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Negligence Of Customs and Excise in the Implementation of Judicial Decisions on Audit Result Disputes that can Cause Country Loss and Business Actors (A Study On Court Decision No. 46/Pk/Tun/2011 Which Has Not Been Done By Customs And Excise Till Nowadays)

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Abstract

Law enforcement has two instruments consisting of supervision and sanctions. In administrative law, supervision and sanctions are closely related to authority and are attached to the instrument of supervision. Law enforcement is the implementation of government functions in law enforcement. Therefore law enforcement must also heed the general principles of good governance. The law requires various devices with the aim of having good performance. One of the performances that distinguish it from the others is that the law has coercive rules, meaning that if the rule of law is poured into a statutory regulation, everyone must implement it. In this study, problems were formulated about (1) How to regulate Customs and Excise obligations in carrying out Supreme Court decisions that already have permanent legal force, (2) How to implement Supreme Court decisions against business actors, (3) How are legal provisions against administrative officials' decisions state for the decision. The decision of the Supreme Court must be carried out because if it is not, it will cause losses to the state. Court decisions that already have permanent legal force are orders that must be carried out. In this case, PT Multi Fabrindo Gemilang's practice of implementing the law is based on the description above: business actors should not be charged according to the Decree issued by the Director-General of Customs and Excise. The provisions of Article 26 paragraph (1) letter h of Law No. 17 of 2006 concerning Amendments to Law no. 10 of 1995 concerning Customs Jo. Article 2 and Article 3 of the Regulation of the Minister of Finance of the Republic of Indonesia No. 163/PMK.04/2007 dated December 17, 2007, concerning the Granting of Exemption from Import Duty on the Import of Goods by the Central Government or Regional Governments for the Public Interest.

Keywords: Legal Certainty, State Administrative Law, Customs and Excise, Indonesia

1. Introduction

The Directorate General of Customs and Excise has special authority as an Investigator, as referred to in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), to conduct criminal investigations in the field of Customs and Excise (Maulana, 2019). Kusnardi and Saragih (2018) says; All authority and actions of state equipment or rulers, solely based on law and governed by the law.

Nugroho et al. (2019) studied the customs and excise documents in Indonesia to improve the people's welfare. Rawls theory, 'justice as fairness,' conceive a society in which free individuals holding equal basic rights cooperate to achieve an egalitarian economic system. It addresses what might be called 'basic social justice, which concerns the fair resolution of conflicts and the reconciliation of diverse worldviews allowed by free institutions (Mandle, 2009; Oenen, 2012; Wenar, 2012; Cruz, 2019).

The general principle of fairness is that compared to the other party, each individual is in the same position and not the same as the other party. The equation is not the same as the same. If under different conditions it is treated the same, it tends to be unfair "Recognizing Injustice"(D'Amato, 1996).

According to Blunt et al. (2012), justice is everything related to deciding cases by applying the law, finding the law in concreto in maintaining and guaranteeing the adhered to material law, using procedural means stipulated by formal law, Be emphasized that the State Administrative Court enforces public law, namely administrative law as enforced in the State Administrative Justice Law Article 47 that disputes that include the scope of the authority of the

State Administrative Court are disputes of State Governance (Hadjon, 2015). Absolute authority is the authority of the court in adjudicating based on the type of case (Brudner, 2020; Baras, 2021).

Hamburger (2014) said administrative law revives a sort of power that constitutions were emphatically designe to prohibit. Absolute power was what prompted the development of constitutional law, and constitutional law therefore forcefully bars such power, including the contemporary version. Contemporary regulation might be best described as a regime of "mixed administration" in which private actors and government share regulatory roles (Aronson, 1997; Freeman, 2000).

The main objective of this research is to find out, analysis and explain the arrangement of customs and excise obligations in carrying out court decisions that already have permanent legal force regarding disputes over audit results, the practice of implementing legal decisions against business actors, ideal position against the decree of state administrative officials over disputes of audit results.

2. Literature Review

Business actors have qualified the administration of goods to import duties to the State, namely on April 28, 2008, by depositing IDR. 6,577,337,469 (six billion five hundred seventy-seven million three hundred and thirty-seven thousand four hundred sixty-nine Rupiah) to Customs, Excise, and Taxes in the Framework of Imports stipulated by the Tanjung Priok Main Customs and Excise Service office.

Due to the occurrence of the sealing case, the Directorate General of Customs and Excise conducted an audit of the plaintiff as an importer of goods. From the audit results, PT Multi Fabrindo Gemilang must pay import duties and taxes in the framework of imports with a total amount of IDR. 8,363,127,800 (eight billion three hundred sixty-three million one hundred and twenty-seven thousand eight hundred Rupiah).

As a result of the audit results, business actors objected because it was a work project in the public interest by the 3 Regulation of the Minister of Finance of the Republic of Indonesia No. 163/PMK.04/2007 dated December 17, 2007, and business actors have made their obligation to deposit administration fees in import activities. There is a lack of law applied by the Directorate General of Customs and Excise in this case. Therefore, the business actors make legal efforts, namely suing the Directorate General of Customs and Excise to the State Administrative District Court, hoping that the audit results can be canceled. The consideration of judges in the State Administrative District Court.

The defendant's authority in issuing Decree Letter of *objectum litis* refers to the laws and regulations that are the source of attribution of the defendant's control, namely the Law of the Republic of Indonesia Number: 10 of 1995 on Customs conjunction Regulation of the Minister of Finance Number: 125 / PMK.042007 on Customs Audit. Article 86 paragraph (1) of the Customs Act a quo mentions that the Customs and Excise Office is authorized to checkbooks, records, correspondence related to the import or export and preparation of goods from persons as referred to in Article 49 for audit purposes in the field of customs. In contrast, Article 7 paragraph (1) states that general audits and special audits are carried out based on a letter of duty from Director General Customs and excise. Proof of T-33 in the form of duty letter Number: ST-82 / KPU.01 / 2008 dated September 3, 2008, proving that the Defendant (Director General of Customs and Excise) issued a Duty Letter signed by the Head of the Main Service office of Customs and Excise Tanjung Priok to conduct an audit in the field of Customs and Excise funds and conduct the necessary enforcement to the Plaintiff.

