

RECONSTRUCTION OF REGULATIONS FOR DUTIES EXEMPTION ON THE IMPORT OF MOTORIZED VEHICLES FOR THE PUBLIC TRANSPORT OF PUBLIC GOODS BASED ON JUSTICE VALUE

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ABSTRACT

The purpose of this study is to review and analyze the regulation and reconstruction of the regulation of the import duty exemption facility on the import of motorized vehicles for public goods transport based on the value of justice. This research is sociological juridical research by obtaining legal knowledge empirically by going directly to the object. This study seeks to examine the potential for unfairness and ineffectiveness of regulations providing exemption from import duty on imported machinery and assess how far the current regulations are in the public's view. Motorized transportation for general goods as an important business field for the general public that delivers various daily needs and a business strategy to import capital goods directly from producing countries is an interesting thing for the author to discuss in this study. The results of the study found that the main background The acquisition of the import duty exemption facility on the import of machinery is intended to provide the best public goods transportation service for the community, namely by using motorized vehicles that are sophisticated, strong and environmentally friendly. The community will benefit by obtaining the provision of public goods transportation services more a) on time, b) reducing the potential for accidents on the highway and c) better vehicle emission expenditures so that they are environmentally friendly. From the business actor's point of view, the import of motorized vehicles will be profitable because it will obtain a vehicle unit that a) is not easily damaged, b) has a longer economic life and c) is more fuel efficient. Therefore, it is necessary to reconstruct the requirements for the exemption of import duty on the import of motorized vehicles in the context of investment, namely in the provisions of Bkpm Regulation No. 4/2021 Requirements/ Completeness of Investment Facility Submission Documents, as well as legal structure and legal culture.

Keywords: Facilities; Exemption; Duty; Entry; Import; Machine; Justice;

INTRODUCTION

Broadly speaking, logistics activities include several components, namely planning, design and supporting services for transportation, warehousing and distribution.¹ The activities of goods transportation services are closely related to the distribution component. The distribution of goods can be carried out by land, sea (including rivers and lakes) and air depending on the mode of transportation. The distribution of goods by sea is carried out by means of transportation in the form of ships or boats, while the distribution of goods by air is carried out by means of transportation in the form of airplanes. The distribution of goods by land is mainly carried out by means of transportation in the form of trains and motorized vehicles such as trucks, box cars, pick-up cars and containers.²

For the mode of transportation in the form of trains, Article 13 paragraph 1 of the Railway Law explains that railways are controlled by the State and its development is carried out by the Government.³ Currently, there are types of trains that are not fully funded by the government, namely the Integrated Moda Raya (Mass Rapid Transportation or MRT) and the Integrated Lintas Raya (Light Rail Transit or LRT) in Jakarta. However, the MRT and LRT are only able to transport people/passengers.⁴ Therefore, companies with capital originating from the private sector mostly carry out the provision of goods transportation services by road using motorized vehicles in the form of trucks, box cars, pick-up cars and containers and their business activities are called motorized transportation for general goods.

According to the results of research by a leading international business research and analysis consultant based in South Jakarta, the market size for freight logistics business activities in Indonesia is expected to reach a value of US\$275 billion in 2020, a significant increase when compared to the size of the logistics market in 2015. 2015 with a value of US\$135 billion. This increase is a reflection of the increasing need of the Indonesian people for goods transportation services. On the other hand, 90% of the movement of goods transportation logistics activities in Indonesia is carried out by road using motorized transportation modes. This percentage far outperforms other modes of transportation, such as ships (sea, lake and river) by around 9%, trains by about

¹ Central Bureau of Statistics, Regulation of the Head of the Central Statistics Agency Number 2 of 2020 concerning the Standard Classification of Indonesian Business Fields, BN No. 1084, Year 2020, Category H: Transport and Warehousing, Subclass 5229: Other Transport Support Activities.

² Hetiyasari et.al, Reconstruction Of The Position Of Heirs To The Coverage Fund (Insurance) Of Transportation Accident Victims Based On The Value Of Justice, Journal Of Xidian University, Volume 16, Issue 2, 2022.

³ Indonesia, Law No. 23 of 2007 concerning Railways, LN No. 65, TLN No. 4722, Year 2007, Article 13 Paragraph (1).

⁴ The MRT and LRT became the first privately-run trains in Indonesia since independence. The construction of the MRT and LRT is also financed by the state through loans from the Japanese government, central government funds and the DKI Jakarta government. The MRT and LRT are both managed by BUMD, a company in the form of a company owned by the DKI Regional Government. MRT is a new company that was established on June 17, 2008. While the LRT will be operated by PT LRT, a subsidiary under PT Jakarta Propertindo." Accessed from <https://www.kompasiana.com/sujadi/5c9399f40b531c6d770f96f3/mrt-dan-lrt-kereta-api-swasta-pertama-indonesia-pasca-merdeka>, on 16 May 2020 at 17.05 WIB.

1% and the remaining less than 1% using airplanes. This shows that the activity of transporting goods by road using motorized vehicles is a very important business activity and concerns the fulfillment of the needs of the majority of Indonesian people.

