

Legal Certainty In Customs Law Enforcement Against Illegal Exports: A Comparative Study of Indonesia and Malaysia

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Abstract

Illegal exports pose a serious challenge to developing countries, including Indonesia and Malaysia, which have high natural resource wealth but are vulnerable to smuggling and illicit trade practices. This study aims to analyze and compare the policies and practices to counter illegal exports implemented by the two countries. This research uses a qualitative approach with literature study methods and policy analysis. The results of the study show that Indonesia and Malaysia have differences in legal frameworks, institutions, and law enforcement strategies. Indonesia tends to adopt a repressive approach with a focus on border surveillance and increased legal sanctions, while Malaysia emphasizes more cross-sector collaboration and the use of technology in tracking export goods. Although both face similar challenges, such as weak interagency coordination and corruption, the best practices of each country can serve as a reference in formulating more effective regional policies. This study recommends that to reduce illegal exports, the need to equalize the standards of export documents between Indonesia and Malaysia accompanied by an active role of joint patrols that are more intensive than just MoUs on paper, and to improve the legality of border markets so that the local economy runs legally.

[Ekspor ilegal merupakan tantangan serius bagi negara-negara berkembang, termasuk Indonesia dan Malaysia, yang memiliki kekayaan sumber daya alam yang melimpah tetapi rentan terhadap praktik penyelundupan dan perdagangan ilegal. Penelitian ini bertujuan untuk menganalisis dan membandingkan kebijakan serta praktik penanggulangan ekspor ilegal yang diterapkan oleh kedua negara tersebut. Penelitian ini menggunakan pendekatan kualitatif dengan metode studi literatur dan analisis kebijakan. Hasil penelitian menunjukkan bahwa Indonesia dan Malaysia memiliki perbedaan dalam kerangka hukum, kelembagaan, serta strategi penegakan hukum. Indonesia cenderung menerapkan pendekatan represif dengan fokus pada pengawasan perbatasan dan peningkatan sanksi hukum, sedangkan Malaysia lebih menekankan kolaborasi lintas sektor serta pemanfaatan teknologi dalam pelacakan barang ekspor. Meskipun kedua negara menghadapi tantangan yang serupa, seperti lemahnya koordinasi antarinstitusi dan praktik korupsi, praktik-praktik terbaik (best practices) yang diterapkan masing-masing negara dapat dijadikan rujukan dalam perumusan kebijakan regional yang lebih efektif. Penelitian ini merekomendasikan perlunya harmonisasi standar dokumen ekspor antara Indonesia dan Malaysia, yang disertai dengan peran aktif patroli bersama yang lebih intensif dan tidak hanya

terbatas pada nota kesepahaman (Memorandum of Understanding/MoU) semata. Selain itu, diperlukan upaya peningkatan legalitas pasar perbatasan agar aktivitas perekonomian masyarakat setempat dapat berjalan secara legal dan berkelanjutan.]

Keywords: Illegal exports, Law enforcement, Regional cooperation, Comparative Law

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INTRODUCTION

International trade serves as the backbone of the global economy by enabling the lawful exchange of goods and services among nations. Nevertheless, illegal export practices or smuggling continue to occur frequently, causing significant losses to state revenue and disrupting domestic market stability. Illegal export activities involve the shipment of commodities without proper authorization, tax evasion, and non-compliance with official customs procedures. Their negative impacts extend beyond material losses, undermining the competitiveness of law-abiding domestic producers.

Indonesia is a state governed by the rule of law as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. However, addressing export-related crimes requires comprehensive policies to safeguard national economic sovereignty. According to Statistics Indonesia (BPS), Indonesia's export value in October 2024 reached USD 24.41 billion, representing a 10.69% increase compared to September 2024 and a 10.25% rise compared to October 2023. This performance reflects growth amid geopolitical challenges. The government remains optimistic about achieving further export growth by 2026 through downstream industrialization and product diversification to enhance global competitiveness, maximize foreign exchange earnings, and strengthen the Rupiah. Nonetheless, this significant growth potential is often hampered by rampant illegal exports, particularly involving natural resource commodities such as tin and plantation products. Exporters association records indicating the leakage of thousands of tons of tin ore to Malaysia annually not only cause financial losses but also distort the accuracy of official trade statistics.