Based on the provisions of a quo, Defendant is authorized to issue Decision Letter litis. It will then be considered whether the Decision Letter of *objectum litis* has been published by Defendant following formal procedures and substance.

a. Stating that the Decree of the Director-General of Customs and Excise No: KEP-1987 / KPU.01 / 2009 dated March 18, 2009, concerning the audit results of PT Multi Fabrindo Gemilang Cq Mining Office of the Provincial Government of DKI Jakarta, which is the object of disputes in listings does not include the State Administrative Decree because it does not meet the elements of the State Administrative Decision as referred to by article 1 number 3 of Law No. 5 of 1986.
b. That the Defendant's intention is not to meet the elements of a State Administrative Decree is the object of the dispute in litis is not final because can still appeal it to the Tax Judicial Agency following the provisions of Article 95 of Law No. 10 of 1995 on customs as amended by law No. 17 of 2006, thus the Jakarta State Administrative Court is not authorized absolutely to examine and adjudicate disputes in litis.
c. That against the exception of the defendant a quo, Plaintiff has argued in its reply dated July 13, 2009, which states that the dispute in litis has fulfilled the elements of the State Administrative Decision, which has been individual, concrete and final. It is absolute, in the sense that the object of the dispute has caused legal consequences for Plaintiff, namely the obligation of Plaintiff to pay duties on goods imported by Plaintiff.
d. That against the defendant's exception and Plaintiff's rebuttal a quo, The Panel of Judges will consider the exception of the absolute authority, namely whether the Jakarta State Administrative Court is authorized to adjudicate disputes in litis.

e. That the decree of the object of the dispute in litis to be categorized following the State Administrative Decree must meet all the elements as required by article 1 number 3 of Law No. 5 of 1986 so that it can be declared as a dispute of State Governance that can be tested for its validity by the State Administrative Court as determined by article 1 number 4, article 47 and Article 50 of Law No. 5 of 1986.
f. That article 1 number 3 of Law No. 5 of 1986 states that the State Administrative Decree is a written determination issued by a State Administrative Entity or Official that contains legal actions of State Administration based on applicable laws and regulations, which are concrete, individual and final that cause legal consequences for a person or entity of civil law.
g. That the provisions of Article 1 number 4 of Law No. 5 of 1986 states that state administrative disputes are disputes arising in the field of state governance between persons or entities of civil law with bodies or state executive officials, both in the center and in the region as a result of the issuance of state administrative decisions including staffing disputes based on applicable laws and regulations.
h. The provisions of Article 47 and Article 50 of Law No. 5 of 1986 regulate the duties and authority of the State Administrative Court, namely examining, resolving, and resolving State Administrative Disputes at the first level.
i. That look at the decision letter of the object of the dispute in litis. The Panel of Judges held that the thing of the disagreement had cumulatively fulfilled all the elements required by the provisions of article 1 number 3 of Law No. 5 of 1986, especially the final component because it has been definitive to cause legal consequences for plaintiffs, namely the obligation to pay import duties in the context of importing goods amounting to Rp. 8,363,127,800, - (Eight Billion Three Hundred Sixty-Three Million One Hundred and Twenty Thousand Eight Hundred Rupiah)
j. Plaintiff's objection to the obligation to pay duties a quo does not necessarily have to be appealed to the Tax Court; however, the legal efforts available to it have been regulated in the provisions of Law No. 10 of 1995 on customs conjunction Law No. 10 of 1995 on customs. An expert witness conveyed the same thing.
k. That the proof of the letter marked T-52 in the form of an explanation of the problem with audit experts PT. Multi Fabrindo Gemilang by the defendant explains that his objection can be appealed to the Tax Court. Plaintiff did not follow up the explanation by applying to the Tax Court but objected to the Audit Expert PT. Multi Fabrindo Gemilang qq DKI Jakarta Provincial Mining Office in litis submitted Plaintiff to the Jakarta State Administrative Court.
l. That in addition, according to the knowledge of expert witnesses, a quo is the object of disputes in litis concerning the legality (validity) of a decision of state governance consisting of authority, procedure, and substance, whose testing parameters are based on applicable laws and regulations and general principles of good governance. Thus the object of the dispute in litis includes the absolute competence of the State Administrative Court to test it. While the Tax Court tests and decides the determination of the amount of taxes owed from the taxpayer in the form of technical taxation calculations and does not regulate lawsuits regarding the legality of State Administrative Decisions.
m. That the laws and regulations in Article 95 paragraph (1) of Law No. 10 of 1995 on Customs mention people who object to the determination of the Director-General on tariffs and customs values as referred Article 17 paragraph (2) or the Decree of the Director-General as referred to article 93 paragraph (2) or Article 94 paragraph (2) can appeal only to the Tax Judicial Agency within 60 days from the date of determination or date of the decision after the import duty is repaid.
n. That tax disputes that can be appealed under Article 95 of Law No. 10 of 1995 on customs include the Determination of the Director-General on the value and tariff of customs as referred to Article 17 paragraph (2) or the Decree of the Director-General as referred to Article 93 paragraph (2) or Article 94 (2).
o. That the provisions of Article 17 paragraph (1) and paragraph (2) govern as follows:
    1) The Director-General Customs and Excise may re-establish tariffs and customs values for the provision of import duties within (2) years from the date of the customs notice.
    2) If the determination referred to in paragraph (1) is different from Article 16, the Director-General informs the importer in writing to pay the underpayment of duties or get a refund of more paid duties.
p. That relating to Article 17 a quo, Decree of the Director-General of Customs and Excise Number: Kep-1987/KPU.01/2009, dated March 18, 2009, concerning the Audit Results of PT. Multi Fabrindo Gemilang Cq Mining Office of DKI Jakarta Provincial Government did not reassign tariffs and customs values.
q. That based on the Decision of the Tax Court Number: 07389/ PP / M.II / 19/2006, dated January 16, 2006 conjunction The Decision of the Supreme Court of Indonesia Number: 68/C/PK/PJK/2006 dated February 20, 2007, it was stated that the Decision of the Director-General of Customs and Excise which is not a re-determination of tariffs and customs values could not be appealed to the Tax Court because it is not the authority of the Tax Court to examine and try it.