Based on the Regulation of the Minister of Transportation Number PM 60 of 2019 ("PM 60/2019"), a public transportation company is a legal entity that provides transportation services for people and/or goods using public motorized vehicles.⁵ The definition of a public motorized vehicle is any motorized vehicle used for the transportation of goods and/or people for a fee.⁶ Motorized Vehicle is any vehicle that is driven by mechanical equipment in the form of a machine other than a vehicle that runs on rails.⁷ Transportation of goods by motorized vehicles is required to use goods cars⁸ and goods cars are prohibited from being used for the transportation of people unless stipulated otherwise by law.⁹ Goods transportation can be divided into general goods transportation and special goods transportation.¹⁰ Public transportation¹¹ of goods is the transportation of goods in general which is not dangerous and does not require special facilities.¹² Meanwhile, special goods transportation consists of dangerous¹³ goods and non-dangerous¹⁴ goods that require special facilities.¹⁵

This study will specifically discuss business actors in the form of limited liability companies established in the context of investment that carry out motorized transportation business activities for general goods by using goods cars¹⁶ in the form of tractor heads.¹⁷ Towing Car is a vehicle specially designed for towing trailer or outboard carriages.¹⁸ Outboard carriage (trailer)¹⁹ is a means for transporting goods that are designed to be towed and part of the load is supported by the towing motor vehicle.²⁰ The towing car or road tractor for the semi-trailer (tractor head)²¹ or truck referred to in this study specifically is a 6x4²² truck type which has a permitted combined weight of up to 45 (forty five) tons.

Motor vehicles in the form of trucks are included as movable objects²³ and trucks have a limited useful life. After the end of its useful life, the truck can no longer be used. Thus, business actors of motorized transportation for general goods must rejuvenate their fleets so that they can continue to carry out their business activities. Meanwhile, the purchase of truck units to add

⁵ Minister of Transportation, Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 60 of 2019 Concerning the Implementation of Transportation of Goods by Motorized Vehicles on Roads,, BN No. 1087, Year 2019, Pasal 1 Ayat (3).

⁶ *Ibid.*, Article paragraph (14).

⁷ Indonesia, Law No. 22 of 2009 concerning Road Traffic and Transportation, LN No. 96, TLN No. 5025, Year 2009, Article 1 Paragraph (8).

⁸ *Ibid.*, Article 137 Paragraph (3).

⁹ *Ibid.*, Article 137 Paragraph (4).

¹⁰ Minister of Transportation, Op. Cit., Article 2 Paragraph (3).

¹¹ General goods include: a) general cargo; b) metallic loads; c) wood cargo; d) palletised/packaged cargo; e) vehicles with side curtain covers and f) flat glass. *Ibid.*, Article 4 Paragraph (2).

¹² *Ibid.*, Article 4 paragraph (1).

¹³ Dangerous goods are at least in the form of: a) explosive goods; b) compressed gas, liquefied gas or dissolved gas at a certain pressure or temperature; c) flammable liquids; d) flammable solids; e) oxidant producing materials; f) poisons and materials that are easily transmitted; g) radioactive goods; h) corrosive goods; and/or i) other dangerous goods. *Ibid.*, Article 10 Paragraph (1).

¹⁴ Non-dangerous goods include: a) bulk goods; b) containers; c) plants; d) live animals; e) heavy equipment; and/or f) transportation of motorized vehicles. *Ibid.*, Article 11.

¹⁵ *Ibid.*, Article 9.

¹⁶ Goods cars include: a) pickup trucks; b) closed tailgate; c) tankers and d) towing cars. *Ibid.*, Article 2 Paragraph (2).

¹⁷ HS Code 8701.21.90: Road tractors for semi-trailers with only compression-ignition internal combustion piston engine (diesel or semi-diesel)). Minister of Finance, Regulation of the Minister of Finance of the Republic of Indonesia Number 26/PMK.010/22 concerning Stipulation of Goods Classification System and Imposition of Import Duty Tariffs on Imported Goods, BN No. 316, 2022. Appendix III, Goods Classification Structure and Imposition of Import Duty Tariffs.

¹⁸ Rabiman, *Pengetahuan Dasar Teknik Otomotif* (Yogyakarta: Liberty, 2017), page. 9.

¹⁹ HS Code 8716.40.00: Trailer dan semi-trailer lainnya (*other trailers and semi-trailers*). Minister of Finance, Minister of Finance Regulation No. 26/PMK.010/22, Op. cit. Appendix III.

²⁰ Rabiman, *Op. Cit.*

²¹ A road tractor for semi-trailers is a vehicle that is constructed primarily for pulling trailers and semi-trailers, or what is also known as a tractor head. Minister of Industry, Regulation of the Minister of Industry of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Regulation of the Minister of Industry Number 34/M-IND/PER/9/2017 concerning Industry of Four or More Wheel Motorized Vehicles, BN No. 378, Year 2018, Article 1 Paragraph (9).

²² A 6x4 truck means that the truck has 3 axles and 2 axles driven by the engine (double axle). The axles driven by the engine are the center and rear axles. Accessed from <http://konsultan-mitsubishi.com/sk-165-mitsubishi-fuso-6x4-6x2-dan-4x2-dimana-bedanya.html>, on 18 May 2020 at 14:52 WIB.

²³ Movable objects because of their nature are objects that can move or be moved. Dutch East Indies, Burgerlijk Wetboek voor Indonesie, Staatsblad 1847-23 translated by Subekti and R. Tjitrosudibio, Civil Code: Burgerlijk Wetboek, 34th Printing (Jakarta: Pradnya Paramita, 2004), Article 509, p. 159. This book is a translation of the original version of the Dutch civil law book entitled Burgerlijk Wetboek. This book is the result of the codification of civil law, most of which comes from the Napoleonic Code and a small part of the old Dutch law. This book was officially entered into force in the Netherlands on October 1, 1838. When the Dutch East Indies was occupied by the Dutch colonial government, the principle of concordance was applied, meaning that the law applicable to the Dutch in the Dutch East Indies was the same as the law in force in the Netherlands. After Indonesia's independence, this book is a positive law in Indonesia based on Article II of the Transitional Rules of the 1945 Indonesian Constitution which states that "all existing state bodies and regulations are still in effect immediately, as long as new ones have not been promulgated according to this Constitution". The Civil Code which was written in its original version, namely Classical Dutch, is still valid today in Indonesia and has not yet been replaced. The Civil Code regulates matters that have not been unified by law. Things that have been unified are such as Marriage law and Agrarian law.

