aforesaid matters, it is necessary to establish Customs Law, which meets the current situation and needs, based on Pancasila and the 1945 Constitution;

GENERAL

1. The Republic of Indonesia, as a constitutional state, wishes to establish a firm national legal system that serves the national interests, based on Pancasila and the 1945 Constitution. However, there is no national customs law since the declaration of Indonesian independence; therefore the Indische Tarief Wet (Indonesian Tariff Law) Staatsblad Year 1873 no.35, Rechten Ordonnantie (Duty Ordinance) Staatsblad Year 1882 No.240 and Tarief Ordonnantie (Excise Ordinance) Year 1910 No.628 are still in effect by virtue of Clause II of the Transitional Provisions of the 1945 Constitution.

In order to fulfill the demand of national development, the cited law and ordinances have been revised and supplemented. However, the revisions and supplementary are deemed unable to meet the demand since such revisions are made partially and not related to fundamental aspect as well as based on different philosophical background. Therefore a reformation of the law and ordinances should be conducted.

2. To establish a legislation based on Pancasila and the 1945 Constitution that contains the aspect of fairness, human rights, and places customs formalities as the national obligation which reflects the participation of the people in collecting funds through Import Duties, this legislation which is regarded as a part of the fiscal law, shall ensure the security of the people interest, the expeditious flow of goods, person, and documents, the optimality of Import Duties Revenue, and shall establish a business climate that induces the pace of the national development.

To that end, customs administration is urged to provide better, more effective and efficient services in accordance with its function and duty.

3. This Customs Law has considered the following aspects:

a. fairness, in a sense that Customs formalities shall only be the obligation of any person being involved in customs activity and such a person shall be treated equally under the same terms and condition;

b. incentives provision which will bring benefit for the national economic growth, such as facilities for Bonded Storage, Import Duty exemption on import of machinery and raw materials destined for export and approval for importing goods prior to Import Duty payment;

c. neutrality in the imposition of the Import Duty to prevent distortion that may cause disturbances to the national economy;

d. administrative feasibility in which customs practices can be implemented in a better order, control, simpler and easily understood by the public to prevent duplication. Therefore, administrative cost can be kept to a minimum level;

e. state revenues, in a sense that the provisions of this law have taken into account the aspects of stability, potentiality and flexibility of the revenue. Therefore, the law enables to ensure the increase of state revenue and to anticipate the need to increase funds for the national development;



f. application of enforcement and sanction to ensure the compliance of this law;

g. Indonesian Archipelago Outlook, in a sense that the provisions of this law shall be applied in the Customs Territory covering the area of the Republic of Indonesia in which Indonesia has its sovereignty and the rights to sovereign, that is in the inland waters, archipelagic waters, sea area, additional zone, exclusive economic zone, continental shelf and straits used for international navigation;

h. international customs practices, as regulated in the international trade agreements.

4. This Customs Law also regulates new matters that are not covered under the previous legislation and ordinances, such as the provisions of Anti-dumping and Countervailing Duties, control of import and export of goods which violate intellectual property rights, bookkeeping, administrative sanction, investigation and appeal institution.

5. In addition, to increase the effectiveness and efficiency of the customs service in expediting flow of goods, person and documents, this law also regulates, among others:

a. Application of selective examination

b. lodgment of a Customs Declaration via electronic media (inter computer connection)

c. implementation of control of import or export activities which is mainly emphasised on the audit of company book-keeping.

d. participation of the people in taking responsibility upon assessment and payment of Import Duty due which is performed through self assessment system, in which the provisions of export and import prohibition and restriction have been taken into account, such as : pornography, narcotics, counterfeit money and fire arms.

6. Considering point 1 to 5, Article 23 paragraph (2) of the 1945 Constitution, and those written and implied orders under the Guidelines of State Policy, this Customs law is a national product that should be able to respond to the demand of the development.

Article 2

(1) Goods brought into the Customs Territory shall be treated as imported goods on which the Import Duties is due.

(2) Goods that have been loaded or will be loaded on a means of transport to be released from the Customs Territory shall be deemed exported and treated as exported goods.

(3) The goods as referred to in paragraph (2) shall not be deemed as exported goods in case such goods are proven to be unloaded at a place within the Customs Territory.

(Article 2)

Paragraph (1)

This paragraph defines a clear understanding of the term “import” juridically, that is the time when goods enter the Customs Territory and determine the moment when the goods are subject to the Import Duty and provides juridical basis for the Customs Official to conduct control.

Paragraph (2)

This paragraph defines a clear understanding of the term “export.” In reality, Export occurs when goods cross the Customs Territory, nevertheless considering the aspect of service and security, it is impossible to place the Customs Official along the borderline, therefore, juridically, export is already deemed occurred when goods are already loaded or to be loaded into means of transport going out of the Customs Territory.

The term “means of transport” is any vehicle, air craft, ship or other means used to carry goods or person.

The term “to be loaded” in this paragraph refers to condition that the exported goods have already been confirmed to be sent out of the Customs Territory since the Customs Declaration has been lodged to the Customs Official. However it is possible that such goods still remain at the temporary Storage or other places designated to store the goods, including a warehouse or the factory of the exporter concerned.



Paragraph (3)

This paragraph defines a clear understanding of goods that have already been loaded into means of transport going out of the Customs territory. Such goods are not regarded as exported goods if it can be proven that the goods will be unloaded in the Customs Territory by lodging the Customs Declaration.

Article 3

- (1) Customs examination shall be applied for imported goods.
- (2) The examination as referred to in paragraph (1) shall include verification of documents and physical inspection of the goods.
- (3) The physical inspection of the goods as referred to in paragraph (2) shall be performed selectively.
- (4) The procedure of the customs examination as referred to in paragraph (1) shall be further regulated by the Minister.

(Article 3)

To obtain accurate data and evaluation concerning the lodged Customs Declaration, customs examination shall be carried out upon imported goods through the inspection of the goods and verification of documents. To ensure the expeditions inspection flow of goods, the physical inspections of the goods shall be done selectively, in a sense that the inspection shall only be focused on imported goods pertaining to high risk, such as goods with high import duties, dangerous goods for the state and the people, and goods imported by black list importers.

Article 4

- (1) Verification of documents shall be applied for exported goods.
- (2) Under certain circumstances, physical inspection of exported goods may be performed.
- (3) The procedure of customs examination as referred to in paragraph (1) and (2) shall be further regulated by the Minister.

(Article 4)

To encourage export, especially the efforts to increase the competitiveness

of Indonesian export goods in the world market, speedy and certainty of customs procedures are needed by exporter. Therefore the examination of exported goods shall be kept to a minimum level by verifying document only. To obtain accurate data and evaluation concerning the lodged Customs Declaration, this article authorises the Minister, under a certain condition, to determine a provision on the inspection of exported goods.

Article 5

- (1) Fulfillment of the Customs Formality shall be done at the Customs Office or another place deemed as the Customs Office by using the Customs Declaration.
- (2) The Customs Declaration shall be lodged to the Customs Official at the Customs Office or another place deemed as the Customs Office in a prescribed form or through an electronic media.
- (3) The Customs Area and the Customs Post shall be stipulated to implement and control the fulfillment of Customs Formality.
- (4) The Customs Area, the Customs Office and the Customs Post shall be stipulated by the Minister.

(Article 5)

Paragraph (1)

Geographically, the Republic of Indonesia is a huge archipelago state. It is impossible place the Customs Official along the seashores to secure that goods incoming to and outgoing from the Customs Territory have fulfilled the prevailing provisions. Therefore, the fulfillment of Customs formality shall be done at the Customs Office.