r. That based on the description of the above consideration because the issue of a quo lawsuit is not a demand for the amount of tariffs and customs values, but about the validity of the procedure of issuing the decree of the *objectum litis* and such problems according to the decision of the Tax Court Number: 07389 / PP / M.II / 19/2006, dated January 16, 2006 conjunction Supreme Court Decision No. 68/C/PK. PJK/2006 dated February 20, 2007, and according to expert witness Philipus M. Hadjon, S.H, has the authority to try the Jakarta State Administrative Court authorized to examine, decide and resolve the cancellation lawsuit on the decision letter of the object of the dispute in lits following the decision of Article 47 and Article 50 of Law No. 5 of 1986. Because the Jakarta State Administrative Court has declared the authority to examine, resolve, and resolve disputes in litis, it is reasoned that the Defendant's exception law regarding the absolute competence of the court was rejected.

s. That Plaintiff is the winner of a public auction held by the Mining Office of the Special Regional Province of the Capital Jakarta and has been established as the provision of goods/services of the Provision of Sea Cables for Electricity Transmission of Thousand Islands based on the Decree of the Governor of the Special Region of the Capital Jakarta No. 1045/2007, dated July 9, 2008.

t. A quo project is carried out in the public interest, namely the improvement of services to the Thousand Islands Community and the development of the tourism industry in Seribu Island.

u. That, the Governor's Decision a quo is followed up with the creation of a Letter of Agreement / Contract for the Implementation of Sea Cable Provision Work for Electricity Transmission to Thousand Islands Number: 2651/077.922, dated August 01, 2007, between the Provincial Government of DKI Jakarta which in this case was represented by the Head of Mining and Energy Business Sub Office of DKI Jakarta Provincial Mining Office with President Director of PT Multi Fabrindo Gemilang (proof P-2 = T-2).

v. In addition to the Letter of Agreement a quo, that also made Addendum Letter of Agreement / Contract for the Implementation of Sea Cable Provision Work for Electricity Transmission to Thousand Islands Number: 4929/077.922. dated December 3, 2007, on Amendments to the Annex to RKS Technical, Tax, and Import Duties of Imported Goods Letter of Agreement / Contract for The Implementation of Sea Cable Provision Work for Electricity Transmission to Thousand Islands (proof T-3).

w. That, Article 3 paragraph (2) of the Letter of Agreement dated August 1, 2007, and Article 4 paragraph (2) Addendum letter of agreement a quo stated that the Plaintiff is obliged to pay Income Tax (PPh) and Value Added Tax (PPn), except Income Tax (PPh) of imported goods, Value Added Tax (PPn) of imported goods and Import Duties for imports carried out following applicable laws and regulations. In addition, it is determined that following the implementation document of the Regional Device Work Unit Budget (DKA-SKPD) fiscal year 2007 Number. 031/DASK/2007 dated January 7, 2007, and contained in the Self-Estimated Price (HPS), for Income Tax, Value Added Tax, and Import Duties for imported goods are not included in the cost of carrying out the work.

x. That, the work in the framework of the implementation of the provision of Sea Cables for Electricity Transmission to the Thousand Islands through the APBD fiscal year 2007, which the Plaintiff carried out, to carry out the work a quo, the Plaintiff imported sea cables with ethylene-propylene rubber insulation type (ERP) from Italy. To manage the importation of goods a quo, the Provincial Government of DKI Jakarta, in this case, the Mining Office as the owner of the project with the Plaintiff, has submitted several letters requesting the exemption of import duties to the Defendant (proof P-3, P-5, P-9).

y. On the application for the exemption of import duties submitted by the Provincial Government of DKI Jakarta, plaintiffs did not get a response from Defendant in the form of approval of duty exemption against the import of sea cables. Nevertheless, the Import Debtor of the Ministry of Trade of the Republic of Indonesia (vide proof P-8) has approved the Mining Office of the DKI Jakarta Provincial Government to import goods in the form of, among others, 42,240 meters Sub Marine Power Cable 3X 120 sqm, 20kV, ERP SWA without API (Import Identification Figure), even though the implementation of sea cable installation a quo must be immediately implemented by the Plaintiff following the existing Agreement Letter.

z. That the provisions of the legislation regarding the exemption or waiver of import duties can be granted on imports regulated, among others, in Article 26 paragraph (1) letter h of Law No. 17 of 2006 on Amendments to Law No. 10 of 1995 on Customs, namely "goods by the Central Government or Local Government intended for the public interest"

The Granting of Import Duties on Imports of Goods by the Central Government or Local Government aimed at the public interest, as follows (Regulation of the Minister of Finance No. 163/PMK.04/2007):

1. Article 1 number 1 explains the Understanding of the Public Interest, namely the Interests of the Community that do not prioritize interests in the field of Finance.
2. Article 2 paragraph (1) of public interest goods imported by the Central Government or Local Government granted the exemption of import duties.

