



Legal Approach to the Sale of Imported Second-Hand Clothing in Stores to Protect Consumers

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ABSTRACT

Certain individuals in Indonesia have started to participate in the trade of selling second-hand clothing imported from nearby nations. For certain individuals, this location serves as a means of making a livelihood by engaging in the trade of purchasing and selling second-hand imported garments. According to Article 47, paragraph (1) of Law Number 7 of 2014 on Trade, it is mandated that all importers must bring in items in a brand new condition. In addition to the implementation of Minister of Trade law Number 40 of 2022, which specifically states and mandates the destruction of imported used apparel that is being sold in Indonesia after the law comes into effect.

INTRODUCTION

Trade in goods and services can have both good and bad effects for members of society. Laws are made to regulate the lives of humans or members of society in order to create order and justice that can be felt by everyone in the society concerned. Fashion *trends* are now increasingly widespread among the public and become an important part of everyday life. Therefore, the trend of buying fashion products continues to grow from time to time. So that causes not a few people who have high fashion wants and needs, one of which is *thrift products*. Linguistically, *thrift* is taken from the word *thrive*, which is to develop or progress. While the words *thrift* itself can be interpreted as saving, which is how to use money and other goods properly and efficiently. It can also be interpreted that *Thrifting* is an activity of buying in order to get a much cheaper product price because the product has been used by others and gets unusual goods on the market (products are not new).

Secondhand clothing refers to garments that have been previously worn or used. Currently, there is a significant influx of imported pre-owned clothing being exchanged in both traditional and modern marketplaces. The trade of secondhand imported clothing is experiencing significant growth due to consumer demand. Consumers are increasingly interested in purchasing imported secondhand clothing from specific countries, such as France, Italy, and America, which are known for their numerous well-established fashion brands. This preference for imported secondhand clothing is driven by the perception that it offers better quality and brand recognition compared to purchasing new local clothing with lesser-known brands. This is because many people are hunting for imported new clothing products to collect some world famous brands and today's fashion styles.

For some time, the issue of free clothing trade in the market was based on various reasons. The circulation of clothes is not new to imports in the world, one of which in Indonesia is a grant for victims of natural disasters or ordinary trade such as auctions of used clothes by artists or just looking for profits at low prices. The circulation of non-new imported clothes to the Indonesian customs area has occurred since decades ago until now, these imported clothes come from neighboring countries such as Singapore, Malaysia, and other countries in Asia. Some Indonesian people began to engage in the business of selling imported non-new clothes from neighboring countries. This is also a place to earn a living for some community members who if able to run the business of buying and selling used imported clothes. The market for second-hand imported clothing is thriving, with prices varying based on the quality of the items being traded. These prices are affordable and accessible to people from all walks of life, in contrast to the higher prices typically found in shopping centers for new clothing. The reason why several persons opt to get vintage imported clothes is to acquire superior garments at affordable prices, therefore circumventing the necessity of spending additional funds on new apparel. The Trade Law of 2014, also known as Law Number 7 of 2014, encompasses a wide range of regulations pertaining to different areas of trade. These areas include Domestic Trade, Foreign Trade, Border Trade, Standardization, Trade through Electronic Systems, Trade

protection and security, empowerment of cooperatives and micro, small and medium enterprises, Export development, International Trade Cooperation, Trade Information System, duties and authorities of the government in the field of Trade, the National Trade Committee, supervision, and investigation. According to Article 47, paragraph (1) of this legislation, it is mandatory for every importer to bring in items that are in a brand new state. Regulation Number 40 of 2022, published by the Minister of Trade, modifies Regulation Number 18 of 2021. This legislation mandates the destruction of non-new imported apparel that is being marketed in Indonesia after the regulation becomes effective.

The prohibition of importing used clothes in Indonesia is based on the findings of bacteria and fungi that can lead to skin diseases, venereal diseases, digestive disorders, and various other infectious diseases. This discovery was made by the Ministry of Trade in collaboration with the Directorate General of Standardization and Consumer Protection, as well as by Customs in several cities in Indonesia. Samples suspected of being used for imports were taken for testing. Furthermore, the examination of twenty-five samples, including adult women's clothes, children's clothing, and adult men's clothing, revealed the presence of substandard imported used clothing. One of the samples was obtained from Pasar Senen, Jakarta. Imported clothing is forbidden from being advertised in Indonesia due to its perceived detrimental impact on the local apparel market.

