

Analysis of Cross-Border Trade Between Countries (Normative Study Between Indonesia and Countries with Direct Land Borders)

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ABSTRACT

Based on Government Regulation Number 34 Year of 2019 on Border Trade, economic transactions in cross-border trade are permitted with certain restrictions. These limitations include the type of goods, the quantity of purchases, and the trading system of trade goods. The types and maximum purchase limits are regulated in the bilateral Border Trade Agreement (BTA) and Border Crossing Agreement (BCA). In practice, transactions exceed the limits of transaction value specified in bilateral agreements and governing laws and regulations, causing losses to the state. There are two purposes of this research. The first is to explore and analyze the factors causing irregularities in cross-border trade transactions and the second is to explore the efforts to minimize them. This research is normative legal research through library research by tracing secondary data in the form of primary legal materials and secondary legal materials, using documentation methods and instruments in the form of document studies. Then, data were analyzed using qualitative analysis. There are two results of this research. The first is four factors that cause deviations in cross-border trade transactions, including economic factors, infrastructure factors, and juridical factors. The second is the efforts that can be made to minimize deviations in cross-border trade transactions including preemptive efforts in the form of instilling good values that are internalized into a person, preventive efforts in the form of preventive actions, and repressive efforts in the form of law enforcement actions.

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1. INTRODUCTION

The Unitary State of the Republic of Indonesia is an archipelago characterized by the archipelago, meaning that the territory of Indonesia as an archipelago borders several neighboring countries. The border areas include land, sea and air. Based on Article 6 of

Law No. 43/2008 on State Territory, Indonesia's land borders are directly adjacent to Malaysia, Papua New Gunie (PNG), and Timor Leste. Geographically, these border areas are spread across Kalimantan Island, Papua Island, and East Nusa Tenggara (NTT) Island. Each border area has different

characteristics. Juridically, Indonesia is an independent country that has sovereignty and authority to manage and utilize natural conditions as much as possible for the welfare and prosperity of the Indonesian people. In connection with its condition as an archipelagic state, it is important to emphasize the boundaries of land territory, inland water areas, archipelagic water areas, and territorial sea areas. The law stipulates that a state border is a boundary line that separates the sovereignty of a state based on international law. The meaning of borders has two meanings, as *bonderies* and *frontiers*. In the context of boundaries, borders are the dividing lines between countries. As for the frontier context, the border refers more to the path (zone) that stretches and separates the two regions of the country (Tangkilisan, 2013). Further arrangements regarding borders between countries are regulated in bilateral agreements. Bilateral agreements also stipulate certain points for the construction and placement of cross-border posts between countries.

Based on Article 1 point 5 of Government Regulation Number 34 of 2019 concerning Border Trade, a cross-border post is a designated place at the border of a state territory to notify and complete customs, immigration, quarantine, and security obligations for goods carried by border crossers. Border crossers are residents who live or reside in the state border area and have an identity card issued by an authorized agency and who travel across borders in the border area through a cross-border post. Provisions

This provision is regulated in Article 1 point 2 of Government Regulation Number 34 of 2019 concerning Border Trade. It has been stated that each border area has a different character from one another. However, overall, they show the same phenomenon, namely direct and intensive interaction between Indonesian citizens and citizens of neighboring countries. The interaction is in the form of socio-cultural relations and modern economic activities, such as border trade. According to Article 1 point 2 of Government Regulation No.

34/2019, border trade is trade conducted by Indonesian citizens residing in Indonesia's border areas with residents of neighboring countries to meet their daily needs. Such trade is permitted by the government as stipulated in Article 2 of Government Regulation No 34/2019. The article stipulates that every Indonesian citizen who resides in the territory of Indonesia that borders directly with other countries can conduct border trade with residents of other countries who reside in the border area. Such border trade can only be carried out in land border and sea border areas as stipulated in bilateral agreements between the two countries. Border trade transactions carried out must go through cross-border posts between countries and must be carried out in accordance with the provisions outlined in the laws and regulations as stipulated in Article 8 of Government Regulation Number 34 of 2019 concerning Border Trade.