to the existing truck units is called business development.²⁴ The Indonesian Truck Entrepreneurs Association (“Aptrindo”) requested incentives in the form of transfer fees tax and other facilities in order to rejuvenate trucks to suit the land route facilities (toll roads) that have been built by the government. Every 10 (ten) years the price of domestic trucks doubles or increases by 10% per year. The increase in the price of this truck unit is not in line with the price of goods transportation services, which follow the price of fuel oil (BBM) which tends to be stable. The components that determine the unit price of this truck are, among others, influenced by the imposition of Value Added Tax (“VAT”), transfer fees for motorized vehicles and import duties which amount to half of the unit price of the truck itself.²⁵

Purchase of truck units can be done by purchasing trucks from the sole agent of the brand holder (“ATPM”) or dealers in Indonesia. For truck units that can be produced domestically, business actors will be charged, among others, with VAT on the acquisition of vehicles and vehicle title transfer fees. Meanwhile, for truck units that cannot be produced domestically, the ATPM or dealer will import, for which the ATPM and dealers will be charged with VAT on imports, import duties on imports and Income Tax (“PPH”), and then the third This import burden will be included in the component of the truck unit sales price to transportation businesses. This will certainly make the purchase price of the truck unit increase significantly compared to the original price from the factory.

In such circumstances, there are certain public goods transportation business actors who choose to use a business strategy by rejuvenating and developing their business by importing trucks directly from truck manufacturers abroad. This import activity is carried out mainly for the types of trucks that cannot be produced domestically and therefore obtain import duty exemption facilities on imports in accordance with the provisions in the investment sector. These business actors must be prepared with the consequences of their business strategy, namely they must be able to maintain and repair sophisticated and unique truck units where the availability of spare parts and mechanical capabilities for these truck units is not easily obtained domestically. According to the author's research in the form of interviews with Land Transport Organizations (“Organda”), not many freight forwarders use this kind of business strategy because they are not familiar with truck units from abroad such as European brands, in addition to the high cost of truck spare parts. and the resale price of these truck units can be very low.

The role of motorized transportation business actors for general goods in serving the community is very important because they are able to provide door-to-door²⁶ transportation services, while other transportation facilities such as trains, ships and airplanes cannot provide similar services. Other modes of transport of goods may take a shorter time or can pass through terrain where there is no road, but to arrive at the destination for delivery of goods, transportation using motorized vehicles must still be carried out. Motorized transportation²⁷ activities for general goods are very important activities in the series of goods transportation, because in addition to 90% of Indonesian public goods transportation using motorized vehicles, the position and role of these business actors to deliver goods to their destination is also irreplaceable.

Indonesia is known as the largest archipelagic country in the world. The Indonesian government is trying its best to be able to interconnect the 34 provinces that are part of the Indonesian state, especially related to logistics networks. Despite having to face quite challenging geographical conditions, the economy in Indonesia continues to progress from year to year. In order to continue to achieve sustainable economic growth, the Indonesian government seeks to shift a large part of the economic base from agriculture to manufacturing and service-oriented industries. The high rate of economic growth is reflected in business opportunities in the transportation and warehousing sectors. While large islands such as Java, Sumatra and Kalimantan have wide roads with varied transportation systems, there are still many smaller islands that have not been developed due to poorly maintained and fragmented roads.

The Indonesian government seeks to develop and reform the logistics sector. This is necessary in order to reduce economic inequality in Indonesia. Inadequate facilities and infrastructure coupled with logistics performance that is far from adequate has made provinces outside Java less attractive to investors, especially foreign investors. With the fifth largest population in the world, the consumption of Indonesian people is very high. This large market can support the government's efforts to start transforming the economy from an agriculture-based one to a manufacturing and technology industry. However, to date, more than 80% of large and medium-sized industries are still located on the island of Java.

Currently, the Government of the Republic of Indonesia is carrying out a lot of infrastructure development, especially toll roads. Until 2018, the toll roads that have been built during the administration of President Joko Widodo have reached 782 Kilometers. Construction continues and the government targets the construction of new toll roads by the end of 2019 to reach 1,070 Kilometers.²⁸ The government estimates that there will be a total of 4,700 Kilometers to 5,200 Kilometers of toll roads operating in 2024.²⁹ One of the goals of this infrastructure development is to make logistics distribution lines cheaper. The impact felt for the construction of toll roads is very massive in the regions, namely increasing added value and will lead to large economic benefits. Business actors of motorized transportation services for general goods play an important role in participating in the improvement of the community's economy by carrying out business activities of transporting goods by road.

²⁴ Business development is the addition/expansion of business activities by adding capacity, line of business and/or location. Investment Coordinating Board, Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities, BN No. 272, Year 2021, Article 1 Paragraph 32.

²⁵ Accessed from <https://ekonomi.bisnis.com/read/20190410/98/910242/harga-truk-kian-tak-tercepat-aptrindo-minta-insentif-be-balik-nama> on May 4, 2021 at 14:36 WIB.

²⁶ Door to door” or “door to door” as meant in this paper includes transportation from factory to factory, factory to warehouse, factory to project site, factory to distributor/trader, and vice versa.

²⁷ Sukarni et.al, Impact of Traffic Congestion on Economic Welfare of Semarang City Community, Journal of Xidian University, Volume 16, ISSUE 2, 2022.

²⁸ Accessed from <https://www.cnbcindonesia.com/news/20190915191130-4-99585/mantap-jokowi-mau-bangun-2000-km-jalan-tol-di-2019-2024>, on 23 July 2020 at 14.00 WIB .