Indonesia and Malaysia maintain close bilateral trade relations, supported by their geographical proximity. This closeness is evident in the land borders on Kalimantan Island and maritime boundaries across the Malacca Strait, Singapore Strait, South China Sea, and Sulawesi Sea. These borders create informal routes frequently exploited for illicit trade. Smuggling of goods such as second-hand clothing, agricultural products, and mining materials is widespread. Differences in regulations, tariffs, and commodity prices—such as lower sugar prices in Malaysia—serve as major drivers of smuggling. This situation demands serious attention from both governments through consistent law enforcement.

Bilateral cooperation has been established, including joint patrols such as *Patkor Kastima* (Malaysia–Indonesia Customs Coordinated Patrols) to prevent border smuggling. Despite demonstrating commitment, smuggling activities persist with increasingly sophisticated methods. Enhanced coordination among customs authorities, police forces, and border security task forces

is necessary. Evaluating the effectiveness of *Patkor Kastima* and similar initiatives is essential to identify field-level obstacles and formulate more efficient countermeasures.

Research comparing policies and practices to address illegal exports between Indonesia and Malaysia is therefore urgent. A deeper understanding of each country's approach can provide valuable insights into customs law enforcement. This study critically examines how regulations are formulated and implemented in both countries, with the aim of generating effective policy recommendations to strengthen border supervision and reduce state losses caused by organized smuggling activities.

Fundamental differences in legal systems—civil law in Indonesia and common law in Malaysia—also influence each country's approach to combating illegal exports. Indonesia primarily relies on administrative and criminal regulatory mechanisms, while Malaysia emphasizes integrated law enforcement and bureaucratic efficiency, particularly at borders. Accordingly, this study seeks to comprehensively compare regional policies and enforcement practices in both countries, focusing on regulatory frameworks, smuggling modus operandi, and enforcement effectiveness, to identify best practices from both administrative and preventive perspectives. Based on the background outlined above, the research questions are as follows:

1. How is customs law implemented in Indonesia and Malaysia in addressing illegal export activities?
2. How does a comparative analysis of customs law enforcement in Indonesia and Malaysia identify more effective best practices in combating illegal exports?

METHOD

This normative juridical research uses two approaches, namely the legislative approach and the conceptual approach. Both approaches are used simultaneously in order to obtain comprehensive analysis results, not only focusing on what is written (positive law), but also understanding the theoretical basis and principles behind the regulation. This research focuses on secondary legal materials through literature study methods in the form of journals, books, articles, news and government websites related to customs, trade, and smuggling laws in Indonesia and Malaysia. The collected legal materials are then analyzed through a descriptive comparative method. This data analysis technique was chosen in order to be able to interpret in depth related to policy regulations in dealing with illegal exports and law enforcement practice efforts in dealing with these cases in the two countries that are the object of this research.

RESULTS AND DISCUSSION

Law Enforcement Theory focuses on the realization of legal ideals into practical reality; whereby legal norms function as concrete behavioral guidelines within society. Law enforcement must be oriented toward human interests and justice rather than mere formal procedures. It represents a continuous effort to achieve justice, legal certainty, and utility. The success of law enforcement depends on three components: legal structure (law enforcement apparatus), legal substance (legislation), and legal culture (public awareness). Enforcement may be repressive or responsive, depending on whether the law acts firmly through sanctions or accommodates societal interests in combating crime. Comparative Law Theory According to Michael Bogdan, comparative law is a method of studying different legal systems to identify similarities and differences and explain their origins. This theory evaluates legal solutions, system classifications, and theoretical and methodological analyses. Bogdan also emphasizes that comparative law often functions as a sociological experiment replacing real experiments that are impossible in legal studies. Furthermore, a country's legal system is influenced by geographical conditions, climate, and natural resources.