However, in practice there are still loopholes for irregularities in conducting border trade transactions, for example, cross-border trade activities that exceed the transaction value limit, but do not pay import fees. The amount of transaction value can be seen based on the various types of goods spent by border crossers. Supported by his research, according to Mamiloto (2017), incoming goods include canned food and drinks, household goods, electronic goods, fertilizer, and sugar). If this event is not regulated firmly and clearly, it can lead to irregularities in its utilization. This needs to be resolved so as not to cause further problems, so it is interesting and relevant to study the analysis of Indonesia's Cross-Border Trade with countries that have direct land borders.

2. LITERATURE REVIEW

Indonesia is a state of law and is obliged to uphold the law, Indonesia is also an archipelago that should ensure equitable prosperity for all its citizens by the ideals of the nation, namely promoting general welfare. The 1945 Constitution of the Republic of Indonesia guarantees that everyone is entitled to ease and special treatment to obtain the same opportunities and benefits to

achieve equality and justice as outlined in Article 28H Paragraph (2). One of the efforts to guarantee convenience and special treatment so that people obtain the same opportunities and benefits is to provide facilities that facilitate people in certain areas so that their welfare increases. These efforts include making bilateral agreements between Indonesia and directly bordering countries to fulfill the welfare of the community, especially Indonesian citizens who live in areas directly bordering a country. Grammatically, the term trade in KBBI is defined as work related to selling and buying goods for profit, while border means the area or path of separation between political units of the state. Based on the meaning of the two terms, the phrase border trade can be interpreted as buying and selling activities to gain profit from transactions in border areas separated by border points that have been determined by the government.

One of the agreements on cross-border trade between Indonesia and bordering countries is outlined in the bilateral agreement between Indonesia and Malaysia that established 16 exit-entry points through the Border Crossing Agreement (BCA) in January 2006. Border areas are strategic areas, both economically and in terms of defense and security according to Pongoh (2022) in his research. Economically, border areas function as border trade areas between regions through border trade mechanisms as well as export and import activities. Export and import activities. Article 1 of Law No. 7/2014 on Trade stipulates that trade is an order of activities related to transactions of goods and or services within the country and across national borders to transfer rights to goods and or services to obtain rewards or compensation and is carried out based on fair and healthy principles.

Border trade can only be conducted by Indonesian citizens and residents of other countries residing in border areas. Border trade areas only include land border and sea border areas as stipulated in Government Regulation Number 34 of 2019 concerning Border Trade. Article 55 paragraphs (1), (2), and (3) of Law Number 7 Year 2014 on Trade

outlines the procedures for implementing border trade. Every citizen can conduct border trade activities with residents of other countries who live in the land and sea borders that have been determined by the government. Border trade must be carried out based on bilateral agreements and laws and regulations.

The legal basis for border trade can be outlined in bilateral agreements, such as the Border Crossing Agreement between bordering countries. Indonesia shares land borders with three countries, namely Malaysia, Timor Leste and Papua New Guinea. In relation to border trade, there may be gaps that can have positive and negative impacts. The BCA agreement between countries regulates the provision of Cross Border Posts (PLBN) at direct land border points. According to Article 1 Point 5 of Government Regulation Number 34 of 2019, a cross-border post is a designated place at the border of the state territory to notify and complete customs, immigration, quarantine, and security obligations for goods carried by border crossers.

The provision of border facilities in the form of PLBN is followed by a policy of issuing Cross-Border Identity Cards or commonly referred to as (KILB/KLB). KILB/KLB is a card issued by the customs office in charge of the cross-border checkpoint (PPLB) given to border crossers after certain requirements are met. The purpose of issuing KILB according to Article 6 of PP No. 34 of 2019 is so that commodity sale and purchase transactions can be carried out to meet the needs of daily life. The determination of the types of goods that become commodities in border trade is regulated in a bilateral agreement between the bordering countries. Procedure for utilization KILB, utilization procedures for PLBN border crossers are also specifically regulated. PLBN border crossers are required to show immigration documents and customs documents.

3. RESEARCH METHODS

3.1 Nature and Type of Research

This type of research is normative juridical legal research. The nature of the research is library research or library research. Normative juridical legal research is legal research that primarily examines secondary data according to Zainuddin (2023). Secondary data is data obtained by literature study. Done by collecting and examining or tracing documents and literature that can provide information or information needed by the author.