3. Article 2 paragraph (2) in the case of goods referred to in paragraph 1 is not imported alone by the Central Government or Local Government, and third parties can carry out imports under the Agreement/employment contract between the Central Government or Local Government with the relevant third party.
4. Article 2 paragraph (3) if third parties carry out imports, the agreement/ employment contract as referred to in paragraph 2 shall state that the value of the contract does not include the element of import duties.
5. Article 3 letter a: the import of goods referred to in Article 2 is a purchase financed by the State Revenue and Expenditure Budget (APBN) or the Regional Revenue and Expenditure Budget (APBD).
6. Article 4 paragraph (1) to obtain the exemption of import duties on imported goods as referred to in Article 2, the Central Government, Local Government or third-parties as referred to in Article 2 paragraph (2), applying to the Minister of Finance through the Director-General Customs and Excise.

That thus, according to the Panel of Judges, the misposition of the classification of imported goods which is the reason for the rejection of the exemption of import duties in the decree *objectum litis*, should not be charged unilaterally to the plaintiff but must be borne jointly with the Mining Office of DKI Jakarta province, because according to Redress Consignee is PT. Multi Fabrindo Gemilang Cq Mining Office of DKI Jakarta Province, which is the Project of the Jakarta Provincial Government through APBD financing in the fiscal year 2007.

That based on a series of considerations a quo, it has been proven that the issuance of the Decree *objectum litis* both in terms of formal procedures and in terms of substance has been contrary to the principle of accuracy as part of the General Principle of Good Governance as determined by Article 53 of law number 9 of 2004, because the Decision Letter *objectum litis* declared void, Defendant must revoke the Decision Letter *objectum litis.*

The panel of Judges obtained the results of the following verdict:

a. Granting Plaintiff's lawsuit for the entire court
b. Declared void the Decree of the Director-General of Customs and Excise No: KEP-1987 / KPU.01 / 2009, dated March 18, 2009

With the decision of the State Administrative District Court, the Director-General of Customs and Excise appealed to the High Court of State Administration. The decision of the Jakarta State Administrative Court, in this case, was pronounced on October 8, 2009, while filed the appeal on October 13, 2009, so that according to the court of appeal, the request was still within a grace period of 14 (fourteen) days as stipulated by Article 123 of Law No. 51 of 2009 on the Second Amendment to Law No. 5 of 7986 on State Administrative Justice. After the Panel of Judges The appeal level examines the dispute a quo carefully, ranging from the Lawsuit, News of Preparatory Examination Event, News of The Trial Event, Letter of Evidence and Witness Testimony submitted by both parties at the trial, conclusions from both parties, Official Copy of The Jakarta State Administrative Court Decision Number 74/G/2009/PTUN-JKT dated October 8, 2009, and has noticed and studied the Memory of Appeal and Counter-Memory of Appeal filed in this dispute, apparently does not contain new things that can weaken the legal considerations and decisions of the First-Tier Judge, the Court of Appeal judges argues that the plaintiff's legal concerns are entirely appropriate and correct that all the reasons for the consideration of the decision of the First-Tier Judges by the Court of Appeal judges can be approved and used as the basis for their review in examining and resolving this dispute in the court of appeal.

In the examination process in the appeal level of Defendant/comparison has sent a letter to the Chairman of the Jakarta State Administrative Court dated December 21, 2009 Number: S-1471 / BC / 2009 regarding the Application for Legal Protection to revoke the Determination of the Jakarta State Administrative Court Number: 74/G/2009/PTUN-JKT dated October 8, 2009, concerning Delay in The Implementation of The *objectum litis* Decree because it is not following the provisions contained in article 67 of the State Administrative Justice Act and Law No. 19 of 1997 on Tax Collection by Forced Letter. Business actors also lawsuit the Tax Court with the tax court's decision to grant the application for the revocation of SPKPBM Letter No. 006548 / AUDKAN / KPU-TP / BD.02 / 2009 dated March 25, 2009.

The author analyzes, based on the principle of public interest, the type of goods imported falls into the category of goods that are not subject to Import Duties (Duty-Free) because the activity is intended for the public interest (Law No. 17 of 2006 on Amendments to Law No. 10 of 1995 on Customs article 26 paragraph (1) letter h).

Regulation of the Minister of Finance Number: 163/PMK.04/2007 dated December 17, 2007, Article 2 Mentions "Against goods in the public interest imported by the Central Government or Local Government is given import duties," In the case of goods as referred to in paragraph (1) not imported by the Central or Regional Government, imports can be carried out by third parties under the Regional Agreement / Contract with the third party concerned. Article 3 paragraph (a) mentions the import of goods as intended in article 2 is a purchase financed by the State Budget or Regional Spending Revenue Budget. Because the activity is funded from the Regional Budget, it is exempt from import duties.

On January 24, 2008, there was a sealing at sea on imported goods by the Field of Enforcement and Investigation of the Tanjung Priok Customs Main Service Office. Then for the occurrence of the sealing event, the Tanjung Priok

Main Customs and Excise Service Office conducted an audit and investigation of goods in the form of sea cables imported by the Plaintiff. Defendant has conducted an audit of the Plaintiff as an importer of goods based on the Duty Letter of the Head of the Main Service Office of Customs and Excise Type A Tanjung Priok No: ST-821 / KPU.01 / 2008 dated September 3, 2008, for importation activities on the Notice of Import of Goods (PIB) Number: 023545 dated January 21, 2008.