It means that loading or unloading goods at any place other than the Customs Office shall be regarded as violation against this law. In this way the control is easier to be done since the place to meet Customs formality such as : the lodgment of the Customs Declaration or payment of the Import Duties has been clearly limited by designating the Customs Office in accordance with the trading needs.



The fulfillment of the Customs formality at a place other than the Customs Office can be done when certain conditions determined by the Minister are fulfilled in accordance with trading and economic needs or when such a procedure provides an easier, safer and cheaper way to fulfill the Customs formality. Such facilitation is granted on a temporary basis.

Paragraph (2)

This paragraph clearly states that the Customs Declaration for the fulfillment of Customs formality may be done in writings or through electronic media such as a diskette or inter computer direct connection.

Paragraph (3)

For the purpose of service, control, smoothness of the flow of goods, proper loading and unloading of goods, and safeguard of state funds, this law specifies that there is a certain area at the harbor, airport or other places regarded as the Customs Areas that are under the full supervision of the Directorate General of Customs and Excise.

For the same purpose, the appointment of the Customs Station to provide the Customs Official a place to conduct control. However a part of the Customs Office, the station cannot be function to fulfill customs formality.

Paragraph (4)

Self explanatory

Article 6

All imported or exported goods shall be subject to the provisions of this law.

Article 6)

This article states that anything related to the accomplishment of Customs formality upon imported or exported goods, shall always be based on the provisions laid down in this law. The enforcement of this law shall be only conducted by the Directorate General of Customs and Excise.

CHAPTER I IMPORT AND EXPORT

Part One Import

Section 1

Arrival, Unloading, Storage, and Release of Goods

Article 7

(1) Imported goods shall be brought to the Customs Office at the first destination through the specified route and the arrival shall be notified by the carrier.

(2) Should the means of transport be in emergency, regardless of the provisions as referred to in paragraph (1), the carrier may unload the imported goods in advance and subsequently mandatory report the unloading to the nearest Customs Office.

(3) Carrier not complying with the provisions as referred to in paragraph (1) or (2) shall be subject to a penalty of minimum Rp 2,500,000.00 (two million and five hundred thousand rupiah) up to maximum Rp 25,000,000.00 (twenty five million rupiah).

(4) The carrier complying with the provisions as referred to in paragraph (1) or (2) shall pay import duties on goods in short in case the number of unloaded goods does not conform with the number notified in the Customs Declaration and be subject to a penalty of minimum Rp 5,000,000.00 (five million rupiah) up to maximum Rp 50,000,000.00 (fifty million rupiah) unless the shortage can be proven accordingly.

(5) The carrier complying with the provisions as referred to in paragraph (1) or (2) shall be subject to a penalty of minimum Rp 5,000,000.00 (five million rupiah) up to maximum Rp 50,000,000.00 (fifty million rupiah) whenever the number of goods unloaded is in excess of the number notified in the Customs Declaration.

(6) The imported goods as referred to in paragraph (1) awaiting for the release from the Customs Area may be temporarily stored at the Temporary Storage.



(7) The Goods as referred to in paragraph (1) may be released from the Customs Area after the fulfillment of the Customs Formality in order for such goods to be:

- a. imported for home use;
- b. temporarily admitted;
- c. stored at the Bonded Storage;
- d. transported to the Temporary Storage in another Customs Area;
- e. transited or transshipped; or
- f. re-exported.

(8) Any person who releases goods from the Customs Area before obtaining an approval of the Customs Official shall be subject to a penalty of Rp 5,000,000.00 (five million rupiah).

(9) The provisions as referred to in paragraph (1), (2), (6), and (7) shall be further regulated by the Minister.

(Article 7)

Paragraph (1)

The obligation to notify the arrival of imported goods to the Customs Office at the first destination through the designated route is to ensure that unloading is done in accordance with this law. In the term of imported goods also includes means of transport imported for home use or temporarily imported.

“The designated route” is sea route, air route, inland water route and inland route. It means that transport shall pass the sea route mentioned in the navigation manual, the air route as established by the Ministry of Communication, the inland water route and inland route at the border area as determined by the Minister.

The term “carrier” applies to person, his/her behalf or person responsible for the operation of means of transport that are actually used to transport goods or persons.

The Customs Declaration is made and submitted by the carrier within a determined period of time.

Paragraph (2)

In principle, imported goods shall be only unloaded after the Customs Declaration of the arrival of means of transport is submitted. Nevertheless, under emergency circumstances such as fire, unrepairable broken engine, bad weather or other force majeure, unloading may be done without prior notice upon the arrival of the means of transport.

The Nearest Customs Office means the easiest Customs office to be reached.

Paragraph (3)

Violations done by the carrier against the provision as referred to in paragraph (1) may happen more than once. Therefore, administrative sanction stated in this paragraph ranges from the minimum to the maximum amount of penalty. It means that the carrier violating the provision as referred to in paragraph (1) for more than once shall be subject to higher amount of penalty than that of violating once. While violation done by carrier against the provision as referred to in paragraph (2) will not happen frequently and beyond his/her control. Therefore, the administrative sanction applied to such conditions shall only be subject to the minimum penalty as stated in this paragraph.

Paragraph (4)

Obligation which shall be carried out by a carrier or his/her behalf is to notify the arrival of means of transport by submitting the Customs Declaration to the Customs Officials and such a document shall states all imported goods, either commercial goods or ship supplies carried by the means of transport. When the amount of the unloaded goods is less than that stated in the Customs Declaration, the carrier based on this paragraph is deemed to have already imported the goods. Therefore the carrier shall be obliged to pay both Import Duty on the shortage goods and administrative sanction, unless the cause of the shortage can be proven as not his/her fault.



Paragraph (5)

Self explanatory.

Paragraph (6)

It is not obligatory to store imported goods at the Temporary Storage, unless such goods cannot be immediately released.

The term “release” means taking goods out of the Customs Area, the Temporary Storage, Bonded Storage or the Customs Storage, into free circulation with the approval from the Customs Official, after the fulfillment of Customs Formality.

Paragraph (7)

The term “transited goods” means goods transported by means of transport, through any Customs office without prior unloading.

The term “transshipped goods in transshipment” means goods transported by means of transport, transshipping at any Customs office after prior unloading.

The term “re-exported” means re-consignment of imported goods outside Customs Territory for reasons that the goods are in conformity with the order or the existence of new government provisions which do not allow such goods to be imported into the Customs Territory.

Paragraph (8)

Although the removal of the goods as referred to in this paragraph done without any intention to avoid the Import Duty payment, the release, if it is not approved by the Customs Official, shall be regarded as violation against this paragraph even though both the Customs Declaration and the Import Duty are already fulfilled. Therefore the release is subject to administrative sanction.

Paragraph (9)

Self explanatory.

Section 2

Import for Home Use

Article 8

(1) Import for home use means :

- a. bringing goods into the Customs Territory destined for home use; or
- b. bringing goods into the Customs Territory to be under possession or control of a person who domiciles in Indonesia.

(2) Imported goods may be released for home use :

- a. after submitting the Customs Declaration and after payment of the Import Duty;
- b. after submitting the Customs Declaration and the security as referred to in Article 42;
- c. after submitting the complementary Customs documents and the security as referred to in Article 42.

(3) Imported goods brought by passengers, crews of means of transport, and border crossers to the Customs Territory shall at the time of their arrival be declared by each of them to the Customs Official.

(4) Imported goods sent by postal or courier service shall only be released with the approval of the Customs Official.

(5) The provisions, as referred to in paragraph (1), (2), (3), and (4) shall be further regulated by the Minister.