²⁹ Diakses from <https://www.cnbcindonesia.com/news/20191030172710-4-111454/jokowi-mau-bangun-2500-km-tol-baru-duitnya-dari-mana-nih>, pada tanggal 23 Juli 2020 at 14.01 WIB.

Indonesia is a developing country. To build requires a large capital or investment. Investment activities in Indonesia have been started since 1967, the first time since the enactment of Law Number 1 of 1967 concerning Foreign Investment³⁰ and Law Number 6 of 1968 concerning Domestic Investment.³¹ With the existence of these two legal instruments, it is hoped that investors, both foreign investors and domestic investors can invest in Indonesia.

Looking at the new order era and the reform era, there are differences in the amount of investment and projects financed. During the New Order era, which started from 1967 to 1997, the amount of foreign investment invested by foreign investors was USD 190,631.7 billion and the number of projects financed was 5,699 projects. Meanwhile, the amount of domestic investment invested by domestic investors is Rp. 580,484,996 trillion and the number of projects financed is 11,911 projects. Then, during the reformation period, which started from 1998 to 2006, the amount of foreign investment invested by foreign investors was USD 117.87 billion and the number of projects financed was 10,686 projects. Meanwhile, the amount of domestic investment invested by domestic investors is Rp. 416.17 trillion and the number of projects financed is 2,025 projects.³² Thus, we can see that the value of investment in the reform era is lower than investment in the new order era.

During the New Order era, the number of investments in Indonesia was higher than in the reform era because political, economic, security and defense, social and social stability were safe and under control so that investors received protection and security guarantees in doing business in Indonesia. Meanwhile, the amount of investment, especially foreign investment that entered Indonesia during the reform era, experienced a significant decline due to frequent conflicts in society.³³ In order to increase the number of investment in Indonesia, it is necessary to make changes to the old investment laws and regulations because they are considered no longer in accordance with the needs of accelerating economic development and national legal development, especially in the field of investment, so that Law Number 25 is promulgated. of 2007 concerning Investment (“Investment Law”).³⁴

With various considerations and in view of the investment law which has been in force for approximately 40 (forty) years, it is increasingly pressing the need for the establishment of an Investment Law as a replacement for Law Number 1 of 1967 concerning Foreign Investment as amended by Law Number 11 of 1970 concerning Amendments and Supplements to Law Number 1 of 1967 concerning Foreign Investment and Law Number 6 of 1968 concerning Domestic Investment as amended by Law Number 12 of 1970 concerning Amendments and Supplements to Law Number 6 of 1968 concerning Domestic Investment which was previously the legal basis for investment activities in Indonesia needs to be replaced because it is no longer in accordance with the challenges and needs to accelerate the development of the national economy through the construction of national law development in the field of investment that is competitive and in favor of interests. only national.³⁵

The Investment Law covers all direct investment activities in all sectors. This law also guarantees equal treatment in the context of investment. In addition, this Law orders the Government to improve coordination between Government agencies, between Government agencies and Bank Indonesia, and between Government agencies and regional governments. Coordination with local governments must be in line with the spirit of regional autonomy. Regional governments together with agencies or institutions, both private and government, must be empowered again, both in developing regional potential opportunities and in coordinating investment promotion and services. Regional governments exercise the widest possible autonomy to regulate and manage their own investment management affairs based on the principles of regional autonomy and assistance or deconcentration tasks. Therefore, the increase in institutional coordination must be measured by the speed of licensing and investment facilities at competitive costs. In order to comply with the principles of economic democracy, this Law also orders the preparation of laws and regulations concerning business fields that are closed and open with conditions, including business fields that must be partnered or reserved for micro, small, medium enterprises, and cooperatives.³⁶

After the enactment of the Investment Law, it can be seen that the number of investments and projects financed for foreign investment (“PMA”) and domestic investment (“PMDN”) is as follows:³⁷

Year	PMDN		PMA	
	Project	Investment Value (Billion Rp.)	Project	Investment Value (Million USD)
2010	875	60.626	3.069	16.214
2011	1.029	76.000	3.614	19.442
2012	1.210	92.182	4.579	24.564
2013	2.129	128.150	9.612	28.617
2014	1.652	156.126	8.885	28.529
2015	5.100	179.465	17.738	29.275
2016	5.405	216.230	17.728	28.964
2017	8.838	262.350	26.257	32.239
2018	10.815	328.604	21.972	29.307
2019	30.451	386.498	28.208	30.354
Total	67.504	1.886.231	141.662	267.505

³⁰ Indonesia, Law No. 1/1967 concerning Foreign Investment, LN. No. 1, TLN No. 2818, 1967.

³¹ Indonesia, Law Number 6 of 1968 concerning Domestic Investment, LN. No. 33, TLN No. 2853, Year 1968.

³² Salim HS. dan Budi Sutrisno, *Hukum Investasi Di Indonesia, Edisi Kedua, Cetakan Keempat*, (Depok: Rajagrafindo Persada, 2014), p. 1-2.

³³ *Ibid.*, p. 3

³⁴ Indonesia, Law Number 25 of 2007 concerning Investment, LN No. 67, TLN No. 4724, Year 2007.

³⁵ *Ibid.*, general. capricont

³⁶ *Ibid.*, General Description.

³⁷ Accessed from https://nswi.bkpm.go.id/datum/get_datum_peringkat_investasi on October 16, 2021 at 10.23 WIB.

From these data, it can be seen that more than 80% of the investment value in Indonesia is realized by domestic investors, which consist of the private sector and state-owned enterprises. The value of foreign investment seems to continue to increase from year to year, from 16 billion USD in 2010 and then doubled to 32 billion USD in 2017, although then it decreased somewhat in 2019.