Plaintiff has deposited Customs, Excise, and Taxes in the Framework of Imports stipulated by the Main Service Office of Customs and Excise Tanjung Priok. Plaintiff has qualified the administration of goods to import duties to the state, namely on April 28, 2008, amounting to IDR. 6,577,337,469 (six billion five hundred seventy-seven million three hundred and thirty-seven thousand four hundred sixty-nine Rupiah).

Reply to letter No: 1252/-1.823.353 dated April 28, 2008, regarding the Policy of Recommendation for The Exemption of Sea Cable Duty, answered by letter No. S-868 /BC.2/2008 dated August 1, 2008, which is essentially the application for the exemption of sea cable duty, cannot be considered by the Technical Director of Customs and Excise of the Ministry of Finance of the Republic of Indonesia.

From the results of the audit conducted by Defendant, then on March 18, 2008, a decision was issued, which was issued a Decree on the Object of Dispute, which is essentially the Decree of the Director-General of Customs and Excise of the Ministry of Finance of the Republic of Indonesia Number: KEP-1987 / KPU-01 / 2009, which essentially Plaintiff is required to pay import duties and taxes in the framework of imports with a total amount of Rp. 8,363,127,800 (Eight billion three hundred sixty-three million one hundred and twenty-seven thousand eight hundred Rupiah).

Plaintiff argues that the sealing event of imported goods has also been resolved administratively by Plaintiff, by the processes and mechanisms determined and applied by the Tanjung Priok Office of The Main Service of Customs and Excise, so that the event (destruction of the seal) is not a logical reason to determine the release of sea cable duties.

PT Multi Fabrindo Gemilang cannot accept the decision of the Supreme Court with the consideration of the Judge, namely, That the reasons submitted by the Applicant for Judicial Review cannot be justified, the Judex Juris verdict is correct, there is no actual error or error because the object of the lawsuit is the authority of the Tax Court. These reasons are the Interpretation/opinion of the Applicant for Review and contain only differences in interpretations of law enforcement. Therefore, it does not meet the requirements of the submission of review, as referred to in Article 67 of Law No. 14 of 1985 as amended by Law No. 5 of 2004 and the Second Amendment to Law No. 3 of 2009, that, based on the considerations mentioned above, the application for re-enactment submitted by PT. Multi Fabrindo Gemilang is unwarranted, so it must be rejected.

3. Methodology

Research is a principal means of developing science and technology because research aims to reveal the truth systematically, methodologically and consistently through a process of analysis and construction of data that has been collected and processed (Nurianti et al., 2020).

This research uses normative research in writing this article, Bayles (1987) says; A prior normative basis for evaluating characteristics or consequences. In effect, information is relevant if, in legal terminology, it indicates something about the nature or consequences of the principle

The normative research used comes from; the law of the Republic of Indonesia number 17 of 2006 on changes to law number 10 of 1995 on customs, the law of the administrative justice of the Republic of Indonesia number 51 of 2009, government regulation number 3 of 2018 on the type and rate of Indonesian state revenues is not taxable to the minister of finance of the Republic of Indonesia, Regulation of the Minister of Finance of the Republic of Indonesia number 169/PMK.04/2017 on procedures for collecting import duties and/or excise, Regulation of the Minister of Finance no. 163/PMK.04/2007 dated December 17, 2007, on The Granting of Import Duties on Imports of Goods and Law No. 19 of 2000 on Tax Collection by Forced Letter. These laws and regulations became the primary legal material in this study.

There are several theories that the author uses in writing this article, namely: Authority Theory, Certainty Theory and Justice Theory. According to Hadjon (2015), "in administrative law, government obtains authority by means of attribution, delegation and sometimes also mandate". The authority obtained by the government comes from laws and regulations by way of attribution, delegation and mandate. Attribution authority is obtained through the 1945 Constitution and/or laws which are new powers that previously did not exist and the responsibility for authority rests with the relevant Government Officials and cannot be delegated unless regulated in the 1945 Constitution and/or Laws (Nurianti et al., 2020)

4. Results and Discussions

4.1. Implementation of the supreme court's decision

Supreme Court Decision No. 46 PK/TUN/2011 explained that means that the Decree must be carried out by executing the audit letter, from the Directorate of Customs and Excise, following Law number 1995 on customs as amended by Law No. 17 of 2006 article 36 paragraph (3) provisions regarding the procedure of payment, acceptance, the deposit of import duties, administration fines, and interest, as referred to in paragraph (1) and rounding the amount as referred to in paragraph (2), is further regulated with or based on ministerial regulations, article 41 describes the implementation of import duty collection carried out by the Directorate General of Customs and Excise following Ministry Regulation No. 111 / PMK.04 / 2013 on the procedure of collecting import duties and/or excise Chapter II Article 1 paragraph (1) and paragraph (2), Article 3, Article 4 paragraph (1) to paragraph (5), Article 5 paragraph (1) to paragraph (4)

Before charging Customs and Excise, first publish the following:

a. STCK-2 letter of reprimand by officials (Article 8 paragraph (1)
b. Forced Letter (Article 11)
c. Confiscation (Article 21)
d. Auction (Article 34)
e. Prevention or Hostage Taking (Article 36)

This stage must be carried out by the Directorate General of Customs and Excise to fulfilled the Supreme Court's decision. In practice, until now, the decision has not been carried out. Officials do not apply the principle of legality and do not also carry out what is stated in article 6 and article 7 of law no. 30 of 2014 concerning the Administration of State Government. This means that officials of the Directorate General of Customs and Excise do not carry out the mandate of the law to cause losses for the State.

4.2. Regulation of customs and excise obligations in carrying out supreme court decisions that already have permanent legal force.