(6) Importers who do not pay the Import Duties on imported goods as referred to in paragraph (2)(b). or (2)(c). within the period designated by this law shall be subject to a penalty of ten percent of the Import Duties that should be paid.

(Article 8)
Paragraph (1)
Self explanatory



Paragraph (2)

This paragraph allows an importer having fulfilled the requirements to release imported goods for home use prior to the payment of Import Duty by depositing a security. However, the importer shall fulfill the obligation to pay the Import Duty within a specified period of time stipulated in this Law. The facility is granted to expedite the flow of goods.

Paragraph (3)

A “Passenger” means any person, other than crews of means of transport and border crossers, passing the borderline of a country using means of transport.

The term “border crossers” means a resident, living or staying at the border area of a country holding an identity card issued by competent government agencies, who crosses the border area and passes the border post.

The term “crews of means of transport” means any person, due to his/her job shall be inside the means of transport and arrives with the means of transport.

Paragraph (4)

An approval of the Customs Official means the decision made by the Customs Official indicating that such goods have undergone Customs formality by virtue of this law.

Paragraph (5)

Self explanatory.

Paragraph (6)

The provision in this paragraph imposes a sanction to the importers, having facilities as referred to in paragraph (2) (b) or (c) to import goods for home use prior to the payment of the Import Duty by depositing a security, who do not pay the import duty within a specified period of time by virtue of this law.

“Importer” means a person who imports.

Section 3

Temporary Admission

Article 9

(1) Imported goods may be released as temporary admission if at the time of importation it is clear that these goods will be re-exported.

(2) Temporarily admitted goods shall be under Customs control until their re-exportation.

(3) The provisions as referred to in paragraph (1) and (2) and the determination of duration of the temporary admission shall be further regulated by the Minister.

(4) Any person who does not re-export the temporarily admitted goods within the period as referred to in paragraph (3) shall be subject to a penalty of one hundred percent of the Import Duty that should be paid.

(Article 9)

Paragraph (1)

The objective of applying temporary admission is to provide a facility for importation of goods for specific purposes, such as goods for exhibition, games, vehicles brought by tourists, equipment for scientific and technological research and education purposes, appliances used by technicians, journalists and experts, for temporary use and at the time of importation, it is obvious that the goods will be re-exported.

Paragraph (2)

The term “Custom controls” means control carried out by the Directorate General of Customs and Excise.

Paragraph (3)

Self explanatory.



Paragraph (4)
Self explanatory.

Part Two Export

Article 10

(1) The goods that will be exported shall be declared by using the Customs Declaration.

(2) The Customs Declaration as referred to in paragraph (1) shall not be required for goods taken out by passengers, border crossers, or consignment of a certain customs value and/or a certain amount.

(3) The goods declared for export, awaiting for loading, may be stored at the Temporary Storage.

(4) Goods declared for export as referred to in paragraph (1) shall be notified to the Customs Official, when canceled for export.

(5) The exporter who does not notify the export cancellation as referred to in paragraph (4) shall be subject to a penalty of Rp 5,000,000.00 (five million rupiah).

(6) The provisions as referred to in paragraph (1), (2), (3), and (4) shall be further regulated by the Minister.

(Article 10)
Paragraph (1)
Self explanatory.

Paragraph (2)
Self explanatory.

Paragraph (3)
It is not obligatory to store exported goods at the temporary storage, unless such goods can not be immediately loaded.

Paragraph (4)

In order to settle and have proper administration order as well as to control the facilities granted by this provision, it is mandatory to notify the cancellation of exportation of goods.

Paragraph (5)

“Exporter” means a person who exports.

Paragraph (6)

Self explanatory.

Part Three

Transportation of Goods

Article 11

(1) A carrier shall declare goods being transported, by using the Customs Declaration before leaving the Customs Office for destination outside the Customs Territory.

(2) Transportation of goods within the Customs Territory shall be declared by using the Customs Declaration, as long as it concerns with:

- a. imported goods from the Temporary Storage or the Bonded Storage destined to another Temporary Storage or Bonded Storage;
- b. imported goods transited and/or transshipped;
- c. exported goods in transited and/or transshipped,
- d. goods of the Customs Territory transported through a location outside the Customs Territory.

(3) The carrier, who does not declare the transported goods as referred to in paragraph (1) or (2), shall be subject to a penalty of Rp 5,000,000.00 (five million rupiah).

(4) The carrier complying with the provisions as referred to in paragraph (2)(a) or (2)(b), shall pay the Import Duties on goods transported which do not reach the destination or in which the number does not conform with the number notified in



the Customs Declaration and be subject to a penalty of minimum Rp 5,000,000.00 (five million rupiah) up to maximum Rp 50,000,000.00 (fifty million rupiah) unless they can be proven accordingly.

(5) Import or Export of electric power, liquid goods, or gas may be conducted by transmission or through pipe lines.

(6) The provisions on the requirements and the procedure for the transportation of the goods as referred to in paragraph (1), (2), and (5) shall be further regulated by the Minister.

(Article 11)

Paragraph (1)

The provision in this paragraph is a means used to control goods to be taken out of the Customs Territory.

Paragraph (2)

The provisions under (a) and (b) are laid down to secure the state rights of the goods that are still subject to the Import Duty. While the provision under (c) is used to control exported goods, and the provision under (d) is used to ensure that domestic goods can be differed from imported goods loaded outside the Customs Territory.

Paragraph (3)

Self explanatory.

Paragraph (4)

Self explanatory.

Paragraph (5)

Self explanatory.

Paragraph (6)

Self explanatory.

CHAPTER III

BOOK-KEEPING

Article 12

Importers, exporters, operator of the Temporary Storage, operator of the Bonded Storage, management of Customs brokers, or managements of transportation shall be obliged to carry out book-keeping and keep records and correspondence concerning Imports and Exports.

(Article 12)

The obligation to carry out book-keeping and the filing of documents and correspondence relating to Import or Export is required to undertake Customs audits after goods are released from the Customs Area. These Customs audits are carried out to secure the rights of the state as a consequence of the implementation of self-assessment and the performance of selective inspection of goods.

“Transportation management” means person provide transportation services of imported or exported goods with means of transport on land, sea, or air.

Article 13

(1) On the request of the Customs Official, the persons as referred to in Article 49 shall be obliged to submit books, records, and correspondence concerning Imports and Exports for examination.

(2) In case the persons as referred to in paragraph (1) are not in place, the obligation to submit books, records, and correspondence concerning Imports and Exports for examination shall be transferred to their representatives.

(Article 13)

Self explanatory



Article 14

The books and records as referred to in Article 49 shall use Latin characters, Arabic figures, rupiah currency, and the Indonesian language or the foreign currency and other languages stipulated by the Minister. Books, records, and letters shall be kept for a period of ten years at the their business premises in Indonesia.

(Article 14)

Books, records, and correspondence relating to Import or Export activities shall be kept for a period of ten years, therefore if during that period of time a violation against this law is discovered, the required books, records, and correspondence are still available. The obligation to keep such books, records, and correspondence is consistent with the provisions of Article 111 concerning the expiration dates of criminal prosecutions in Customs affairs.

Article 15

Any person who does not comply with the provisions as referred to in Article 12 or 14 and whose act does not cause financial losses to the State shall be subject to a penalty of Rp 5,000,000.00 (five million rupiah).