RESEARCH METHOD

This type of research is qualitative research³⁸. Research Approach The approach in this study uses a sociological juridical approach from a sociological point of view as an interpretation or interpretation.³⁹ In the sociological approach, it is deeper to study phenomena that occur in society, can be seen from the point of view of the implementation or implementation of the law, so this research uses direct research to obtain data as accurate as possible.⁴⁰ Related to this research, the sources of data used in this study are: Primary Data, is data obtained from statements and information from respondents directly obtained through interviews and observations. Secondary Data, is legal research data obtained directly from the main source, but the data is obtained through intermediaries or other sources such as books, magazines, and journals, from the secondary data of course it has been grouped as follows: Primary Legal Materials, Legal Materials Secondary, and Tertiary Legal Materials. Data collection methods through observation, interviews, and literature studies. Data analysis techniques are qualitative data analysis. ⁴¹

RESEARCH RESULTS AND DISCUSSION

Comparison of Import Duties on Imports in Several Countries

1. The United States

Import duties on imported motor vehicles are regulated in several other countries. Referring to the explanation on the official website of United States Customs and Border Protection, imports of motorized vehicles made in foreign countries, both new and used, are generally subject to import duties whose value is based on the price, namely a) cars of 2.5 % (two point five percent),⁴² b) trucks with HS Code 8701.21.00: Road Tractors for Semi-Trailers 25% (twenty five percent) and c) motorbikes, can be released or 2.4% (two point four percent).⁴³ Import duties on these vehicles can be waived for i) United States citizens who work overseas provided they enter the United States for a short period of time, are not non-resident and export their vehicles when leaving the United States, ii) members of the military and civil servants returning from overseas assignments provided that if sold within less than 1 (one) year from the date of importation, the vehicle will be subject to import duty, c) non-residents may import duty-free vehicles for up to 1 (one) year if the vehicle imported simultaneously with the arrival of the owner provided that if the vehicle does not meet the provisions of safety and emission standards, then the vehicle must be exported within 1 (one) year and cannot be traded in the United States and d) if the import is carried out in accordance with a multilateral agreement between the United States of America, Mexico and Canada.⁴⁴

Thus, it can be seen that in the United States, imports of motor vehicles will be subject to import duties on imports. This import duty can be waived if the party carrying out the import fulfills the requirements stipulated in the legislation and multilateral agreements with other countries. The author sees that this import duty is given to vehicles with consideration of the subject or the party who imported it, regardless of the technical provisions that apply on the highway. As long as the importing party is deemed eligible to obtain import duty exemption, then he/she is entitled to the exemption.

³⁸ Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of Applied Business and Economic Research, Vol.15 Issue.20. 2017

³⁹ Esmi Warassih. Pranata Hukum: Sebuah Telaah Sosiologis, (Semarang: Suryandaru Utama, 2005), page. 23-24. See too Anis Mashdurohatun, M Ali Mansyur, Product capabilities dynamic on industrial design carved wood in Small and Medium Enterprises (SMES) Jepara furniture in promoting the protection of intellectual property rights, International Journal of Applied Engineering Research, Volume 12, Issue 19, 2017. pp.8217-8226.

⁴⁰ Muhammad Zainuddin, Pemahaman Metode Penelitian Hukum (Pengertian, Paraadigma, dan susunan Pembentukan), (Yogyakarta: CV.Istana Agency, 2019), page. 22.

⁴¹ Agus Irawan Yustisianto, Sri endah Wahyuningsih, & Anis mashdurohatun, Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value, Sch Int J Law Crime Justice, Dec, 2022; 5(12): 513-519

⁴² Tractors” means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilizers or other goods. Author’s translation: "Tractor" means a vehicle made to transport or tow vehicles, equipment or other cargo, whether or not containing additional equipment for transportation, in connection with the main use of the tractor i.e. to transport equipment, seeds, fertilizers and other goods. Harmonized Tariff Schedule of The United States Revision 8 (2022), Vehicles Other Than Railway or Tramway Rolling Stock and Parts and Accessories Thereof. Accessed from <https://hts.usitc.gov/current> on September 7, 2022 at 11.32 WIB.

⁴³ Foreign-made vehicles imported into the U.S., whether new or used, either for personal use or for sale, are generally dutiable at the following rates: Auto 2,5%, Trucks 25%, Motorcycles either free or 2,4%. Duty rates are based on price paid or payable. Diakses from <https://www.cbp.gov/trade/basic-import-export/importing-car> pada tanggal 7 September 2022.

⁴⁴ Ibid.

2. Australia

In Australia, imported goods with a value of more than AUD1000 (a thousand Australian dollars) are subject to import duties and taxes.⁴⁵ Referring to the official website of the Australian Border Force, importation of goods with HS Code 8701.21.00: Road tractors for semi-trailers, with only compression-ignition internal combustion piston engine (diesel or semi-diesel), or trucks with diesel fuel, is subject to an import duty of 5% (five percent).⁴⁶ The Australian government supports its domestic industry by implementing a tariff concession system. The Tariff Concession Order ("TCO") is an easing of Australian government revenues that is granted when there are no Australian manufactured goods that can replace the goods to be imported. In order to obtain TCO under Australian law, the imported goods must fall within the defined TCO classification and must meet the conditions stated in the TCO. HS Code 8701.20 or HS Code 8701.21 was not found by the Author in the TCO list for HS Code scope 8701.⁴⁷

TCO is designed to help the Australian industry become more competitive. The TCO reduces import costs by allowing duty-free entry for certain types of goods not produced in Australia.⁴⁸ Examples of goods that receive TCO are HS Code 8704.10.00 with TCO code 9907508, namely trucks, spark or compression ignition, which have the criteria a) 6x6 truck type, b) limited slip differential front axle, c) differential lock rear axle, d) a maximum speed of more than 20 kilometers per hour, e) a ground clearance of 450 millimeters or more and f) a maximum weight of 22.5 tons or more but excluding underground mining trucks. It can be seen that in Australia, TCO is given to certain units of goods/vehicles which are specifically described in the TCO list.