3.2 Research Materials

The research material used in this research is secondary data. Secondary data is data obtained by means of a literature study of legal materials related to research problems. The legal materials used in this research include:

3.2.1 Primary legal materials

Primary legal materials are authoritative legal materials, meaning they have authority. Authoritative legal materials are binding in content, while those that include binding primary legal materials are legislation, official records, or minutes in making legislation and judicial decisions. Primary legal materials are authoritative legal materials, meaning they have authority according to Marzuki (2003). Primary legal materials in this research are:

- 1) Kitab Undang-Undang Hukum Perdata,
- 2) Undang-Undang No 43 Tahun 2008,
- 3) Undang-Undang No 7 Tahun 2014 Tentang Perdagangan,
- 4) Peraturan Pemerintah No 34 Tahun 2019 tentang Perdagangan Perbatasan,
- 5) PERMENKEU no 80/PMK.04/2019 tentang impor dan ekspor barang yang dibawa oleh pelintas batas dan pemberian pembebasan bea masuk barang yang dibawa oleh pelintas batas,
- 6) PERMENKEU No 89/PMK.04/2007 tentang impor barang pribadi penumpang, awak sarana pengangkut, pelintas batas dan barang kiriman.

3.2.2 Secondary legal materials

Secondary legal materials are legal materials that provide explanations of primary legal materials, such as draft laws, research results, works from legal circles, and so on. According to Soekanto and Mamudji

(2005) secondary legal materials are legal materials that provide explanations of primary legal materials, such as draft laws, research results, works from legal circles and so on. Secondary legal materials used in this research are:

- 1) Books on Trade,
- 2) Books on International Trade Law,
- 3) Research results related to cross-border trade between countries,
- 4) Legal articles and websites related to the issues studied.

3.3 Tertiary legal materials

Tertiary legal materials are materials that provide instructions and explanations for primary and secondary legal materials, for example, dictionaries, encyclopedias, cumulative indexes, and so on. The tertiary legal materials used in this research are the Big Indonesian Dictionary (KBBI) and Black's Law Dictionary.

Data collection in this research was carried out using the literature study method and the use of literature. The data that has been obtained by the literature study method and the use of literature, then analyzed by qualitative analysis. Qualitative analysis, among others, is carried out through categorization based on the problems studied and the data collected (Sumardjono, 2014, p. 32). The data analysis technique used is "content analysis" or content study. The content analysis technique is integrative and focuses more conceptually on finding, identifying, classifying data, and analyzing documents to understand their meaning (Bungin, 2015, p. 84).

4. RESULTS AND DISCUSSION

4.1 Factors causing irregularities in cross-border trade practices between countries

Indonesian citizens residing in Indonesia's border areas with residents of neighboring countries can conduct border trade activities to meet their daily needs, especially for areas with direct land borders. Such trading activities must be carried out based on bilateral agreements by laws and regulations. According to Article 4 of Government Regulation Number 34 of 2019,

transactions to purchase goods from outside the customs area in the context of border trade must have border-crossing immigration documents issued by the relevant immigration office and border-crossing customs documents issued by the relevant regional supervisory customs office.

One of the countries with border areas and areas outside customs that conduct border trade transactions with Indonesia is PNG. In accordance with the provisions of PP No. 34 of 2019, the two bordering countries make an agreement in a bilateral agreement relating to cross-border trade. The bilateral agreement between Indonesia and PNG is outlined in the Basic Agreement Between the Government of Indonesia and The Government of the Independent State of Papua New Guinea on Border Agreement 2018. The basic agreement between the Government of the Republic of Indonesia and the Government of PNG on Border Arrangements stipulates border trade activities including trade in border areas. In addition, the Government of Indonesia represented by the Minister of Trade has renewed the Border Trade Agreement between the Government of Indonesia and the Government of Malaysia as outlined in the Indonesia-Malaysia Border Trade Agreement or BTA in 2023.

The bilateral agreement also includes an agreement on the construction of cross-border posts as access to conduct border activities. Based on data from the National Border Management Agency of the Republic of Indonesia (BNPP RI) in 2024, there are cross-border posts agreed in bilateral agreements between Indonesia and PNG and between Indonesia and Malaysia. According to Article 1 point 5 of PP No 34/2019, border areas must have cross-border posts. A cross-border post is a designated place at the state border to manage and settle customs, immigration, quarantine and security obligations for goods carried by border crossers.