Implementation of Customs Law in Indonesia and Malaysia in Addressing Illegal Exports

In Indonesia, Law No. 17 of 2006 amending Law No. 10 of 1995 on Customs serves as the primary legal basis governing export activities. This law is supported by Law No. 7 of 2014 on Trade and Minister of Trade Regulation No. 23 of 2023, which specifies regulated commodities and export requirements, granting customs authorities the power to enforce, seize, investigate, and impose sanctions on illegal exports. Exporters are thus fully obligated to comply with licensing, certification, and documentation requirements. Exporting goods without valid documents or exporting prohibited/restricted goods constitutes smuggling in the form of illegal exports.

The operationalization of customs law is further elaborated through Minister of Finance Regulation No. 155/PMK.04/2022, which comprehensively regulates export procedures, including export declarations, administrative document reviews, and physical inspections. Customs authorities are empowered to conduct physical and documentary controls to ensure compliance with restrictions and export duties. These regulations emphasize transparency, service efficiency, and risk management systems to facilitate trade flows while ensuring legal compliance.

Indonesia has also strengthened its legal framework through Law No. 39 of 2007 on Excise, regulating specific goods such as tobacco products and ethyl alcohol, aligning their supervision with customs controls. Additionally, conservation laws and sectoral regulations—including forestry and quarantine laws—enable strict control over high-value commodities such as minerals and forest products to prevent illegal exports threatening ecological sustainability and national interests. These policies combine export restrictions with stricter administration and criminal sanctions.

Under Indonesia's civil law system, repressive enforcement policies are deemed crucial to safeguarding national sovereignty against illegal export activities. These policies emphasize strict supervision, enhanced sanctions, increased personnel deployment, and routine patrols in smuggling-prone areas. The government continues to revise legislation to impose heavier penalties on transnational smuggling offenders.

Customs Law Enforcement in Malaysia

In Malaysia, the Customs Act 1967 constitutes the primary legal framework regulating customs operations, export-import supervision, duty collection, and smuggling prevention. This law grants authority to the Royal Malaysian Customs Department (RMCD) to control goods movement, manage free trade zones, and regulate customs agents. It is complemented by the Strategic Trade Act 2010, which governs export conditions through administrative mechanisms, particularly at ports and borders.

To reinforce customs enforcement, Malaysia replaced the 2017 Customs Order with the Export Order 2023, which prohibits or restricts the export of certain goods without special permits. These controlled goods include petroleum products, wheat flour, LPG, animals, plants, and other essential commodities vulnerable to smuggling. Malaysia also implements a single-point (one-stop) system for export administration to prevent document falsification and enhance domestic value-added processing.

Malaysia's common law system emphasizes cross-sectoral collaboration and advanced technology in enforcement strategies. Real-time tracking technologies enable efficient monitoring of logistics flows, prioritizing early detection and prevention rather than reactive enforcement. Regulatory strengthening is aligned with the World Trade Organization Trade Facilitation Agreement (WTO TFA) to enhance transparency and efficiency in customs clearance procedures.

At the regional level, enforcement is supported by ASEAN mechanisms such as the ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT), which strengthens oversight of goods movement and reduces opportunities for illegal exports. Bilaterally, cooperation under the Joint Commission for Bilateral Cooperation (JCBC) ensures harmonized enforcement efforts, information exchange, and jurisprudential consistency between Indonesia and Malaysia.

Comparative Analysis of Customs Law Enforcement in Indonesia and Malaysia

The comparative analysis reveals fundamental differences rooted in legal systems and operational focus. Indonesia adopts a more repressive approach with intensive physical surveillance, maritime patrols, and severe criminal sanctions, while Malaysia prioritizes bureaucratic efficiency, technological integration, and corporate accountability mechanisms.