3. India

Import duty on the import of motorized vehicles with HS Code 8701.20.10: Road tractors for semi-trailers new in India is subject to an import duty of 10% (ten percent).⁴⁹ The import-export policy in India is quite strict regarding the import of motor vehicles. In addition to the high burden of import duties on motor vehicles, India's export-import policy also states that these vehicles must also not be manufactured or assembled in India, not traded, leased or financed before being imported into India. In addition, the vehicle must be registered to have been used in another country before being imported into India. The import-export policy for new imported vehicles can only come from the country of manufacture of the vehicle and must comply with the 1989 Central Motor Vehicle Regulations.⁵⁰

4. Germany

Cars or other vehicles imported into Germany from outside the European Union are subject to an import duty of 10% (ten percent) and VAT of 19% (nineteen percent). VAT on imports is also known as import turnover tax (Einfuhrumsatzsteuer). However, if someone wishes to move to Germany and becomes a citizen, then the person concerned can import his vehicle free of import duty and VAT on imports. To obtain exemption from import duty and VAT on these imports, the person concerned is required to provide evidence in the form that he has left his former citizenship (non-EU), has resided in Germany and has lived in Germany for at least 12 (twelve) months. consecutive.⁵¹ The provisions in Germany are more or less similar to the provisions in the United States, where the exemption of import duties on the vehicle is based on the importing party.

Looking at the examples of several countries above, it can be seen that even in other countries the import of motor vehicles is subject to import duties on their imports. The amount of this import duty varies in several countries. In Indonesia, the

⁴⁵ Accessed from <https://www.abf.gov.au/importing-exporting-and-manufacturing/importing/cost-of-importing-goods/charges> on 7 September 2022 at 12:20 WIB.

⁴⁶ Section XVII – Vehicles, aircraft, vessels and associated transport equipment, Chapter 87 – Vehicles other than railway or tramway rolling-stock and parts and accessories thereof. classification/current-tariff/schedule-3/section-xvii/chapter-87#8701 pada tanggal 7 September 2022 at 12.14 WIB.

⁴⁷ Accessed from <https://www.abf.gov.au/tariff-classification-subsite/Pages/TariffConcessionOrders.aspx?ch=87> on 7 September 2022 at 12:39 WIB.

⁴⁸ Accessed from <https://savingpoint.com.au/tariff-concession-order/> on September 11, 2022 at 11.36 am.

⁴⁹ Accessed from <https://connect2india.com/import-duty-for-Truck-Parts> on 7 September 2022 at 13:53 WIB.

⁵⁰ policy of India is quite strict in matters related to import of vehicle. Apart from the heavy custom duty on the automobile, the Exim policy of India also states that the Vehicle should not be manufactured/assembled in India, not been sold, leased or loaned prior to being imported to India; or should have been registered for use in any country prior to being imported to India. It is also mentioned in the Exim policy that for new vehicles being imported into the country should be imported only from the country of manufacture and should comply with Central Motor Vehicles Rules (CMVR), 1989. Accessed from http://www.eximguru.com/exim/guides/how-to-import/ch_16_import_of_cars_vehicle_commerical_and_non_commercial.aspx on 7 September 2022 at 10.13 WIB.

⁵¹ *A car or other motor vehicle imported to Germany from outside the EU is normally subject to a 10% import duty and a 19% import value added tax. (The value-added tax on imports is called import turnover tax (Einfuhrumsatzsteuer). However, if you are moving to Germany with the intent to become a full time resident you can, if you meet certain requirements, bring in your personal car (and household goods) free of duty and import turnover tax. To escape the duty and tax you are be required to prove: that you have actually given up your residence in the non-EU foreign country you are coming from that you are establishing a new residence in Germany that you have been residing outside Germany for at least 12 consecutive months (this can be waived if the reasons for your earlier return are beyond your control).* Diakses from <https://www.howtogermy.com/pages/import-car.html> pada tanggal 7 September 2022 at 09.56 WIB.

import duty on truck imports is 5% of the truck price with HS Code 8701.21.90: Road tractors for semi-trailers only with a new compression-ignition internal combustion piston engine (diesel or semi-diesel).⁵²

Reconstruction of Regulations on Exemption of Import Duties on the Import of Motorized Vehicles in a just manner

Furthermore, to make it easier to understand the reconstructed provisions, the author will describe it in the form of a table below:

Reconstruction table of the requirements for the exemption of import duty on the import of motor vehicles in the context of investment.