(Article 15)

Self explanatory

CHAPTER IV

PROHIBITIONS AND RESTRICTIONS OF IMPORTS OR EXPORTS, AND CONTROL OF IMPORT OR EXPORT OF GOODS AS A RESULT OF VIOLATIONS AGAINST INTELLECTUAL PROPERTY RIGHTS

Part One

Prohibitions and Restrictions of Imports and Exports

Article 16

(1) For the purpose of supervising the execution of provisions of prohibition and restriction., the government agencies that determine the provisions on

prohibitions and/or restrictions of certain Imports and Exports shall notify them to the Minister.

(2) The provisions concerning the execution of the supervision of the prohibition and/or restrictions as referred to in paragraph (1) shall be further regulated by the Minister.

(3) All goods that are prohibited or restricted, having not fulfilled requirement, if already notified with the Customs Declaration, on the request of the importer or exporter may be:

- a. canceled for export;
- b. re-exported; or
- c. destroyed under the supervision of the Customs Official.

(4) Goods prohibited or restricted for import or export that have not been declared or not truthfully declared shall be notified as goods claimed by the State as referred to in Article 68, unless otherwise regulated differently by virtue of the prevailing government regulations and laws.

(Article 16)

Paragraph (1)

Basically supervision on the implementation of prohibitive and restrictive regulations on the import or export of certain goods cannot be carried out individually by each government agency that stipulate such regulations at the time of goods incoming to or outgoing from the Customs Territory. In accordance with international customs practices, the supervision on the traffic of goods incoming to and outgoing from the Customs Territory is carried out by the customs administration. Therefore, to make the implementation of the supervision on these prohibitive and restrictive regulations more effective, and coordinative each government agency concerned is obliged to hands over the regulations to the Minister to be stipulated and implemented by the Directorate General of Customs and Excise.

“Government agencies” are government departments or non-departments



Paragraph (2)
Self explanatory

Paragraph (3)

Goods, of which the import or export is prohibited or restricted, that do not meet the requirements of this paragraph are imported or exported goods having been declared using the Customs Declaration, but do not meet the requirements specified in the prohibitive or restrictive regulation of such goods. The Customs Declaration as referred to in this paragraph may be a notification of the arrival of the carrier, import declaration for home use, and export declaration.

Paragraph (4)

The term “otherwise regulated differently by virtue of the prevailing Government Regulation on Laws” means that the provisions concerned have specifically regulated the settlement of restricted or prohibited imported goods such as an importation of waste containing hazardous or poisonous substances.

Part Two

Control of Imported and Exported Goods as a Result of Violations Against Intellectual Property Rights

Article 17

On the request of the owner or the holder of trademarks or copyrights, the Chairman of a local State Court may issue a warrant to the Customs Official to suspend temporarily the release of imported or exported goods from the Customs Area that, on the basis of sufficient evidence, are suspected to be the result of violations against trademarks and copyrights protected in Indonesia.

(Article 17)

The warrant is issued by the Head of the Local State Court whose jurisdiction covers the Customs Area, where the Import or Export activity takes place.

In case the import of such goods is destined for several Customs Areas in the Customs Territory, the request for such an order shall be directed to, and issued by the Head of the Local State Court whose jurisdiction includes the first Customs Area where such import is destined or unloaded. In case the export is carried out from several Customs Areas, the request for the order shall be directed to and issued by the Head of Local State Court whose jurisdiction covers the first Customs Area where the Export takes place.

Article 18

The request as referred to in Article 17 shall be submitted by enclosing:

- a. sufficient evidence concerning the violation against trademarks or copyrights of the party concerned;
- b. the evidence of ownership of the trademarks or the copyrights of the party concerned;
- c. a sufficiently detailed description of the imported or exported goods of which their release are to be suspended to make them easily recognizable by the Customs Official; and
- d. securities.

(Article 18)

It is essential to have the items stated in (a) to (d), and therefore they absolutely have to be completely submitted. This is to avoid the use of this provision in trade practices contrary to the purpose of this regulation, which is to reduce or eliminate the trade of products resulting from the breach of trade marks and patent rights.

Such trade practices, which are sometimes used to weaken or paralyze competitors, are in the long run unfavorable to the economy in general. Therefore, it is very important to have adequate securities for at least three reasons. First, to protect the party allegedly doing the offense from unnecessary losses. Second, to reduce the possibility of the misuse of rights. Third, to protect the Customs Official from possible indemnity claims resulting from the executions of suspension orders.



Article 19

Upon the receipt of the warrant as referred to in Article 17, the Customs Official:

- a. notifies the importer, exporter, or owner of the goods in writing about the order to suspend the release of the imported or exported goods;
- b. as of the date of the receipt of the warrant from the Chairman of the local State Court shall suspend the release of the imported or exported goods of the party concerned from the Customs Area.

(Article 19)

Self explanatory

Article 20

(1) The suspension of the release of the goods as referred to in Article 18 (b) shall be executed for a period of maximum ten working days.

(2) The period as referred to in paragraph (1), based on particular reasons and conditions, may be extended once for maximum another ten working days upon a warrant of the Chairman of the local State Court.

(3) The extension of the suspension as referred to in paragraph (2) shall be accompanied by an extension of the security as referred to in Article 18 (d).

(Article 20)

Paragraph (1)

The ten working days period is the maximum time for the suspension. This period of time is provided to give the party requesting the suspension the opportunity to take immediate steps to defend his/her rights in accordance with the prevailing legislation.

Paragraph (2)

Extension of the suspension period may only be granted under restricted conditions to avoid the possibility of the misuse of the right to request the suspension.

Paragraph (3)
Self explanatory

Article 21

(1) On the request of the owner or the holder of trademarks or copyrights demanding the suspension, the Chairman of the local State Court may issue a permit to the owner or the holder of such rights to examine the imported or the exported goods for which suspension of the release is requested.

(2) The issuance of the license to examine as referred to in paragraph (1) shall be done by the Chairman of the local State Court after hearing and considering explanations as well as the interests of the owner of the imported or the exported goods for which a suspension of the release is requested.

(Article 21)

Paragraph (1)

The examination is carried out to identify and counts the items to give the opportunity to proceed with legal actions or measures to defend the rights which have allegedly been violated.

The examination is carried out under the supervision of the Customs Official.

Paragraph (2)

Since the request for suspension is still based on allegations, the interests of the owner of the goods shall be also properly considered. These interests include among other the interest to protect trade secrets or confidential technological information used in producing the imported or exported goods. In such a case, only physical examination is permitted, merely to identify or counts the goods on which the suspension has been requested.

Article 22

(1) If within the period of ten working days as referred to in Article 20 paragraph (1), the Customs Official has not received a notification from the party



requesting the suspension of the release and that the legal action required to maintain his/her rights pursuant to the prevailing government regulations has already been carried out and the Chairman of the Local State Court does not extend in writing the order to suspend, the Customs Official shall terminate such a suspension and settle the issue pursuant to the Customs provisions by virtue of this law.

(2) In case the legal action to maintain the right is initiated pursuant to the prevailing government regulations and law within a period of ten working days as referred to in paragraph (1), the party that has requested in writing the order to suspend the release of imported or exported goods shall be obliged to notify it to the Customs Official who receives the order and executes the suspension of imported or exported goods.

(3) In case the legal action as referred to in paragraph (2) has been notified and the Chairman of the local State Court does not extend in writing the order to suspend as referred to in Article 17 paragraph (2), the Customs Official shall terminate the suspension and settle the issue pursuant to the Customs provisions by virtue of this law.

Article 22

Self explanatory

Article 23

Under certain circumstances, importer, exporter, or owner of imported or exported goods may submit a request to the Chairman of the local State Court to issue a warrant to the Customs Official to terminate the suspension as referred to in Article 54 by submitting a security equivalent to the one as referred to in Article 18 (d).