If the activity of buying and selling clothes is not new imported results are carried out continuously, it is feared that it will have an impact on the environment, especially health, where the waste environment is difficult to decompose in a long enough amount of time. In addition, from a health point of view, it will have an impact on the community in experiencing skin diseases or other diseases caused by bacteria found in newly imported clothing. So in this concern there needs to be a response and policy from the enforcers and government ranks in enforcing regulations prohibiting the sale and purchase of new imported clothes, which until now there are still many and even no sales licenses in the implementation of buying and selling activities of new imported clothes.

LITERATURE REVIEW

Crime reduction or crime reduction efforts are an integral concept of community protection efforts and efforts to achieve social welfare. According to Friedrich Karl von Savigny, as cited by Sudarto, the law is established according to the will and awareness of each individual in society, with the aim of ensuring that the law operates in accordance with the community's aspirations, specifically seeking harmony and peace in communal coexistence.

The individual who perpetrates the offense will have legal liability if they exhibit an error. A person is deemed at fault when, at the moment of engaging in the action, their guilt is assessed based on societal norms.

Talking about law enforcement will always involve humans in it and thus will involve human behavior as well. The law cannot be established by itself, meaning that it is unable to realize on its own the promises and wills contained in the law. Such promises and wills, for example, are to give a person the right to give protection to a person to impose a crime on someone who meets certain

conditions and so on. Law enforcement is often conducted by people, since it is focused on regulating and addressing human behavior. Therefore, it is crucial to have a deep understanding of human behavior in order to effectively carry out law enforcement activities.

The precise and explicit definition and notion of customers may be seen in the Consumer Protection Law (UU PK). As to Article 1 point 2 of the PK Law, consumers are individuals who use goods and/or services within the community, for their personal benefit, the benefit of their family, others, or other living beings, and not for commercial purposes. Moreover, the PK Law, particularly in Article 1 letter o of Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, offers a precise definition of a consumer: "Any person or organization that uses goods and/or services, either for personal profit or for the advantage of others." The primary objective of law is to protect and uphold the welfare and rights of individuals. To safeguard human interests, it is imperative to enforce laws. The enforcement of the law can go smoothly and amicably, but it can also arise as a result of legal infractions. In this scenario, it is imperative to enforce the legislation that has been breached. Law enforcement is the means by which the law is actualized. When upholding the law, three essential factors are always taken into account: legal certainty (*rechtssicherheit*), expediency (*zweckmässigkeit*), and fairness (*gerechtigkeit*). In business, producers are always required to produce in order to get as much profit as possible (*profit oriented*) so that to reach a point of equilibrium (*equilibrium*), producers hold efficiency in such a way. Therefore, sometimes moral hazard, ethics may be set aside in order to pursue these benefits to the detriment of consumers..

METHODOLOGY

This research falls under the category of non-doctrinal research. Non-doctrinal research refers to research that directly examines the practical reality in a certain subject, focusing on the study of how legislation operates in society. The assessment of the role of law in society may be determined by evaluating the degree of efficacy of the legislation. The author employs a sociological juridical method, doing direct field research on the subject of study. The nature of the data may be discerned from its source, allowing for differentiation between data acquired directly from the community and data gathered from library books. This study encompasses both primary and secondary data. This study primarily emphasizes the utilization of secondary data, with primary data playing a supplementary role. Once the data has been acquired, it undergoes data processing, which involves the following steps: Data identification, data categorization, and data systematization Data analysis is conducted once data collection and processing have been completed. The qualitative analysis of the data in this study involves providing explanations and descriptions in easily comprehensible sentences. This analysis aims to interpret the data and draw conclusions regarding the efforts to eliminate the sale of imported new clothes in stores, with the goal of protecting consumers in the Malang regency area. The purpose is to obtain a clear understanding of the problem being studied.