No.	Article Construction Before Change	Weaknesses and/or reasons	Ideal reconstruction
1.	Legal Substance Reconstruction		
	<p>Attachment VIII Letter A point 1 BKPM Regulation No. 4/2021 Requirements/ Completeness Of Investment Facilities Submission Documents</p> <p>Import Duty Exemption Facility on imported machines</p> <p>1. Description of the production process is equipped with a flow chart (flow chart);</p> <p>2. Calculation of the production machine capacity that is adjusted to the type of production listed in the proposed Risk-Based Business Licensing business activity data;</p> <p>3. Layout plan of factory machinery or technical drawings of buildings/buildings for industries that produce services;</p> <p>4. Technical data/design/brochure of machine;</p> <p>5. Risk-Based Business Licensing or Letter of Recommendation:</p> <p>a. for integrated oil palm plantation companies with their processing industries, it must be accompanied by a Technical Recommendation from the Minister of Agriculture cq. Director General of Plantations already owned;</p> <p>b. for rubber industry companies into sheet, concentrated latex, crumb rubber, must be equipped with a Technical Recommendation from the Minister of Agriculture cq. Director General of Plantations already owned;</p>	<p>This requirement does not reflect the value of distributive justice from Aristotle and the value of justice as fairness according to John Rawls. This is because this requirement is not in accordance with the concept of exemption from import duty on imported machinery. According to PMK No. 176/2009, the application for exemption from import duty on imported machinery is approved or rejected by the Head of BKPM on behalf of the Minister of Finance. The basis of the existence of this facility is the regulation of the minister of finance which regulates whether a business activity and business actors are eligible to obtain this facility. Aspects that are taken into consideration in granting import duty exemption facilities are i) whether business actors carry out investment activities, ii) whether business actors carry out public transportation service business activities and iii) whether the machine/truck units to be imported have not been produced domestically. , has been produced domestically but has not met the required specifications or has been produced domestically but the amount is not sufficient for industrial needs based on the list of machines stipulated by the Minister of Industry. The risk-based business license mentioned in number 5 consists of NIB, standard certificates and permits. The motorized transportation business for general goods (KBLI 49430) is included in the medium-high risk category, so it is mandatory to have NIB and standard certificates. A standard certificate is a statement and/or proof of compliance with the standards for</p>	<p>Attachment VIII Letter A point 1 BKPM Regulation No. 4/2021 Requirements/ Completeness Of Investment Facilities Submission Documents</p> <p>Import Duty Exemption Facility on imported machines</p> <p>1. Description of the production process is equipped with a flow chart (flow chart);</p> <p>2. Calculation of the production machine capacity that is adjusted to the type of production listed in the proposed Risk-Based Business Licensing business activity data;</p> <p>3. Layout plan of factory machinery or technical drawings of buildings/buildings for industries that produce services;</p> <p>4. Technical data/design/brochure of machine;</p> <p>5. Business Identification Number and Letter of Recommendation:</p> <p>a. for integrated oil palm plantation companies with their processing industries, it must be accompanied by a Technical Recommendation from the Minister of Agriculture cq. Director General of Plantations already owned;</p> <p>b. for rubber industry companies into sheet, concentrated latex, crumb rubber, must be equipped with a Technical Recommendation from the Minister of Agriculture cq.</p>

⁵² Minister of Finance, Minister of Finance Regulation No. 26/PMK.010/22, Op. Cit., Appendix III, Structure of Classification of Goods and Imposition of Import Duties, Tariff Heading/HS Code 8701.21.90, Goods Description: Road tractors for semi-trailers only with compression-ignition internal combustion piston engines (diesel or semi-diesel) (road tractors for semi-trailers with only compression-ignition internal combustion piston engine (diesel or semi-diesel)).

No.	Article Construction Before Change	Weaknesses and/or reasons	Ideal reconstruction
	<p>c. for integrated sugarcane plantation companies with their processing industries must be equipped with a Technical Recommendation from the Minister of Agriculture cq. Director General of Plantations already owned;</p> <p>d. Specifically for mining companies, it is equipped with a mining Business Permit (IUP) or a Mining Risk-Based Business Permit, and for a mining service company, it is equipped with a Mining Services Business Permit (IUJP) or a Risk-Based Business Licensing for Mining Services and a Work Contract with the IUP owner or a Risk-Based Business Permit. Mining;</p> <p>e. The owner of a mining Business Permit (IUP) or a mining Risk-Based Business Licensing as above must have a clean and clear status from the Ministry of Energy and Mineral Resources (ESDM); and/or</p> <p>f. Other related technical ministries.</p>	<p>the implementation of business activities. The fulfillment of the intended standard is based on PP No. 5/2021 and after accessing the OSS system for KBLI 49431, are the following components:</p> <ul style="list-style-type: none"> - Using freight cars, trailers, and/or patch trains; - Meet the technical requirements and roadworthiness as evidenced by proof of a test card; - Operated on the road according to the class of the road traversed; - Availability of loading and unloading facilities; - Equipped with Letter of Goods; - Meet the Minimum Service Standards for Public Goods Transport; - Placing a driver's performance monitoring device that can record the speed of the vehicle and the driver's behavior in operating the vehicle; - Placing a global positioning system device on each Goods Car. - Meet Safety Management Standards; and - Have a cargo transport agreement. <p>The essence of the components of the standard certificate above are the provisions stipulated in the regulations in the transportation sector. The existence of risk-based business licensing provisions is a condition for obtaining import duty exemption facilities on the import of motorized vehicles, causing a wedge between regulations in the investment sector and regulations in the field of transportation. According to the author, this is conceptually unfair, because the slice is related to the rights of business actors to obtain facilities. The nature of the granting of exemption from import duty on the import of motorized vehicles is regulated in regulations in the investment sector and in the financial sector, and has nothing to do with regulations in the transportation sector, so this provision needs to be reconstructed.</p> <p>In the context of progressive law, the risk-based business licensing requirements in this regulation are not in accordance with the legal reflection that is progressive and responsive to the</p>	<p>Director General of Plantations already owned;</p> <p>c. for integrated sugarcane plantation companies with their processing industries must be equipped with a Technical Recommendation from the Minister of Agriculture cq. Director General of Plantations already owned;</p> <p>d. Specifically for mining companies, it is equipped with a mining Business Permit (IUP) or a Mining Risk-Based Business Permit, and for a mining service company, it is equipped with a Mining Services Business Permit (IUJP) or a Risk-Based Business Licensing for Mining Services and a Work Contract with the IUP owner or a Risk-Based Business Permit. Mining;</p> <p>e. The owner of a mining Business Permit (IUP) or a mining Risk-Based Business Licensing as above must have a clean and clear status from the Ministry of Energy and Mineral Resources (ESDM); and/or</p> <p>f. Other related technical ministries.</p>