Data on the bps.go.id page shows that several direct land border areas serve as border access. Direct border areas between Indonesia and PNG include the districts of

Skouw, Arso, Waris, Senggi, Ubrub, East Kiwirok, Oksibil, Waropko, Midityanah, Bupul, Muting, Sota, and Merauke. In these areas, several cross-border posts were built such as PLBN Skouw, PBLN Sota, and PLBN Yetetkun which connects the door between Indonesia and PNG. The direct land border area between Indonesia and Malaysia includes the border areas of East Kalimantan Province (Kaltim) and North Kalimantan Province (Kaltara) where three provinces have been built Cross State Border Posts. There are three PLBNs in East Kalimantan, namely Entikong PLBN, Badau PLBN, and Aruk PLBN. North Kalimantan also has three PLBNs, namely Labang PBLN, Sei Menggaris PLBN, and Sei Pancang-Sebatik PLBN. The direct border area in NTT with Timor Leste has three PLBN including PLBN Motaaain, PLBN Motamassin, and PLBN Wini. Each border area around the cross-border post area has superior commodities that become the object of cross-border community buying and selling. Looking at the data on the website of the National Border Management Agency of the Republic of Indonesia (BNPP.go.id), each region has superior commodities to support border economic growth. The results of research by Izzudin, et al (2022) show that there are superior commodities from Papua Province in the border area between Papua and PNG including sweet potatoes, coffee, cocoa, red fruit, and pork. Superior commodities in West Kalimantan include oranges, pepper, chilies, beans, tomatoes, eggplants, long beans, cucumbers, and uncak king rice. North Kalimantan also has superior commodities such as durian, red ginger, kitchen lemongrass, and adan rice. Meanwhile, the Riau Islands bordering West Kalimantan Province and Malaysia have superior commodities in the form of pineapples, coconuts, cloves, and fresh vegetables. The border area between NTT and Timor Leste has superior commodities in the form of shallots, beef, and pork. Ideally, agricultural and livestock products located in these border areas should be one of the commodities traded in cross-border trade.

According to Article 6 paragraph (1) of PP No. 34 of 2019, the types of goods that can

be the object of border trade transactions are only goods needed to fulfill daily needs with a predetermined maximum value for each transaction. The types of goods that can be traded in border trade are the types of goods that are not prohibited by their respective governments or whose trade procedures are regulated in bilateral agreements. The definition of goods according to Permendag No. 51 of 2020 concerning Inspection and Supervision of the Import Trade System after passing through the Customs Area (Post Border) is every object, both tangible and intangible, both movable and immovable, both consumable and inexhaustible, and can be traded, used, used, or utilized by consumers or business actors. According to Timisela (2015), the category of prohibited goods in Indonesia includes products that do not comply with Indonesian national standards (SNI) or are not certified by the Food and Drug Monitoring Center (POM), classified as types of narcotics and drugs, illegal weapons, protected plants, and animals. In addition to prohibited items, there are specific regulations regarding rice imports. The act of importing rice according to MOT Regulation No. 01/2018 on Provisions for the Export and Import of Rice can only be carried out for public use by Bulog. In addition to the provisions in laws and regulations and bilateral agreements, other types of goods can also be the object of buying and selling in border trade activities.

Cross-border trade interactions outside the customs area are required to show a Cross-Border Identity Card or KILB. Every Indonesian citizen is required to notify goods brought into the customs area customs and excise officials at the Cross Border Post. Timisela, S. G. (2015) argues that the bilateral agreement between Indonesia and PNG sets the maximum value of the agreed transaction at USD 300. This means that if the value of buying and selling transactions is below or equal to USD 300, it is considered a cross-border transaction, while transaction values of more than USD 300, it is classified as normal trade or import trade.