The most effective best practice identified is a hybrid model, combining Malaysia’s one-stop service system to facilitate compliance and oversight with Indonesia’s robust physical patrols and intelligence-based enforcement. Such integration can enhance regional efforts to combat illegal exports effectively

Table 1. Comparison of Customs Law Enforcement in Indonesia and Malaysia in Tackling the Occurrence of Illegal Exports to Find More *Effective* Best Practices

| Aspect of Comparison | Indonesia | Malaysia |
|------------------------------|--|--|
| Legal System | Civil Law | Common Law |
| Primary Legal Basis | Law No. 17 of 2006 on Customs (Amendment to Law No. 10 of 1995) | Customs Act 1967 |
| Enforcement Focus | Intensive supervision of import and export flows and the collection of customs duties and taxes | Corporate accountability mechanisms, including the application of <i>adequate procedures</i> |
| Enforcement Approach | Relies on intelligence gathering, maritime patrols, and physical and document inspections at customs offices | Implements a <i>one-stop service</i> system for export and import licensing with stricter supervision; supported by the Malaysian Anti-Corruption Commission (SPRM) |
| Legal Sanctions | Repressive measures including imprisonment of up to 10 years and fines of up to IDR 5 billion | High monetary fines up to 20 times the value of the goods and/or imprisonment ranging from 3 to 7 years or more |
| Customs Authority | Directorate General of Customs and Excise (DGCE) | Royal Malaysian Customs Department (RMCD) |
| Bilateral Cooperation | Actively participates in <i>Patkor Kastima</i> (Coordinated Customs Patrol between Indonesia and Malaysia) | Actively participates in <i>Patkor Kastima</i> (Coordinated Customs Patrol between Malaysia and Indonesia) |
| Strengths | <ol style="list-style-type: none"> 1. Actively conducts joint patrol coordination with Malaysia. 2. Possesses many personnel and intensive patrol coverage, particularly in vulnerable areas such as the Malacca Strait and Kalimantan border regions. | <ol style="list-style-type: none"> 1. A more structured and efficient customs clearance process (2–3 working days), with strict document verification. 2. Advanced use of detection and scanning technologies at major ports such as Port Klang. |
| Weaknesses | <ol style="list-style-type: none"> 1. Extensive geographical territory, which complicates comprehensive supervision. 2. Smuggling networks often exploit weaknesses in remote border and maritime areas. | <ol style="list-style-type: none"> 1. Heavy reliance on intelligence-based enforcement. 2. Smuggling increasingly involves falsified documents and sophisticated digital trade mechanisms, including illegal e-commerce. |

Based on the comparison presented in Table 1, measures to combat illegal exports under Indonesian law are predominantly repressive in nature toward offenders. This approach emphasizes not only the seizure of goods, monetary fines, and custodial sentences,

but also controversial deterrent policies such as the sinking of foreign vessels involved in illegal, unreported, and unregulated (IUU) fishing, which has been adopted as a principal preventive strategy. Additional preventive measures include the establishment of a Special Task Force (*Gugus Tugas*) in 2025 to monitor illegal import and export activities, involving the Office of the Attorney General and the National Police in supervising high-risk sectors as part of an anti-money laundering initiative. By utilizing Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering, the task force is mandated to trace financial flows linked to smuggling activities with the objective of dismantling syndicates operating behind illegal exports. Intelligence information exchange has also been conducted through cooperation with INTERPOL and neighboring countries, such as Malaysia, particularly to prevent the smuggling of wildlife and protected natural resources by sharing data on illegal trade routes.

Despite the preventive efforts undertaken by Indonesia, several persistent challenges remain, including shortages of patrol personnel within government institutions—particularly the Indonesian National Armed Forces (TNI) and the National Police (POLRI)—as well as limitations in modern surveillance equipment when compared to the vast expanse of Indonesia’s maritime territory. The involvement of corrupt government officials susceptible to bribery within supervisory mechanisms further enables organized crime groups to adapt and exploit regulatory loopholes, despite ongoing regulatory reforms. Law enforcement practices in Indonesia to prevent illegal exports therefore remain heavily focused on strengthening maritime security, revising customs regulations, and establishing specialized inter-agency task forces. These practices aim primarily to address the smuggling of natural resources and the illegal export of protected commodities.