The Autoregressive Distributed Lag (ARDL) model was used to achieve this research objective (Nkoro and Uko, 2016; Ting and Ling, 2011; Hassler and Wolters, 2006). This model includes using a variety of lag from bound variables and explanatory variables. In case of commitments, as written in Decree, Customs and Excise are entitled to the implementation of the Decree following the norms and nature of the law. In an attempt to explain the nature of a norm that a norm is a commandment, a command is a statement of the will of an individual whose object is the action of another individual.

Binding or non-binding order depends on whether the governing individual gives the "power" to issue the order or not. Provided that it gives "power," then the statement of will is binding, even though it does not have higher real power and the word has a minor form of imperative. The first legal-rational basis, legitimacy, rests on a belief in the legality of the pattern of normative rules and the right of those elevated to authority under such rules to issue a command. Obedience is owed to the legally established impersonal order (Weber,1947; Constas, 1958).

A commandment is binding, not because the governing individual has excellent power, but because they are "authorized" or "given the power" to issue binding commandments; this is in keeping with Austin's opinion that law is a command of the sovereign (Austin, 1954; Marasinghe, 1991). He is only "authorized" or "in power" if a normative order, which is considered binding, gives him this capacity, i.e., gives the competence to issue binding commandments. Thus, his statement of will, addressed to the deeds of another individual, is a binding commandment, even though the governing individual has no real power over the individual to whom the commandment intended.

The binding power is not "derived" from the command itself, but from the conditions that issue it, assuming that the rule of law is a binding command, it is clear that binding power there in the command because the acting official issues the demand, in this case, the Director-General of Customs and Excise.

However, through a closer analysis, it appears that the rule of law is a "commandment" only in a very vague sense. A commandment exists only if a particular individual applies and declares an act of will in their right mind. According to his adequate understanding, only a specific individual uses and proclaims an act of will, making another person's behavior his object. Black et al. (1983) *right to exercise power; to implement and enforce laws; to exact obedience; to command; to judge. Control over; Often synonymous with power*. The statement of the front of choice, through words or gestures or other signs. A command exists when these two elements exist. If someone gives the command and has sufficient evidence before carrying out that command, the act of will that underlies it no longer exists.

If we refer to the law, which established by parliament in a form prescribed by the constitution, as a "command" or, by the same expression, the "will" from the legislator, then a "commandment" in this sense has almost nothing in common with the command in the true sense.

Law describes as "command" or expression of "will" of the lawmaking institution, and when such a legal order is said to be the "command" or "will" of the state, understood a form of expression of this figurative expression.

An imperative law or rule guides the conduct of the obliged or is a norma, model, or pattern, to which their conduct conforms (Austin, 1832). Legal obligations are not somethings independent of legal norms. Legal obligations are solely legal norms concerning individuals/business entities whose actions are within legal norms. The legal obligation is to avoid the delik, which is the subject should "comply" with legal norms.

The author adopted the concept of obligation developed by Austin, the concept of obligation created here is the concept referred to by Austin's analytic theory. Still, the achievement has not been quite successful. Austin argues about the assumption that sanctions are always aimed at the perpetrator, and without realizing cases where sanctions direct at individuals who have a particular legal relationship with the perpetrator.

Austin's definition, the legal norm, will not establish any obligation in such cases. Even so, in Austin's theory, the establishment of an obligation is the essence of a legal norm, which requires the individual/business entity to be an order.

4.3. The practice of implementing supreme court rulings that already have permanent legal force by customs and excise

In application of the law, the judge is not just a tool or automatic substance; therefore, the judge must find the proper law and fulfill the sense of justice to the case or case he tried, often if the laws and regulations do not regulate or not found the law, the judge seeks to make legal discoveries, the primary consequence of is curies novit for the judge is in deciding the case, In addition to having to contain the reasons and basis of the verdict, The judgment must also contain specific articles of the relevant laws and regulations or unwritten legal sources on which to adjudicate (Article 25 of the Judicial Powers Act). Equality of perception in the application of the law will realize legal certainty, which in turn will prevent or avoid disparities and inconsistencies of the verdict because the judge has applied the same legal standards to cases or cases that are the same or similar to issues that have been decided or tried by previous judges. The Judiciary as best able safeguard substantive individual rights. The courts, he famously declares, are the capitals of law's empire and judges are its princes (Dworkin, 2008; Wacks, 2021).

Through law enforcement in the court, it is expected that the judge's ruling, to realize order and legal certainty, must also recognize a law that meets the sense of justice. Consequently, the freedom of judicial power in the hands of judges must be interpreted and supplemented to realize the legal ideal based on justice, expediency, and legal certainty.

In implementing law enforcement, it is mandatory to follow the provisions of the rule of law. Law enforcement that is not in the requirements of the law can result in null and void. Law No. 48 of 2009 on the Power of Justice, in Article 4 paragraph 1, states that "The Court judges according to the law" and "does not discriminate people" is the principle in the conduct of justice.

To ensure that the enforcement of the law can be implemented properly and fairly, not arbitrarily, and does not exceed the limits of authority, is no abuse of authority or power. Then several principles must be adhered to, especially in the trial of the judges, namely the principle of impartiality (impartiality).

The principle of *Audi et alteram partem* (hearing both parties) does not let one party hear outside the defendant's presence at the trial. Therefore, the format of the verstek verdict is always written under the identity of the parties, namely "after hearing both parties" realize the principle of audit et alteram partem. Although the defendant is not present at the trial after being legally called officially and appropriately, this is the postulate of justice (equality before the law). A trial is a way of ascertaining facts; to that end, it uses examination and cross-examination of witnesses and the study of physical evidence, most prominently documents. The judge determines the law be applied after hearing or reading the argument. A brief is an argument written out. Pleading is not a legal argument, although, in use not yet correct, it has taken on that meaning; it is the formal written statement of the litigants' positions. Once pleading had huge significance in the law, and tiny mistakes were fatal; its main modern function is to chart the area of dispute (Rembar, 2015).