No.	Article Construction Before Change	Weaknesses and/or reasons	Ideal reconstruction
		rights and interests of business actors in applying for import duty exemption facilities on imported motor vehicles, so they must be modified.	
2.	Legal Culture Reconstruction		
	<p>The promulgation of BKPM Regulation No. 13/2017, BKPM Regulation No. 6/2018, BKPM Regulation No. 5/2019 and BKPM Regulation No. 4/2021 which regulates the procedure for granting import duty exemption facilities on imported motor vehicles.</p> <p>Many people, especially transportation business actors, are not aware of the existence of an import duty exemption facility on the import of motorized vehicles. Most of the business actors who know it think that obtaining this facility requires very complicated requirements and is impossible to fulfill, has a special connection and costs a lot of money. Thus, the existence of an import duty exemption facility on the import of motorized vehicles is not included in the business strategy of public goods transportation business actors.</p>	<p>Regulations regarding the granting of import duty exemption facilities on the import of motorized vehicles continue to change starting from 2017, 2018, 2019 and 2021, the BKPM regulation which regulates the provisions for granting import duty exemption facilities on the import of motor vehicles. In 2017, applications for exemption from import duty on motorized vehicle imports were submitted online through the Electronic Investment Licensing and Information Service System (SPIPISE), and required to attach an expansion principle permit. Then, in 2018 and 2019 applications for exemption from import duty on imported motor vehicles were submitted online through SPIPISE with due observance of the NIB issued by the OSS system, by attaching a business license which was apparently not regulated in the transportation sectoral regulations, in order to obtain a letter from the Director General of Customs and explained that from the start there was no business license for public goods transportation business activities, and with the discretion of the BKPM officer, business actors were only required to attach a NIB. In 2022, applications for exemption from import duties on motorized vehicle imports will be submitted through the OSS RBA System, the application requires a risk-based business permit, which consists of NIB and Standard Certificate. The ever-changing regulations will make it difficult for the public to understand the import duty exemption facility on the import of motorized vehicles. On the other hand, the regulation of the minister of finance that regulates the provision of this facility was enacted in 2009 and amended in 2012 and 2015 which only changed a few articles, so as to provide more certainty in obtaining facilities.</p> <p>The low level of public awareness of the existence of an import duty exemption facility on the import of motorized vehicles is due to the lack of socialization to the</p>	<p>Provisions other than those reconstructed in this study in BKPM Regulation No. 4/2021, as well as the appearance of the RBA OSS System which is a means to apply for facilities so that they are not changed for a minimum period of 10 (ten) years from the date of promulgation of BKPM Regulation No. 4/2021, except to adjust to changes in the regulation of the minister of finance which regulates the import duty exemption facility on the import of machine goods.</p> <p>The government conducts socialization and promotion to the public and provides information and time to understand so that they have awareness that the import duty exemption facility on the import of motorized vehicles can be obtained in a simple way, does not require special connections and does not incur any costs or is free. Thus, it is hoped that the exemption from import duty on the import of motorized vehicles will become one of the aspects considered by business actors in carrying out business strategies to obtain capital goods in the form of trucks.</p>

No.	Article Construction Before Change	Weaknesses and/or reasons	Ideal reconstruction
		<p>public regarding the concept of this investment facility. In theory, the effectiveness of the law, one of the disturbances to law enforcement that comes from the law is because the principles of law enforcement are not followed. The Investment Law states that the principles of investment include the principle of legal certainty and the principle of fair efficiency. What is meant by "principle of legal certainty" is the principle in a state of law that lays down laws and statutory provisions as the basis for every policy and action in the investment sector. What is meant by "principle of just efficiency" is the principle underlying the implementation of investment by prioritizing fair efficiency in an effort to create a fair, conducive and competitive business climate. Placement of risk-based business licenses as a condition for obtaining facilities is irrelevant and not in accordance with the principle of legal certainty because the provision of import duty facilities should not coincide with provisions in the transportation sector, thus causing legal uncertainty. Is investment facilities within the realm of the transportation sector? according to the author the answer is no. In terms of the principle of fair efficiency, the requirement for point 5 will potentially hinder a fair, conducive and competitive business climate. This requirement clearly does not make the acquisition of the rights of business actors to obtain facilities more efficient and simpler, and does not create justice because of the existence of a wedge of regulations as described above.</p> <p>According to Sudjito, social justice for all Indonesian people in Pancasila is not formal justice, namely a justice born of legislation, but justice that is based on its social habitat, namely society. Seeing the knowledge and public opinion as explained above, it is appropriate that the requirements for granting import duty exemption on imported motor vehicles should be made as simple as possible and BKPM must provide knowledge that obtaining facilities is free and easy.</p>	

CONCLUSION

The main background of obtaining the import duty exemption facility on the import of machinery is to provide the best public goods transportation service for the community, namely by using motorized vehicles that are sophisticated, strong and environmentally friendly. The community will benefit by obtaining the provision of public goods transportation services more a) on time, b) reducing the potential for accidents on the highway and c) better vehicle emission expenditures so that they are environmentally friendly. From the business actor's point of view, the import of motorized vehicles will be profitable because it will obtain a vehicle unit that a) is not easily damaged, b) has a longer economic life and c) is more fuel efficient. Therefore, it is necessary to reconstruct the requirements for the exemption of import duty on the import of motorized vehicles in the context of investment, namely in the provisions of Bkpm Regulation No. 4/2021 Requirements/ Completeness of Investment Facility Submission Documents, as well as legal structure and legal culture

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