(Article 23)

“Certain conditions” are, for example, the condition or the nature of the goods being perishable.

Article 24

(1) If from the examination of the case, it turns out that the imported or exported goods are not originated from violations against or violate trademarks or copyrights, the owner of the imported or exported goods has the right to obtain compensation from the party requesting detention of the imported or exported goods.

(2) The Local State Court that performs the examination and makes the decision concerning the lawsuit as referred to in paragraph (1) may order that the security as referred to in Article 55 (d) be used as payment or partial payment for the compensation.

(Article 24)

Self explanatory

Article 25

The detention of imported or exported goods may also be executed by the Customs Official in his official capacity if there is strong evidence that such goods are originated from violation against or violate trademarks or copyrights.

(Article 25)

This suspension based on the function of the official is only carried out if there is a sufficient evidence. The purpose is to prevent the circulation of goods constituting or originating from trademarks or copyrights violations, which will give an unfavorable impact on the economy in general. In case such a measure is taken, the prevailing procedures as regulated in the Laws on the Trademarks or on the Copyrights are applicable.

Article 26

The provisions on the detention of goods suspected as a result of violations against intellectual property rights shall not be applicable to goods brought by passengers, crews of means of transport, border crossers, or consignments sent by mail or courier services that have no commercial value.



(Article 26)
Self explanatory

Article 27

(1) The control of imported or exported goods suspected as a result of violations against intellectual property rights, other than the trademarks and the copyrights as stipulated in this law, shall be regulated with the Government Regulation.

(2) Provisions required for the implementation of Article 17 up to 26 shall be further regulated with the Government Regulation.

(Article 27)

Paragraph (1)

Considering the provisions of Law Number 7 of 1994, on the Ratification of the Agreement Establishing the World Trade Organisations, the implementation of the provisions of Articles 17 up to 26 on the intellectual property rights, other than those related to trademarks and copyrights, is conducted gradually taking into account the ability and readiness of the management of the system of the intellectual property rights.

Paragraph (2)

Self explanatory

CHAPTER V

AUTHORITY OF THE CUSTOMS OFFICIAL

Part One

General

Article 28

(1) The Customs Official, to secure the rights of the State, shall be authorised to carry out necessary actions with regard to the goods in performing the task by virtue of this law and other regulations of which the enforcement is the responsibility of the Directorate General of Customs and Excise.

(2) In exercising the authority as referred to in paragraph (1), the Customs Official may be armed with weapons of which types and usages are regulated by the Government Regulation.

(Article 28)

Paragraph (1)

It is explicitly affirmed in this paragraph that the Customs Official, in exercising the duties which are inherent to his/her authority to secure the rights of the state, may attempt any effort towards people or things, including animals, to ensure that the provisions of this law are fulfilled. When necessary, various efforts may be attempted to seek and find incidents relating to Customs matters which are suspected to be offenses against Customs law, to determine whether investigations can be carried out or not in accordance with this law.

Paragraph (2)

The use of fire arms is very restricted considering the magnitude of the danger that may threaten safety and security. Therefore, the conditions of their use are further regulated with Government Regulation by taking into account the prevailing legislation.

Article 29

(1) To exercise control over means of transport in order for such means of transport to use the specified route as referred to in Article 7 paragraph (1) and to perform search on such a means of transport as referred to in Article 44, the Customs Official may operate patrol boats or other means.

(2) The patrol boats or other means used by the Customs Official as referred to in paragraph (1) may be armed with weapons of which numbers and types are stipulated with the Government Regulation.

(Article 29)

Paragraph (1)

In conducting the supervision, to make sure that the means of transport proceed along their specified routes and to search vessels, the Customs Official needs to be equipped with operational equipment such as patrol boats and other supervisory media like radio-telecommunication or radar.



“A means of patrol” is the vessel or airplane owned by the Directorate General of Customs and Excise, with the Customs Official as the patrol commander who has the authority to enforce the law within the Customs Territory by virtue of this law.

Paragraph (2)

Considering that in the use of the means of patrol as referred to in paragraph (1) the Customs Official may encounter dangers that threaten the life and safety of such Customs Official and a means of patrol, bearing in the prevailing provisions of this law, the means of patrol may be equipped with firearms, the types and/or number of which shall be stipulated by a Government Regulation

Article 30

(1) To carry out the task by virtue of this law, the Customs Official may request assistance from the armed forces and/or other government agencies.

(2) On the request, as referred to in paragraph (1), the armed forces and/or other government agencies shall be obliged to fulfill such a request.

(Article 30)

All government agencies, either civil or the armed -forces, when ever requested are obliged to give assistance and protection or to issue an order to protect the Customs official in all matters relating to his duties.

The provision of this article declares that the assistance as referred to in the above is in relation to all activities carried out by the Customs Official by according to this law.

Article 31

(1) To fulfill Customs formalities by virtue of this law, the Customs Official shall be authorised to detain goods and/or means of transport.

(2) Provisions on detention procedure shall be further regulated with the Government Regulation.

(Article 31)

Paragraph (1)

This paragraph authorises the Customs Official to carry out customs administrative task by virtue of this law.

The term “to detain goods” means the administrative measure to suspend the release, loading, and transportation of imported or exported goods until the Customs formalities are fulfilled.

The term “to detain a means of transport” is the measure to detain the departure of a means of transport.

Paragraph (2)

Self explanatory

Part Two

Control and Seal

Article 32

The Customs Official shall be authorised to lock, seal and/or affix necessary security marks on imported goods which have not undergone the Customs formalities and on export or other goods subject to control by virtue of this law being on means of transport, at storage places or in other places.

(Article 32)

The authority of the Customs official, as regulated in this provision, is intended to ensure a better supervision to secure the state's finance, since continuous physical control by the Customs Official is not required.

Article 33

(1) Seal and/or other security marks used by foreign Customs administration or other parties may be accepted as the substitute of the seal or security marks as referred to in Article 32.



(2) The conditions of the acceptance for the seal or security marks as referred to in paragraph (1) shall be stipulated by the Minister.

(Article 33)

This article contains the provision concerning the authority of the Minister to decide that the sealing or the affixing of a security mark as a substitute of a seal, done by a foreign customs official or by other parties abroad, is acceptable.

The term acceptable implies that the sealing or the affixing of the security mark is regarded as having been performed within the country according to the prevailing laws. Such facility will naturally enhance the trade between Indonesia and foreign parties. When, according to the consideration of the Minister, the sealing or the affixing of a security mark is not sufficient or not safe enough, the sealing or affixing of the security mark cannot be accepted.

Article 34

(1) The owner and/or the person in charge of means of transport or places that are locked, sealed and/or affixed with the security marks by the Customs Official as referred to in Article 32, shall be obliged to ensure that all keys, seals, and security marks are not broken, loose or lost.

(2) The locks, seals, and security marks that are already affixed as referred to in Article 32 and 33, may not be opened, put off, or broken without the approval from the Customs Official.

(Article 34)

Self explanatory

Article 35

(1) The Customs Official may be posted on means of transport or other places where the goods under Customs control are stored.

(2) Whenever the accommodations are not available on means of transport or at other places as referred to in paragraph (1), the carrier or the company concerned shall be obliged to render appropriate assistance.

(3) The carrier or the company who does not render appropriate assistance shall be subject to a penalty of Rp 5,000,000.00 (five million rupiah).

(Article 35)

Paragraph (1)

The placement of the Customs official mentioned under this article is carried out if the security precautions by way of the sealing mentioned under Article 32 cannot be carried out or if on certain considerations, security measures by the Customs Official are more appropriate.