The maximum value limit of border trade transactions between Indonesia and

Malaysia is also outlined in the bilateral agreement. Mamiloto (2017) argues that the maximum transaction value agreed upon is MYR 600 (six hundred Malaysian ringgit) per person for a period of 1 (one) month if it crosses the land border; or equivalent to 2,092,500 rupiahs. If the transaction value exceeds the maximum limit specified in the bilateral agreement, the excess value is subject to import duty and import tax, and the trader is required to report the import of goods to the customs and excise officers at the relevant regional Cross Border Post. However, according to Aula et al (2019), border communities, especially Badau communities who work as traders, feel disadvantaged by this policy, because the maximum value limit is too small to shop for merchandise. The limitation of the maximum value of border trade transactions has caused traders in the Badau area to take deviant actions by renting out KILB. deviant actions by renting out KILB to the surrounding community. The rental of KILB is done to avoid the collection of additional taxes on border transactions that exceed the set value. This also happens in the border area between Indonesia and Malaysia, especially at PLBN Entikong. According to Hermawan (2018), many people rent their KILB to middlemen in exchange for IDR 100,000 per month.

According to Article 1548 of the Civil Code, leasing is an agreement in which one party binds itself to the other party for the enjoyment of an item, during a certain time. The enjoyment of an item is followed by the obligation to pay a certain price by one party, while the other party is entitled to payment. An agreement or contract should be carried out in good faith by the provisions of Article 1338 paragraph (3) of the Civil Code. Sianipar (2021) argues that an agreement that does not use a lawful cause or is made with a false or prohibited cause, has no legal force. Referring to the provisions of good faith and lawful cause, the act of leasing KILB to circumvent customs to avoid additional tax on imported goods from bordering countries can be said that the leasing act is not carried out in good faith. In addition to not being carried out in good faith, such actions can certainly cause

losses to the state, in the form of tax smuggling which can increasingly affect the receipt of international trade tax revenue. It is juridically stipulated that state tax revenues are obtained from domestic tax revenues and international trade.

Domestic tax revenues are obtained from income tax revenues, added tax revenues, value-added tax on goods and services, sales tax on luxury goods, land and building tax revenues, excise revenues, and other tax revenues. Rufaidah et al (2023) suggest that the largest revenue from international trade is obtained from import and sales taxes. The imposition of high import taxes is intended to reduce the tendency of people to import goods categorized as luxury while protecting the domestic industry and maintaining the stability of the balance of payments.

4.1.1 Economic factors

The influence of the economic conditions of people living in border areas is one of the reasons behind the occurrence of irregularities. Border areas have an image as underdeveloped and isolated border areas of the country. Purnamasari et al (2016) in their research found that this view arose due to the low level of welfare of the people of the border region and the far access to the central government area. Beni, et al (2021) revealed that there are quite a lot of people listed in the list of recipients of the Family Hope Program social assistance in the border area between Jagoi Babang and Serikin. Another study conducted by Suwartiningsih (2018) shows that the socioeconomic level and welfare of the Jagoi Babang area are still low compared to residents in the Serawak Malaysia area.

Low socio-economic conditions can certainly affect the economic behavior of the community so the background of high cross-border activities. The majority of jobs in the border area are in the plantation, livestock, and trade sectors. The limited availability of job opportunities can result in many people seeking work in cross-border areas. This supports the community living in the border area to fulfill their daily needs by shopping across the border. The results of Soleh's research (2015) show that the people of

Sebatik Island tend to prefer Malaysian-produced goods because they are economically cheaper and easier to obtain. The facts above show that economic factors are very influential on border trade activities.

4.1.2 Infrastructure factors

Land border areas generally have economic potential based on land functions, and regional conservation provisions and rely on farming, plantation, and livestock businesses as the main livelihoods of the community. Marketing of crops from land areas will certainly be more difficult compared to sea border areas. Access to production and marketing locations in urban areas requires more effort, as well as purchasing activities to meet daily needs.

Facilities and infrastructure are important in border trade activities. The availability of infrastructure, electricity, and trade facilities are the focus of cross-border trade. Mubarak (2021) argues that infrastructure improvement in the form of road construction is a supporting factor. Ease of access to more developed urban areas is needed. The cost of transporting goods with easy road access to areas or districts at the border is certainly more economical. Johannes (2019) said that the development of the Entikong border area was only felt by the Entikong community in the center of the sub-district.

The communities in Suruh Sembawang Village, Palapasang Village, and Nekan Village, which are far away, still experience transportation limitations. This means that the development of infrastructure is needed evenly from village to city. Ease of access is important to attract people to do buying and selling activities. According to Tirtayasa and Daulay (2021) the affordability of location and ease of access contribute to the background of economic activity, especially buying and selling.