Unfair rules must be made fair to be applied fairly. That is the importance of making legal discoveries through interpretation and construction, even though the formation of laws maintains the strictness of the law. Finding the law must depart from the assumptions of the existing rule of law following the principle of adjudicating according to the law. The establishment of the law departs from the belief that there is no availability of the rule of law. But of the two have a core of equality, which is to both find the law to then be used as a legalistic basis to prosecute according to the law.

The discovery of the law by the judge is always related to the case at hand, which is then formulated in the form of a verdict. The judge's decision must meet the elements, namely the head of the judgment, the identity of the parties, consideration of the law, which includes a reference of the results of the proof formulated in the form of legal facts. Then, the reflection of the law and the arguments, then syllogism prepared a conclusion to answer the petition. The

next element, the verdict, and closing were signed by the panel of judges and clerks who participated in the trial as a form of accountability of the judge for the decision he made.

According to the provisions of Article 50 of Law No. 48 of 2009 concerning the Power of Justice, court decisions, in addition to having to contain the reasons and basis of the verdict, also include particular articles of the relevant laws and regulations or unwritten legal sources that serve as the basis for adjudication. The court's decision must be signed by the chairman and the deciding judge, and the clerk who participated in the trial.

The Law on The Power of Justice Article 1 paragraph (1) states that judicial power is the power of an independent state to conduct a judiciary to uphold law and justice based on Pancasila and The Constitution of the Republic of Indonesia of 1945 for the implementation of the State of Law of the Republic of Indonesia. In the sentence to hold a trial in the article, the word "justice" indicates the process of adjudicating, while "court" means the institution that prosecutes.

Sidharta (2006), says; Judges can only explore the usefulness side as long as the positive norm is formulated with a *disjunctive* proposition whose indicator lies in the word "*can*". If there is the word "*can*" in the text of the law, which means giving discretionary rights for judges to choose which one benefits and which does not bring benefits. On that positive norm proposition, the non-doctrinal premise (the judge's belief in empirical facts) strongly determines the final verdict if the non-doctrinal premise supports the normative hypothesis.

Mahfud MD said that the Indonesian legal State is firmly conceptualized as a colorful state of law, combining positive aspects between restate with legal certainty, the rule of law with its sense of justice integrative. This understanding is reinforced in the 1945 Constitution Article 1 (1), Article 24 paragraph (1), and Article 28 letter D and letter H1(Pradjonggo, 2010).

To build the concept of legal reasoning in the context of the Indonesian legal State is better to look first at the ontology aspects, epistemological aspects, and legal axiology aspects, starting from positivism, sociological jurisprudence, then the theory of development law, and then the idea of the Indonesian State of law based on the Constitution of the Republic of Indonesia in 1945 post-change.

The prevailing legal system binds Indonesian judges, but judges in Indonesia are not bound by jurisprudence as precedent as in The United Kingdom and America. This means that the judge has the freedom to review the decisions he has made, whether it is still worth defending in connection with changes in values in society. Judges are obliged to explore, follow, and understand the importance of the law that grows and develops according to their sense of justice.

Law No. 48 of 2009 on Judicial Power Article 1 paragraph (1) explains that the Judicial Power is the power of an independent state to conduct the judiciary to uphold law and justice based on Pancasila and the Constitution of the Republic of Indonesia.

Judges in making legal decisions must also not violate the provisions of article 178 HIR/Article 189 R.Bg. However, the principle of due process of law, member of the juridical requirement that the judge's decision-maker should not contain things that can result in the treatment of humans (seekers of justice) that can result in unfair, illogical, and arbitrary treatment. The role of judge stands in relationship to other role, the totally of comprises the institutions of law Judges are part of the legal order, that is part of a society in which human conduct is governed by rules. Ideally, rules enable society to function smoothly and efficiently (Hart, 1994).

Realizing legal objectives in decisions such as legal certainty, justice, and expediency, as well as integrity, is a must. Still, it is not easy to realize because the various purposes of the law do not always go hand in hand.

The creation of the law through the judge's ruling (*law in concerto*) can become law in *abstracto* if the shaper of the law takes over the rules in the judge's decision into law. It becomes a positive law that is generally accepted. Similarly, the decision of judges who have permanent legal force (*resyudicata pro Veritate habetuur) followed in legal practice following the principle of similia similibus and became* law in *abstracto*.

Indonesia, as an adherent of the Continental European system, in the event of a normative vacuum, judges are obliged to create laws; there are three reasons for the ability of judges to make legal discoveries or the creation of laws, namely:

1. Indonesian judges do not adhere to a system of precedent,
2. judges are obliged to try all parts of the lawsuit,
3. judges must not refuse to examine and adjudicate a case brought against him because the law is non-existent or unclear but is obliged to explore and try him.

One method of law formation is argumentation theory. The result of the creation of the law by the judge is only recognized as law when it is produced in the judicial process, and this is called the ratio decided in contrast to obiter dieta, which is a legal opinion by judges who are not pleased with the judicial process.

The author argues that any court ruling in any case processed by the court aims to obtain a solution or resolution to a case involving the parties, which is terminated by determining the judge's decision. The verdict handed down alone is not enough and cannot solve the problem if it is not implemented.

The judge's ruling has executive power, namely the head of the verdict, which reads "for the sake of justice based on the supreme divinity of the Supreme Court.", The judgment of the judge who has the power of law must still be carried out when a case has been decided and has obtained a definite legal force.