Paragraph (2)

The provisions in this paragraph oblige the carrier or the owner concerned to provide working facilities assistance, since the accommodation is not available, among others to make available accommodation, a place or room for work, sufficient food and drink to enable the Customs Official on duty to perform his/her tasks properly at such a place.

Paragraph (3)

Self explanatory

Part Three

Examination

Section 1

Examination upon Goods

Article 36

(1) The Customs Official shall be authorised to examine the imported and exported goods after the lodgment of the Customs Declaration.



(2) The Customs Official shall be authorised to request an importer, exporter, carrier, management of the Temporary Storage, management of the Bonded Storage, or on their behalves, to hand in the goods to be examined, to open the means of transport or its parts, and to open each package for examination purposes.

(3) Whenever the request as referred to in paragraph (2) fails to be fulfilled, the Customs Official shall be authorised to take any necessary measure at the risk and cost of the party concerned.

(4) Any person who does not fulfill the request enabling such an official to conduct the examination as referred to in paragraph (2) shall be subject to a penalty of Rp 5,000,000.00 (five million rupiah).

(5) Any person who mistakenly declares the type and/or number of imported goods in the Customs Declaration causing shortage of payment of the Import Duty shall be subject to a penalty of minimum of 100% (one hundred percent) up to maximum 500% (five hundred percent) of the Import Duty in short.

(6) Any person who mistakenly declares the type and/or number of exported goods in the Customs Declaration shall be subject to a penalty of minimum Rp 1,000,000.00 (one million rupiah) up to maximum Rp 10,000,000.00 (ten million rupiah).

(Article 36)

Paragraph (1)

This paragraph authorises the Customs Official to examine goods to obtain data and an accurate assessment concerning the submitted notification or documents. The examination of exported goods can only be executed by virtue of the provisions mentioned under Article (4)

paragraph (2).

The examination shall be executed selectively pursuant to the procedure prescribed by the Minister. The result of the examination represents a basis that is used for the calculation of the Import Duty.

Paragraph (2)
Self explanatory.

Paragraph (3)
Self explanatory

Paragraph (4)
Self explanatory

Paragraph (5)
Self explanatory

Paragraph (6)
Self explanatory

Article 37

Mail suspected to contain imported or exported goods, may be opened by the Customs Official in front of the addressee; in case the addressee cannot be located, the mail may be opened by the Customs Official together with the postal official.

(Article 37)

The secrecy of letters entrusted to the Postal service or its appointed transportation companies shall not be violated, except in cases described in this law.

Small articles are very often sent in envelope as mail. Therefore, mail that might contain small articles may also be opened for examination purposes.

Although the opening of mail may be accounted for, the needs of examination of the article in side without reading its contents and not in contradiction with the secrecy principle of postal service, the opening of a mail shall be carried out before the addressee.



In case the addressee cannot be located, the mail may be opened, with a warrant from the Director General of Customs and Excise, together with a postal service official.

The term “addressee” is the receiver of the mail in case of Import or the sender in case of Export.

Article 38

(1) The Customs Official shall be authorised to ask importer or exporter to turn in books, records and correspondence concerning import or export, and to take sample of the goods to be examined.

(2) The sample of the goods may also be drawn on the request of the importer.

(Article 38)

Paragraph (1)

This paragraph authorises the Customs official to inquire the importer or exporter.

a. to submit the books, records, and correspondence connected with :

- 1. purchase,*
- 2. sales,*
- 3. import,*
- 4. export,*
- 5. stocks/inventory, or*
- 6. consignments of the goods concerned.*

b. to submit samples for the purpose of examining the declaration.

The Customs Official presents the receipt for the submission of the above items by the exporter or importer. In case the above inquiry can not be met, the Customs Official will determine a classification and/or a custom value by virtue of existing data, that will probably cause a loss for the party concerned. Immediately after the examination is completed, the books, records, correspondence, and/or the samples of goods are returned to the owners.

Paragraph (2)

The drawing of samples of goods on the request of the importer is required for the preparation of the Customs Declaration.

Article 39

(1) The Customs Official shall give the import or export approval when the submitted Customs Declaration meets the term required and that the result of the examination of goods is in conformity with the specifications of the goods stated in the Customs Declaration.

(2) The Customs Official shall be authorised to postpone the approval of export or import if the Customs Declaration fails to meet the requirements.

(Article 39)

Self explanatory

Section 2

Examination of Bookkeeping

Article 40

(1) The Customs Official shall be authorised to examine books, records, correspondence concerning export or import, and inventory of the person as referred to in Article 12 for Customs audit purposes.

(2) The person as referred to in article 12 who fails to meet the request of the Customs Official as referred to in article 13, or refuses the request of the Customs Official to examine his/her inventory, shall be subject to a penalty of Rp 5,000,000.00 (five million rupiah).

(Article 40)

To expedite the flow of goods, the examination of goods at the Customs Area shall be as minimal as possible by using a selective method.



To ensure the correctness of the Customs Declaration in order to secure the right of the State, Customs Audit shall be carried out to after the goods released from the Customs Area The Customs Audit shall be carried out by examining the bookkeeping, records, correspondence and the inventory of goods in connection with import or export.

Section 3

Search of Building and Other Places

Article 41

(1) The Customs Official shall be authorised to search buildings and other places:

- a. operated based on the licenses issued by virtue of this law; or
- b. containing goods under Customs control pursuant to the Customs Declaration.

(2) The Customs Official shall be authorised to search buildings and other places directly or indirectly connected or operated in conjunction with the buildings or places as referred to in paragraph (1).

(Article 41)

Paragraph (1)

From the point of view of the security interest of the state, it is necessary to control the goods that are stored either at the Temporary Storage, the Bonded Storage or at other places in which the goods have obtained exemption, relief or deferment of Import Duty or at places with inventory therein that are subject to provisions concerning prohibitions or restriction.

With regard to the control above, the provisions of this paragraph regulate the authority of the Customs official to conduct the search either on buildings and other places that have already had operational licences by virtue of this law, or other places, based on the Customs Declaration or documents at which the goods subject to duty or to prohibitive and restrictive regulation are stored.

Paragraph (2)

This provision is issued, considering that at the time of the search conducted by the Customs Official, there is the possibility that goods have been removed to a building or another place having direct or indirect connection with the places that are being searched.

The term “connected directly” means the buildings or places are physically connected, whereas “connected indirectly” means having no direct physical connection but operationally connected. In this way activities to avoid the search or to conceal the goods may be prevented.

Article 42

(1) To fulfill Customs Formalities by virtue of this law, the Customs Official shall be authorised to enter and search buildings or places other than those referred to Article 41, except dwelling houses, and may examine each of the goods found therein.

(2) During the search of the buildings or places as referred to in paragraph (1), upon the request of Customs Official, the owner or person who assumes control over such places shall be obliged to present any letter or document concerning the goods therein.

(Article 42)

Paragraph (1)

Buildings and other places other than dwelling house mentioned under this paragraph are buildings that are not used for business as mentioned under this law, for instance a building that is specially established to store all types of goods and the purpose of its establishment is not for business by virtue of this law.

If the goods being involved in violation either as goods subject to import duty or to restricted and prohibited regulations are found in such a place, the Director General may give an order to the Customs official to search such buildings or places.



Paragraph (2)
Self explanatory

Article 43

(1) The search of buildings or other places as referred to in Article 41 paragraph (2) or Article 42 paragraph (1) shall be carried out with a warrant issued by the Director General.

(2) The warrant as referred to in paragraph (1) is not required for:

- a. the search of buildings or places which pursuant to this law is under Customs control;
- b. the pursuit of persons and/or goods entering the buildings or other places.