RESEARCH RESULT AND DISCUSSION

The rise of clothing trade is not new from imported imports not only makes a scene in Malang Regency, but also occurs in several big cities such as Cirebon, Yogyakarta, Denpasar, Surabaya and other cities. The excitement of the trade in non-new imported clothes does not discourage traders from trading, even adding many fans of imported non-new clothes considering that the prices offered are very cheap and buyers also do not need to think about knowing the origin of the imported non-new clothes. Sellers of clothes not new imported from imports in Malang Regency are very large and spread not only scattered in several shopping centers such as Tumpang Market, Market, Turen Market, Gondanglegi Market, Bululawang Market, and several other regional places spread across Malang Regency. The operation of the used imported clothing business began in the 1960s and the number of consumers is getting higher from year to year. The distribution of used imported clothes is imported from several countries, such as Malaysia, Singapore, Japan and Korea.

Rachmat Gobel when he served as Minister of Trade had banned the trade of used imported clothes based on Permendag Number 51 / M-DAG / 7/2015 on the grounds that it was dangerous for health because the imported clothes were not newly imported bacteria were found and the trade killed the domestic industry. Based on Point (a) of Permendag Number 51 / MDAG / 7/2015 which reads "new clothes imported from imports have the potential to endanger human health so that they are not safe for use and use by the community", the government prohibits traders from continuing the business of selling imported new clothes because bacteria that are harmful to health are found, one of which is the discovery of monogtigonones bacteria in used imported clothes. Another problem that is difficult for the government to overcome to ban the trade of clothing not new imports is the uncontrolled entry of goods because it passes through small ports on several islands illegally and all circles of society are easy to reach.

At the level theoretical and practical standpoint, it is the responsibility of the state to ensure the highest degree of protection for its residents. This includes provisions for education, healthcare, and addressing socio-economic challenges faced by the population. Regarding the trade of second-hand imported clothing, the roles of the state and the government appear ambiguous, resembling two opposing sides of a coin. On one hand, the state is obligated to safeguard the well-being of its citizens by addressing the potential health hazards associated with used imported clothing. However, it is also incumbent upon the state and government to safeguard and promote the well-being of its citizens within the socio-economic framework. In this instance, the relocation of the Malang Regency Industry and Trade Office has effectively fulfilled its responsibilities and roles in conducting evaluation and administration. Specifically, it has collected data on the trade of second-hand imported clothing, which is predominantly conducted by residents who operate shops selling such items in the Malang Regency region. However, the problem persists without any measures taken to address or eliminate it. Furthermore, it is important to note that according to Regulation 40 of 2022 issued by the Minister of Trade of the

Republic of Indonesia, there is a specific category in Annex II, namely Category IV, which prohibits the importation of used bags, sacks, and clothes that are not newly imported from abroad. These goods are considered used items that have been previously owned and may have been used repeatedly in daily activities, posing potential health risks.

At this time there is a rampant import of clothing not new imported in Indonesia. There are many pros and cons regarding the problem of the rampant sale of imported non-new clothes that are sold in shopping centers and even make shops. Import refers to the process of bringing goods into the customs area of the Unitary State of the Republic of Indonesia ("NKRI"), which includes land, water, air space, certain areas in the Exclusive Economic Zone and continental shelf. The Customs Law is applicable in these areas. Import may be defined as the introduction of commodities from other countries into the territory of the Republic of Indonesia, which is beyond the jurisdiction of the Unitary State of the Republic of Indonesia (NKRI).

Recently, President Joko Widodo (Jokowi) expressed disapproval of the practice of purchasing foreign garments, also known as *Thriftling*, due to its negative impact on the native textile sector. When the garments are not brand new, imported items are introduced into the Indonesian market. As a consequence, the prices of these products are significantly lower, making it difficult for native products to compete. In 2022, the Central Statistics Agency (BPS) recorded that Indonesia imported 26.22 tons of used apparel, valued at US\$ 272,146. The current quantity has experienced a significant growth of 230.40% compared to the previous year's figure of 7.94 tons, which had a value of US \$44,136.

Upon examining the pattern, it is evident that apparel imports in Indonesia have seen fluctuations over the previous decade. In 2019, the imports of products classified under HS code 63090000 reached a volume of 417.73 tons and a value of US \$6.08 million, making it the highest recorded import. In 2019, the amount and worth of newly imported apparel entering Indonesia reached its highest point. Nevertheless, the number significantly decreased in 2020 due to the onset of the Covid-19 epidemic. Subsequently, imports have remained at a relatively modest level, as seen in the data. Upon closer examination, these figures provide as evidence that products classified under the HS code 63090000 have a substantial presence in the Indonesian market, hence hindering local industries from fully capitalizing on their home market potential.