4.1.3 Juridical factors

In addition to economic factors and facilities and infrastructure that are less supportive of healthy border trade transactions, juridical factors also determine community behavior. Legislation and bilateral agreements should serve as controls

in border trade interactions. According to Article 4 of the bilateral agreement between Indonesia and PNG, it has been agreed that each party will recognize and allow traditional residents and border residents to conduct cross-border social relations. It is specified in the bilateral agreement that citizens of each country who by birth or marriage live in the border area are allowed to cross the border at traditional activities within the Border Area.

Traditional activities are activities in the form of ceremonies including marriage, gardening, hunting, land use, water use, and traditional trade at the border. The implementation of Article 4 of the bilateral agreement between Indonesia and PNG must be done by exchanging immigration documents to maintain effective surveillance in the border area. To the required documents that are controlled, KILB plays an important role in the implementation of cross-border activities, especially border trade. Based on the description above, border trade activities in bilateral agreements are only carried out by their purpose, namely to fulfill the daily needs of border communities.

4.2 Efforts to Minimize Deviations in Cross-Border Trade Practices Between Countries

In border trade activities, there are loopholes for irregularities that can cause losses to the state. The rules stipulated both in laws and regulations and in bilateral agreements concluded between two directly bordering countries provide boundaries that function as activity controls for the community. The control is law. According to the triad theory put forward by Gustav Radbruch described in Muslih's research (2013) the law aims to create justice (*gerechtmatigheid*), expediency (*doelmatigheid*), and legal certainty (*Rechtmatigheid*). Law must be able to provide a sense of legal justice, legal certainty, and legal benefits for the entire community. According to Muslih (2017), law is a whole system that includes a set of legal principles, legal norms, and legal rules. A reality, action, and behavior approach is needed so that the law can function as a control.

For legal objectives to be achieved in a legal system, initial efforts are needed by all stakeholders, both government and society to prevent irregularities. These efforts can be done preemptively, preventively, and curatively. Preemptive efforts can be made by instilling good values and norms so that they are internalized in a person to prevent the occurrence or commission of a crime. Educators play an important role in instilling this value so that even though there is an opportunity to commit a violation/crime, the intention to commit a deviation does not arise.

Further efforts are carried out preventively as a follow-up effort to pre-email efforts as prevention. In preventive efforts, what needs to be emphasized is minimizing opportunities that create opportunities for crime. This can be done by conducting market operations to control the price of domestic goods. Furthermore, all security and customs authorities need to tighten both official and non-official border routes. Third, renew bilateral agreements that are adjusted to current conditions.

The lack of intention and the lack of opportunity must also be supported by repressive law enforcement. Repressive efforts are efforts that must be made when irregularities have occurred through law enforcement by imposing penalties or taking action against perpetrators who commit violations or irregularities by strict and precise laws and regulations.

5. CONCLUSION

Based on the research results, it can be concluded that:

- 1) Factors causing irregularities in cross-border trade practices between countries are economic factors, namely low socio-economic conditions, types of work, and limited availability of employment. Facilities and infrastructure factors are important in border trade activities, such as the availability of infrastructure, electricity, trade facilities, affordability of location, and ease of access. Juridical factors show that laws and regulations and

bilateral agreements have not been able to function as controls in border trade interactions.

- 2) Efforts to minimize irregularities in cross-border trade practices between countries are carried out with preemptive efforts in the form of instilling good values and norms so that they are internalized in a person, preventive efforts are made by minimizing opportunities that create opportunities for crime through organizing market operations to control the price of domestic goods, tightening official and non-official border routes, and updating bilateral agreements that are adjusted to current conditions. Repressive efforts are carried out through law enforcement by imposing penalties or taking action against perpetrators who commit violations or irregularities by strict and precise laws and regulations.

Suggestions

- 1) The government must minimize the factors that cause irregularities in cross-border trade practices between countries by providing supporting infrastructure for cross-border trade.
- 2) The government must prepare clear regulatory tools and provide justice for the parties.
- 3) The existing PLBN must be able to carry out its duties as a control tool properly.
- 4) KILB must function according to its designation.
- 5) Law enforcement in terms of violations of the provisions on border trade must be strictly enforced.

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