(3) The management of the buildings or other places as referred to in Article 41 and Article 42 shall not prevent the Customs Official entering such buildings or places except dwelling houses.

(4) Any person who causes the Customs Official unable to apply the provisions as referred to in Article 41 and 42, shall be subject to a penalty of Rp 5,000,000.00 (five million rupiah).

(Article 43)

Paragraph (1)

To conduct the search, the Customs Official shall have a warrant from the Director General to protect human rights.

In practice, the issuance of the warrant by the Director General may be delegated to the appointed Customs official.

Paragraph (2)
Self explanatory

Paragraph (3)
Self explanatory

Paragraph (4)
Self explanatory

Section 4

Search of Means of Transport

Article 44

(1) To fulfill the Customs formalities by virtue of this law, the Customs Official shall be authorised to stop and search means of transport and any goods therein.

(2) Means of transport sealed by other law enforcement agencies or by postal authority shall be exempted from the search as referred to in paragraph (1).

(3) The Customs Official based on the Customs Declaration as referred to in Article 7 paragraph (1) has the power to stop the discharge of the goods from the means of transport if such goods violate the prevailing regulations.

(4) Any person who refuses to stop the discharge as referred to in paragraph (3) shall be subject to a penalty of Rp 5,000,000.00 (five million rupiah).

(Article 44)

Paragraph (1)

The halt and the search of means of transport by the Customs official is to ensure the rights of the state and the compliance of the law of which the implementation is charged to the Directorate General of Customs and Excise. Therefore the halt and the search of means of transport shall be merely carried out selectively.

Paragraph (2)

Self explanatory

Paragraph (3)

To conduct control over such a means of transport which unloads imported goods, the Customs official is authorised to stop the unloading if it appears that the unloaded goods are not allowed to be imported into the Customs Territory, by virtue of the prevailing government regulation.



Paragraph (4)
Self explanatory

Article 45

(1) On the request or signal from the Customs Official as referred to in Article 44 paragraph (1), the carrier shall be obliged to stop his/her means of transport.

(2) The Customs Official has the power to request the means of transport as referred to in paragraph (1) to be brought to the Customs office or other places which are deemed suitable to conduct the search at the expenses of the blame party.

(3) The carrier, on the request of the Customs Official, shall be obliged to present mandatory transportation documents and the Customs Declaration by virtue of this law.

(4) The carrier who refuses to fulfill the request as referred to in paragraph (1), (2), and/or (3) shall be subject to a penalty of Rp 5,000,000.00 (five million rupiah).

(Article 45)

Paragraph (1)

“Signals” are, among others, the hand signals, sound signals, light signals, and radio signals given to a captain or a carrier, that are usually used as a signal to stop the means of transport.

Paragraph (2)

In order to prevent arbitrariness of the Customs Official, the costs that arise from the search are charged to the blame party.

Paragraph (3)

“Transportation documents” mean all documents that are required by the provisions of national and international transportation.

Paragraph (4)

Self explanatory.

Section 5 Body Search

Article 46

(1) To fulfill the Customs formalities by virtue of this law or other legislations concerning prohibition and restriction of imported or exported goods, the customs official shall be authorised to conduct body search of any person:

a. who is aboard or who has just got off the means of transport entering the Customs Territory;

b. who is aboard or about to board the means of transport leaving for outside the Customs Territory;

c. who is present in or who has just left Temporary Storage or Bonded Storage;

d. who is present in or who has just left the Customs Area.

(2) The person as referred to in paragraph (1) shall be obliged to fulfill the request of the Customs Official to proceed to the searching room.

(Article 46)

Paragraph (1)

Considering that a number of goods have very small measurements so that they can be concealed in the body or the clothes worn, the Customs Official shall be authorised to conduct body search.

Body search shall be carried out by complying with the norms of decency and politeness. Therefore, it shall be carried out in appropriate closed searching room by persons of the same sex and an official report shall be made and signed by both parties.

Paragraph (2)

Self explanatory.



CHAPTER VI

PENAL PROVISIONS

Article 47

Any person who imports or exports or attempts to import or export goods, not complying with the provisions by virtue of this law, shall be penalized for smuggling and therefore shall be punished with a maximum imprisonment of eight years and a maximum fine of Rp 500,000,000.00 (five hundred million rupiah).

(Article 47)

This Law regulates or stipulates procedures or provisions that shall be met by any person who imports or exports goods. In case that the person who imports or exports goods does not comply with provisions and procedures stipulated by virtue of this Law, he/she shall be subject to a penalty of this article with an accumulated punishment in the form of imprisonment and fine.

“Not complying with this Law” means fully in compliance with the procedures and the provisions as stipulated by this law. Therefore, if a person who imports or exports goods, entirely or partly, comply with the procedures and the provisions of this law, he/she is not regarded as committing the crime which is punishable based on this article

Article 48

Any person who:

a. produces a false or forged Customs Declaration and/or complementary Customs documents and/or verbal or written information and uses them for the fulfillment of the Customs Formalities;

b. takes out imported goods from the Customs Area or from the Bonded Storage without any approval from the Customs Official with the intention to avoid paying Import Duty and/or other state charges with regard to import;

c. creates, approves, or takes part in adding false data into any book or record; or

d. stores, keeps, possesses, purchases, sells, exchange, obtains, or provides imported goods as the result of the crime as referred to in article 47, shall be punished with a maximum imprisonment of five years and/or a maximum fine of Rp 250,000,000.00 (two hundred and fifty million rupiah).

(Article 48)

Letter a

Self explanatory

Letter b

The evasion of the Import Duty payment and other charges occurs not only in case of the declarant, that has already lodged the Customs Declaration and paid the Import Duty, without paying the shortage, but also in case any person does not lodge the Customs Declaration and doest not pay the Import Duty and other charges as well. Other state charges incurred on the import goods are, among others, excise on Goods Subject to the Excise and value added tax.

Letter c

Self explanatory

Letter d

The provision of the crime herein related to the condition that any person found storing, keeping, possessing, purchasing, selling, exchanging, obtaining or providing goods as result of a crime as referred to in Article 49. If such goods found as result of the examination of the book or intelligent information, the investigator may confiscate the good based on the authority as referred to in Article 59 Paragraph (2)(k).

Any person who has been found storing, possessing, keeping, purchasing, selling, exchanging, obtaining or giving goods as a result of a crime on which the offender can not be located, may be prosecuted with criminal charged under this article. However, whenever such a person obtains goods



with good/positive intention, he may not be prosecuted. In case the person who commits the crime is identified, both may be prosecuted.

Article 49

Any person who:

- a. transports goods as a result of the crime as referred to in Article 47;
- b. destroys, modifies, cuts, conceals, or discards books or records that should be kept by virtue of the law;
- c. gets rid of, approves, or takes part in the elimination of information from the Customs Declaration, the complementary Customs document, records; or
- d. keeps and/or provides commercial invoice forms of a company located abroad, which and knows that the forms can be used as enclosure to Customs Declaration by virtue of this law, shall be punished with a maximum imprisonment of two years and/or a maximum fine of Rp 100,000,000.00 (one hundred million rupiah).

(Article 49)

Letter a

Self explanatory

Letter b

Self explanatory

Letter c

Self explanatory

Letter d

The purpose of this paragraph is to prevent falsification or manipulation of data of the complementary custom documents, for instance invoices

Article 50

Any person who:

- a. unloads imported goods at a place other than the place specified by this law;
- b. without permission opens, takes off, or breaks the key, seal or security marks affixed by the Customs Official, shall be punished with a maximum imprisonment of two years and/or a maximum fine of Rp 150,000,000.00 (one hundred fifty million rupiah).