Regarding the issue of used imported clothing, the government as the State organizer made arrangements, namely the issuance of Law Number 7 of 2014 concerning Trade, which is expressly mentioned in Article 47 by stating that "importers are obliged to import goods in a new state". In addition, the government reaffirmed it with the issuance of Kepmenperindag RI Number 230 / MPP / Kep / 7/1977 concerning Goods Regulated by its Import Trade Administration, and Kepmenperindag RI Number 642 / MPP / Kep / 9/2002 concerning Amendments to Appendix I of Kepmenperindag RI Number 230 / MPP / Kep / 7/1977 concerning Goods Regulated by its Import Trade Administration, in which it states that "it is prohibited to import new and used gombal goods". However, there is regulatory ambiguity between the above

regulations when compared to Article 8 paragraph 2 of Law Number 8 of 1999 concerning Consumer Protection which states that "business actors are prohibited from trading damaged, defective, used and contaminated goods without providing complete and correct information on the goods in question". The regulation's ambiguity is evident in the provisions of Article 8 Paragraph 2 of Law Number 8 of 1999 on Consumer Protection, which appears to permit the selling of second-hand imported clothing. Undoubtedly, the practice of trading clothes that are not new, including imported items, has been in existence prior to the implementation of regulations in the Consumer Protection Law. This indicates that the trading of damaged, defective, and used goods is permissible as long as there is transparent information provided to consumers, enabling them to be aware of the quality and quantity of the goods they intend to purchase. The disagreement between these rules arises from the lack of consistency between the validity of the Law and the Trade Law, namely between Article 8 of the Law and Article 47 of the Trade Law.

The disparity between laws and regulations, as previously said, unequivocally separates the law from its primary objective, which is to establish and implement regulations in society to promote the well-being of the community and avoid legal ambiguity. Paradoxically, the provisions in the Consumer Protection Law are becoming inadequate in effectively providing comprehensive legal protection. This is due to the rapid growth of second-hand trade conducted by the public, disregarding the relevant terms and regulations, particularly the provision of information to consumers about the goods being traded. However, the current situation reveals that the business environment is characterized by intense and detrimental competition, where many entrepreneurs prioritize maximizing profits without considering the quality of their products or services. This state is undeniably deleterious to customers' financial well-being, particularly in terms of their health. The government's objective in prohibiting the sale of used imported apparel is twofold: to safeguard consumers and to provide a favorable and transparent business environment in alignment with the evolution of the commercial sphere. From an industrial perspective, the importation of second-hand clothes from other countries would undoubtedly have a significant impact on the domestic market, particularly on the local and national small-scale garment and textile business, which now has the majority market share. The purposes of importation include meeting the demand for items that cannot be met by domestic sources, promoting the national economy, and increasing the use and trade of domestic products. If imports are determined to be destructive or hurtful to national interests and domestic production, the government takes action to regulate international commerce through the use of company licenses, approvals, standards, bans, and limitations. Indonesians commonly refer to imported garments as "*Thrifting*." This term, although not conventional in English, stems from the noun "thrift," which denotes prudent financial management or, in other words, the act of being thrifty.

Thrifting is a pursuit that involves searching for and purchasing pre-owned items. Thrift stores mostly focus on selling clothes items as a way to counteract

the over consumption of quick fashion. The primary objective of individuals engaged in *Thrifting* is to achieve cost savings. Thrift goods are typically priced significantly lower than their regular counterparts, including branded items from overseas or limited edition products that are no longer in production.

As a general rule, the Indonesian government does not forbid thrift stores or the sale of used goods, so long as the products offered do not include banned items, such as used foreign clothing. When looking at the KBLI code 47742 for retail trade in non-newly imported apparel, footwear, and accessories, this becomes clear. KBLI group number 47742 encompasses the retail trade of footwear, apparel, and accessories, excluding freshly imported items such as pre-loved garments, trousers, jackets, scarves, and headgear. Thrift stores operating domestically are not in violation of any laws, but neither is the importation of pre-owned clothing nor items that have been previously worn overseas.