In parallel with Indonesia’s efforts, Malaysia has also intensified its law enforcement practices against illegal exports through enhanced border surveillance. However, Malaysia places greater emphasis on legislative reform to increase penalties, strengthen inter-agency cooperation, and utilize advanced technology to curb smuggling activities, particularly those involving wildlife and high-value contraband. Amendments to the Wildlife Conservation Act in 2022 introduced legal provisions targeting the online promotion and sale of illegal wildlife and imposed stricter penalties, including mandatory imprisonment and fines of up to RM500,000 for wildlife trafficking offenses. Malaysia has actively targeted online illegal wildlife trade by deploying specialized units to monitor social media and online platforms, resulting in the closure of thousands of illegal listings. Integrated inter-agency operations, such as *Ops Bersepadu Khazanah*, coordinated by the Department of Wildlife and National Parks (PERHILITAN), bring together police, customs, and environmental agencies to conduct enforcement operations against wildlife smugglers.

The Royal Malaysian Customs Department (RMCD) has intensified inspections at major exit points, including Kuala Lumpur International Airport (KLIA), as well as maritime routes, through the deployment of advanced scanning technologies and K9 units. The Malaysian government has also deployed approximately 2,500 wildlife rangers, comprising indigenous personnel, retired police officers, and former military personnel, to patrol biodiversity-rich areas in order to prevent poaching and the illegal export of flora and fauna. Law enforcement strategies have gradually shifted toward intelligence-led approaches targeting organized criminal networks, utilizing data from the Customs Enforcement Network (CEN) to enhance efficiency. Furthermore, in 2025, the Malaysian government allocated RM560 million to strengthen border security, including the integration of drone technology and artificial intelligence (AI) systems to monitor smuggling-prone border areas.

In the context of international cooperation, RMCD has long collaborated with the Directorate General of Customs and Excise of Indonesia through joint and coordinated

patrols to combat export smuggling. However, these efforts have been less effective due to differences in export documentation standards between the two countries, which remain vulnerable to manipulation. Additionally, Malaysia actively participates in international operations led by INTERPOL, such as Operation Pangea, which resulted in the seizure of illegal health products worth millions of dollars and the shutdown of websites linked to criminal activities. Malaysia has also sought to strengthen its position under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by enhancing DNA sampling of seized ivory and improving regional information exchange mechanisms.

As a result of stricter enforcement through legislative reforms, RMCD reported a 28% increase in seized illegal goods, amounting to RM1.29 billion during the first half of 2025. Although the total number of cases declined, this trend reflects a strategic shift toward targeting higher-value contraband, including the mitigation of illegal wildlife export smuggling such as pangolin scales and protected species, as well as the smuggling of tin sand, illegal timber, and subsidized goods. As part of its anti-corruption efforts, Malaysian authorities have pursued legal action against officials involved in illegal possession and smuggling activities, including the prosecution and sentencing of former customs officers.

Nevertheless, despite ongoing preventive reforms, corruption among Malaysian officials remains a persistent issue that continues to facilitate smuggling activities. Wildlife traffickers have increasingly turned to encrypted applications and falsified documents to transport goods, making detection more challenging. Furthermore, extensive yet remote land and maritime borders—particularly forested areas along the Thai Malaysian border—pose significant challenges for effective surveillance of illegal exports. Studies indicate that issues such as weak inter-agency coordination, corruption, and the increasingly sophisticated nature of transnational criminal syndicates continue to hinder the overall effectiveness of law enforcement efforts.

In conclusion, both Indonesia and Malaysia face significant challenges in addressing illegal exports, albeit with differing policy approaches and law enforcement capacities. Indonesia possesses a relatively complex and extensive regulatory framework with strict physical supervision of export goods; however, overlapping institutional mandates often result in weak implementation at the operational level. In contrast, Malaysia benefits from a more streamlined and integrated legal structure, supported by bureaucratic efficiency that accelerates export processes and minimizes obstacles under difficult field conditions. The most effective best practice recommended by this study to combat illegal exports is a hybrid approach, combining Malaysia's integrated one-stop service system to facilitate compliance and oversight with Indonesia's robust physical patrols and intelligence-based enforcement mechanisms.

CONCLUSION

Indonesia and Malaysia have differences in their legal framework, institutions, and enforcement strategies. Indonesia tends to adopt a repressive approach with a focus on border surveillance and increased legal sanctions, while Malaysia emphasizes more cross-sector collaboration and the use of technology in tracking export goods. Although both face similar challenges, such as weak interagency coordination and corruption, the best practices of each country can serve as a reference in formulating more effective regional policies.

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