(Article 50)

Self explanatory

Article 51

Importer, exporter, operator of the Temporary Storage, operator of the Bonded Storage, management of the Customs Broker, or management of Transportation that do not implement the provisions as referred to in Article 12, 13, or 14, and when such an action results a state financial loss, shall be punished with a maximum imprisonment of two years and/or a maximum fine of Rp 125,000,000.00 (one hundred and twenty five million rupiah).

(Article 51)

Self explanatory

Article 52

A Customs broker who handles the Customs Declaration, acting on behalf of an importer or exporter, shall also be subject to the same penalty when committing the same crime.

(Article 52)

This Article confirms that if a customs broker commits an offense against this law in performing business authorised by the importer or exporter, he/she is subject to the same penalty as maybe charged to the importer or exporter concerned.



For instance if a customs broker falsifies the value on an invoices received from an importer so that the value declared in the Customs Declaration submitted on behalf of the importer is lower, he/she shall be subject to penalty mentioned under Article 48 (c).

Article 53

(1) In case where such a punishable crime is committed by virtue of this law or on behalf of a legal Person, firm or corporation, association, foundation or cooperative, a lawsuit shall be directed to and criminal sanction shall be applied to:

a. the legal Person, firm or corporation, association, foundation or cooperative concerned and/or;

b. those who give order to commit the crime or person acting as the leader or someone who neglects any prevention.

(2) In case a crime is committed by a person or a group of person who has business or other relation with a legal Person, firm or corporation, association, foundation or cooperative conducted in lieu of such Person, such a crime shall be regarded as committed by such Person.

(3) In case a criminal lawsuit is placed upon a legal Person, firm or corporation, association, foundation or cooperative, they may be represented by one member of their management and the members can be represented by his/her behalf.

(4) When a legal Person, firm or corporation, association, foundation or cooperative is charged with the punishment as referred to in this law, the principle punishment imposed shall always be in the form of a fine amounting to Rp 300,000,000.00 (three hundred million rupiah) at the most if the crime punishable with imprisonment, without annulling the fine if the crime is charged with imprisonment and fine.

(Article 53)

This Article makes it possible to penalize a legal body, firm, corporation, including a state - owned company or a company owned by a provincial government in whatsoever form, permanent business operations or other

forms of business, association, including partnerships, firms or commercial association, foundations or similar organisations, or cooperatives, because in practice it sometimes appears that persons conduct activities by hiding behind or acting on behalf of the above mentioned organisations. Therefore, besides the aforesaid organisations, those who have instructed to carry out or have actually carried out criminal activities shall also be subject to penalty. By virtue of the results of investigation may be determined to prosecute the organisation and/or its operator concerned. The penalty charged to the aforesaid organisations shall always be in a form of a fine.

Article 54

(1) Imported or exported goods resulting from such a crime as referred to in Article 47, 48 (b) or (d), 49 (a), or 50 (a), shall be confiscated for the state.

(2) Means of transport used to commit the crime as referred to in Article 47 may be confiscated for the State.

(3) The goods as referred to in paragraph (1) shall be settled based on the provisions of Article 20.

(Article 54)

In general, a court decision will be executed by the General Prosecutor. However, imported or exported goods that have been declared to be confiscated for the state based on the court decision, shall by virtue of this law, become property of the state, of which their use shall be determined by the Minister.

Article 55

(1) In case the fine is not paid by the sentenced, asset and/or earning of the sentenced shall be taken as the substitute.

(2) In case the substitute as referred to in paragraph (1) can not be realized, the fine may be replaced with imprisonment of a maximum of six months.



(Article 55)

Self explanatory

Article 56

Ten years elapsed after the lodgment of the Customs Declaration or after the commission of the crime, customs crime cannot be prosecuted.

(Article 56)

Expiration of the lawsuit of a Customs crime is intended to provide legal certainty for the business community and the law enforcers.

CHAPTER VII

INVESTIGATION

Article 57

(1) A certain civil servant official of the Directorate General of Customs and Excise shall be granted special authority as the investigator as referred to in Law Number 8 Year 1981 on the Criminal Code Procedures to investigate crime in customs affairs.

(2) The investigator as referred to in paragraph (1), due to his/her obligation, shall be authorised to:

- a. receive a report or information from any person concerning customs crime;
- b. summon any person to be heard as a witness or to be investigated as an accused;
- c. study, search, and collect information concerning customs crime;
- d. capture and arrest a person suspected to have committed customs crime;
- e. request for information and evidence from the person suspected to have committed such a crime;
- f. take picture of and or record through audio visual media, any person, goods, means of transport, or anything which can be used as an evidence of customs crime;

- g. examine records and bookkeepings by virtue of this law and other bookkeepings;
- h. take fingerprints;
- i. search dwelling houses, clothes, or body;
- j. search places or means of transport and examine the goods therein when suspected to have been involved in customs crime;
- k. seize goods that are strongly suspected as an evidence in a case of customs crime;
- l. affix security marks and secure anything that may be treated as an evidence in relation to customs crime;
- m. invite necessary experts for the examination of customs crime;
- n. halt any person suspected to have committed customs crime and examine the identification of such a person;
- o. cease investigation;
- p. do other things necessary to expedite the investigation of customs crime by virtue of the prevailing laws.

(3) The investigator as referred to in paragraph (1) shall notify the commencement of the investigation and pass on the result of the investigation to the General Prosecutor in accordance with the provisions refer to in Law Number 8 of 1981 on the Criminal Code Procedures.

(Article 57)

Self explanatory

Article 58

(1) For the state revenue purposes, on the request of the Minister, the Attorney General may terminate the investigation of customs crime.

(2) The termination of the investigation of the customs crime as referred to in paragraph (1), shall only be done after the party concerned has paid the Import Duty in short or due, and added with a penalty of four times as much the Import Duty in short or due.



(Article 58)
Self explanatory

CHAPTER IX

TRANSITIONAL PROVISIONS

Article 59

By the enactment of this law:

- a. all pending customs matters shall be settled in accordance with the previous customs legislations until April 1, 1997;
- b. all goods stored in the Temporary Storage, shall be settled by virtue of this law.

(Article 59)

a. Although the provisions of the previous Customs legislation have been revoked by the enactment of this law, in order to accommodate the settlement of state's claims to the debtor, and vice versa ,of the excess payment of import duty or other charges due on which the implementation is still based on the previous Customs legislation. Therefore, this Customs Law stipulates that the expiration date of the previous legislation is on April 1st, 1997.

b. Self explanatory

CHAPTER X

FINAL PROVISIONS

Article 60

By entering this law into force, the following shall no longer be applicable:

1. Indische Tarief Wet Staatsblad 1873 No.35 with its amendments and additions;

2. Rechten Ordonnantie Staatsblad 1882 No.240 with its amendments and additions;

3. Tarief Ordonnantie Staatsblad 1910 No.628 with its amendments and additions.

(Article 60)

Self explanatory

Article 61

This law shall enter into force as of the 1st of April 1996.

In order that every person may be informed, promulgation of this law is ordered to be published in the State Gazette of the Republic of Indonesia.

(Article 61)

Self explanatory

**Legalised in Jakarta,
at the date December 30, 1995**

**PRESIDENT OF THE REPUBLIC OF INDONESIA,
S O E H A R T O**

Enacted in Jakarta at the date December 30, 1995

**State Minister of State secretary of Republic of Indonesia
MOERDIONO**

**THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 1995 NUMBER 75.
ADDITIONAL STATE GAZETTE NUMBER 3612**

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