Quoted in [KemenKopUKM Press Release 81/Press/SM.3.1/IV/2023](#), “the import of imported non-new clothing is prohibited by the Indonesian government, because it is considered detrimental and harmful to the domestic textile industry and has a real impact on Small and Medium Enterprises (SMEs)”. This triggers the economy of the local community so that it is necessary to hold enforcement on traders who sell clothes that are not new to the import of these imported products.

Based on the results of the interview that criminal provisions that can be used as a source of legal basis to convict the managers of clothing stores not newly imported from imported products, namely the prohibition of imported non-new clothing from imported products, regulated in Law Number 7 of 2014 concerning Trade, explained in Article 112 paragraph 2 of Law Number 7 of 2014 concerning Trade, it is stated that for importers who import goods designated as goods that are prohibited (including imported non-new clothes) to be imported can be sanctioned in the form of imprisonment for a maximum of 5 years and or a fine of IDR 5 billion. However, in addition to imprisonment and/or fines, any business actor who does not fulfill the Business License may be subject to administrative sanctions in the form of:

- a. “written reprimand;
- b. withdrawal of Goods from Distribution;
- c. temporary suspension of business activities;
- d. Warehouse closure;
- e. fine; and/or
- f. revocation of Business License.”

Then, once they're inside Indonesian territory, things that aren't allowed to be imported are declared state property and destroyed since they're useless, unusable, ungranted, and economically worthless. Another provision that can be utilized as a legal foundation for financing the administration of clothing stores that do not sell newly imported products is Permendag RI Number 40 of 2022. This regulation amends the Regulation of the Minister of Trade Number 18 of 2021, which pertains to the prohibition of exporting certain goods and importing prohibited goods. In annex II, number IV of this regulation, article 591 of Law

Number 1 of 2023 is referenced. The Job Creation Law can serve as a legal foundation for penalizing those involved in the trafficking of imported apparel, in accordance with the Consumer Protection and Health Law.

If we exclusively utilize a portion of crime statistics, then the efficacy of the criminal justice system will be evaluated solely on the quantity of crimes that come to the attention of law enforcement agencies. Some cases can be resolved by the police, then forwarded by the procuratorate to the court, where the defendant is found guilty and subsequently convicted during the court proceedings. Indeed, the information and resolutions obtained through the criminal justice system only represent a small portion of the overall issue. Numerous incidents persist unnoticed, unrecorded ("crimes without victims"), and hence unaddressed.

CONCLUSIONS AND RECOMMENDATIONS

The efforts of the Malang Regency Industry and Trade Office in preventing the trade of clothing are not new imported from stores in Malang Regency, which begins with collecting data gradually. Disperindag admitted that until now there are no clear rules for the sale of imported new clothing. So that the Disperindag has not been able to do much. Disperindag also explained that what is prohibited is the import of non-new clothes from imported imports. As for its sale, there is no prohibition. That is why, currently what Disperindag does is only limited to collecting data. Except in Malang Regency there are importers, and there are activities to import new clothes from imports, then his party can immediately take action. That criminal provisions that can be used as a source of legal basis to convict the managers of clothing stores not new imported imported products are:

- a. Law Number 7 of 2014 concerning Trade, explained in Article 112 paragraph 2 that importers who import goods that are designated as prohibited goods (including non-new clothes imported from imports) to be imported can be sanctioned in the form of imprisonment for a maximum of 5 years and or a fine of Rp 5 billion. Furthermore, apart from incarceration and/or monetary penalties, any individual involved in business activities who fails to comply with the Business License requirements may face administrative penalties such as: written admonishment; removal of goods from circulation; temporary cessation of business operations; closure of warehouses; fines; and/or revocation of the Business License.
- b. Other provisions that can be used in the legal basis to fund the management of clothing stores not new imported imported from imports, Permendag RI Number 40 of 2022 concerning Amendments to the Regulation of the Minister of Trade Number 18 of 2021 concerning Prohibited Export Goods and Prohibited Import Goods,
- c. The Job Creation Law can also be used as a legal basis for the punishment of traffickers in non-imported clothing.
- d. Consumer Protection and
- e. Health Act

ADVANCED RESEARCH

Writing this essay let the researcher recognize, given his own knowledge and skills limits, that there were still numerous mistakes in language, style, and presenting structure. Consequently, the researchers are hoping for helpful comments and recommendations from a variety of sources so that they can finish their study.

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