The practice of implementing the law in this case, customs and excise, has been given the authority by the Supreme Court to execute legal rulings. However, in exercise that occurred until now, customs and excise have not carried out the Supreme Court's decision, thus causing harm to the State, as the office of the customs and excise government is negligent and does not support the legal principles of state administration, one of which is the principle of carefulness, based on the principle of wisdom (Sapientia) in the principles of state administrative law, in the administrative law of the State, the use of administrative sanctions is the application of government authority, in this case, customs and excise authority, where this authority comes from the rules of written and unwritten administrative law (formal legal sources). The Ministry of Finance as the parent that regulates customs and excise should act decisively and issue regulations to customs and excise so that the State is not harmed.

In Law No. 5 of 1986, on PTUN, there is no burden of responsibility and sanctions that can be given to officials in person. In its development, sanctions against officials who do not comply with the court's ruling gained a place in positive law., as stated in article 116 paragraphs (4) and (5) of Law No. 9 of 2004 concerning changes to Law No. 5 of 1986 are mentioned as follows. Paragraph (4) if the defendant is not willing to carry out the court's decision that has obtained permanent legal force, against the officials concerned in the form of forced efforts in the form of payment of a sum of forced money and/or administrative sanctions, paragraph (5) of officials who do not carry out the court's decision as referred to in paragraph (4) announced in the local print media by the Registrar should not fulfill the provisions as referred to in paragraph (3).

4.4. Ideal arrangements against disputes over customs and excise audit results

The Decree issued by the customs and excise officer has the responsibility of position concerning the legality (validity) of the Decree. In administrative law, the legality of government action is related to the approach to government power. Thus in this approach determines control or supervision of the use of power If there are irregularities or violations of the use of power by the government, then the responsibility of the state is carried out based on the legality or the principle of "*rechtmatigheid*."

In the event of unfulfillment, such legality causes defects in government action. Defects in authority result in government actions, or government decisions become null and void *(dieting*). Flawed procedures do not cause government actions or decisions to be invalid, but existing deficiencies must be adequate. Defects in the system may be requested for cancellation and not null and void.

The author's analysis of the supreme court's legal provisions from the theory of Justice and the theory of legality stated by Hans Kelsen has fulfilled the elements of fulfilling the requirements of the law against a decree or legal object issued by the Director-General Customs and Excise. The author outlines the theory that Justice in this sense means legality; a general rule is "fair" if the regulation is applied to all cases according to its contents, the law must be used. Autin (1832) says; a determinate law, justice is the conformity of a given object to the same or a similar measure.

In the sense of legality, Justice is quality-related not to the content of a positive legal order but its application. The Justice, in this sense, is following and required by every positive law through its application which is completely following the soul of the capitalistic and communalistic legal order, democratic and autocratic. "Justice" means the maintenance of a positive legal order through its application that genuinely follows the soul of the positive legal order. This Justice is Justice based on the law.

The statement logically has the same character to incorporate a concrete phenomenon into an abstract concept. Suppose the information that a particular act is following or incompatible with a legal norm is called consideration of value. In that case, the consideration of objective value must be clearly distinguished from the subjective value consideration that expresses the will and feelings of its subject. Whether the Decree is legal or not based on the law, the information can be verified objectively, regardless of the law enforcement giving such consideration. It is only in this sense of legality that the concept of Justice can enter into the science of law (Kelsen, 1949).

The author argues that something can be said to be ideal if it meets legal certainty and legal Justice. However, both legal certainty and legal Justice have their excellent characteristics, based on the provisions in the Directorate General of Customs and Excise, and the Decree is ideal because it is issued following customs and excise procedures and regulations and can be carried out executions by the Directorate General of Customs and Excise. However, there is a legal gap in the absence of such implementations, contrary to Kelsen (1949) opinion, that law is the primary norm which stipulates the sanction. Officials of the Directorate General of Customs and Excise do not carry out the law's mandate by not carrying out the procedures listed in the Regulation of the Minister of Finance No. 111 / PMK.04 / 2013 and Law No. 30 of 2014 concerning the Administration of State Government.

The author argues that there should be a judicial review of law No. 30 of 2014 on State Government Administration and Regulation of the Minister of Finance No. 111/PMK.04/2013 on Procedures for Collecting Import

Duties and/or Excise, this is necessary so that the State can get its rights from legal events following the decision of the Supreme Court No. 46PK / TUN / 2011.

5. Conclusions

The implementation of the law can take place normally. Through law enforcement, three elements must always consider, namely legal certainty (Rechtssicherheit), expediency (Zweckmassigkeit), and justice (Gerechtigkeit) (Scheltema, 1994).

From the position of the case that occurred between the parties involved in the case, the author gave the following conclusion:

1. Arrangements regarding the obligations of Customs and Excise in Carrying out The Decision of a Court That Already Has Permanent Legal Force is that according to positive law must be carried out the decision because the ruling already has permanent legal force. By carrying out the decision, the Director-General of Customs and Excise has fulfilled the principle of legal certainty; the principle of legal certainty is a principle in the State of law that prioritizes the foundation of rules and regulations, compliance, and justice in every state maintenance policy. The focus of legal certainty in the State of law, according to Radbruch, is very guarded for the achievement of order or order.
2. The practice of implementing supreme court decisions that already have permanent legal force by Customs and Excise has not been implemented by the Directorate General of Customs and Excise, thus causing harm to the State.
3. The ideal arrangement of disputed audit results in case No. 46 / PK / TUN / 2011 should be judicial review of the regulations of the minister of finance and the Law on The Administration of state government. have sent a letter to be given not subject to import duties and are regulated in the regulations article 26 paragraph (1) letter h of Law No. 17 of 2006 on Amendments to Law No. 10 of 1995 on Customs Jo Article 2 and Article 3 of Regulation of the Minister of Finance no. 163 / PMK.04 / 2007 dated December 17, 2007, concerning the Granting of Import Duties on Imports of Goods by the Central Government or Local Government Intended for the Public Interest.

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