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The Legal Vacuum in the Case of evidence Grantsat the Stage of Investigation of Customs Criminal Acts

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Abstract
Introduction: This research addresses aspects of the legal vacuum in the case of evidence grants at the investigation level, provided that the Code of Criminal Procedure does not explicitly and implicitly control the grant process at the investigation level before the court's decision to acquire permanent legal force.
Research Methodology: The method used in this research is empirical juridical research. The research approach used in this study is the statute approach and the conceptual approach. The Statute approach will examine the articles on the proceedings for the implementation, in the Criminal Procedures Code, of the evidence grant in the case of customs criminal acts and those related to the handling of the procedure for the execution, in the course of investigative customs crime.
Discussion: In the investigative level, the Criminal Procedure Code does not control the process of evidence grants. The proof at the stage of the inquiry is thus provided on the other hand by the theory of innocence, according to which a person must be presumed innocent until the judgment of the court that a person is wrong (presumption of innocence) is issued. The use of such evidence without a legal decision is still on the one hand detrimental to the defendant because if it turns out he was found not guilty, then the goods that should be his property have been granted. Related to the legal vacuum of evidence grants can be seen from the perspective of progressive law that considers elements or considerations of social benefit (reasonable). Thus, the Grant of evidence at the level of investigation under the lens of progressive law and the theory of expediency, that is, the law must function as a means of manifesting the benefit of the community at large.
Conclusion: The results of the study indicate that in order to avoid a legal vacuum, it is necessary to make changes or revisions to the Criminal Procedure Code by amending the alternative provisions related to the article regarding grants for evidence other than from the auction and annihilation actions.
Keywords: Evidence Grants; Customs Criminal Acts; Legal Vacuum

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I. INTRODUCTION

Evidence or tools play a crucial role in revealing the facts before a trial. The role of evidence is as an indicator for judges to determine whether or not someone prosecutes a criminal offense. In reality, the confiscation of evidencedoes not seldom applyevidence according to established procedures. Of starters, the procedure for the evidence of criminal activity even if the case remains under review, is being introduced. In principle, State agencies or organizations should only grant to goods which are in reality state-owned or controlled by the state.

As for proof of the state booty, these things may only be seen as booty of state if permanent legal force has been obtained. It means a prosecution does not have definitive legal effect in terms of the law, but the evidence used for proof before a trial is given under certain conditions, usually taking into account elements of the use in the interests of society.

During the prosecution process, cases of evidence obtained generally take place in products that are perishable or rotting, so that the authorities then require legal permission for the product to be released to the public. The Criminal Procedure Code only regulates the authority of law enforcement officers (i.e., Investigators, Public Prosecutors and Judges) regarding the management of evidence is limited to the auction process and the destruction of evidence of criminal cases. The Criminal Procedure Code does not give authority to law enforcement authorities to carry out the process of granting evidence of criminal cases.

One case of evidence grants at the investigation stage occurred in a customs crime in the jurisdiction of the Kuala Simpang District Court. By the case study conducted by the researcher in the case of customs crime on behalf of the defendant Sabaruddin Rambe Bin Rambe with case register Number: 10/ KSP/ 11/2017, the fact

is obtained that the convicted Sabaruddin Rambe Bin Umaruddin Rambe was charged with customs crimes in the import field, that is, transporting imported goods, shallots, as much as 1,330 (one thousand three hundred thirty) sacks @ 9 (nine) kilograms, from the port of Jeti, Seberang Perai, Penang, Malaysia around the Alur Cot waters, Kec. Treasurer, Kab. Aceh Tamiang, Prop. Aceh, Indonesia, on Friday, July 21, 2017, around 20:00 West Indonesia Time using a Motor Boat (KM) Berkat Jaya II Gt. 13 toDusunPunti, Tangsi Lama Village, Seruway District, Aceh Tamiang Regency, Aceh Province, Indonesia, the convicted person has been proven to have committed a crime as referred to Article Article 102 letter an of Law 10 of 1995 concerning Customs as amended by Law Number 17 of 2006.

Researchers obtained the fact that the case evidence referred to in the form of shallots as much as 1,330 (one thousand three hundred thirty) sacks @ 9 (nine) kilograms had been carried out a grant process to the Government of Langsa City on August 2, 2017, by the Regional Office Investigator of the Directorate General of Customs and Aceh Excise and the implementation of the grant have received approval from the Chairman of the Kuala Simpang District Court with number: 02 / Pen.Pid / 2017 / PN-KSP dated August 1, 2018.

Upon approval of the granted permission from the Chairperson of the Kuala Simpang District Court, the Investigator of the Regional Office of the Directorate General of Customs and Excise (DBJD) of Aceh submitted a written request in the form of a letter to the local Court Chairperson. The Chairperson must approve the grant process of the Kuala Simpang District Court.

The writer examines and analyzes the legal vacuum analysis in the case of evidence grants at the investigation level, bearing in mind that the Code of Criminal Procedure itself does not explicitly and implicitly regulate the process of granting goods at the investigation level before the court's decision to obtain permanent legal force.

II. RESEARCH METHODOLOGY

The empirical juridical analysis is the approach used in this study. According to Asri Wijayanti, empirical legal research is positive law research concerning community behavior in social relations. This study aims at analyzing the facts of evidence for customs criminal acts in depth. In this study, the research approach is the legal approach and the conceptual approach. The legal approach is carried out to examine the articles relating to the process of implementing evidence grants in cases of customs criminal acts in the Criminal Procedure Code as well as those relating to the handling of the implementation of evidence grants in cases of customs crimes at the investigation stage. However, the conceptual approach is used to understand the concepts relating to the process of implementing evidence grants in cases of customs crimes at the investigation stage.
The research was held in the Kuala Simpang Court. The area was chosen as a representative sample for the granting of customs proof in the province of Aceh.

III. RESEARCH RESULTS AND DISCUSSION

a. Provisions on Customs Evidence Grants of Customs Criminal Acts

Evidence confiscated for the benefit of the State typically occurs in criminal activities that damage the country, for example in a smuggling crime or in a criminal act of corruption in which movable or immovable assets obtain the proceeds of corruption, then the goods are sold at the auction and the profits of the sale are returned to the government. According to the explanation of Article 45 paragraph (4) of the Criminal Procedure Code, the object must be submitted to the relevant department under the provisions of the law. Then what about the grant of evidence carried out by law enforcement officials? Is this regulated in the Criminal Procedure Code?

Concerning the proof-granting process during the investigation stage, the Code of Criminal Procedure does not regulate the mechanism of proof at that stage.

Based on the elaboration of the Criminal Procedure Code (KUHAP) as mentioned above, the KUHAP explicitly only stipulates the authority of law enforcement officials related to the management of evidence limited to the auction process and the destruction of evidence of criminal cases. The Criminal Procedure Code does not give authority to law enforcers such as Investigators, Public Prosecutors, and Judges to carry out the process of granting evidence of criminal cases.

By regulation, grants issued by state agencies or institutions may be made only on goods determined to become state property. Article 1(7) of the Finance Minister's Regulation No03/PMK.06/2011 on the management of State-owned goods resulting from State allocation and gratification Goods specifies that State-owned goods are goods purchased or acquired at the cost of the State budget or derived from other valid acquisitions. As regards state booty evidence, such goods can be regarded as a state booty only if permanent legal force is obtained.

Article 1 number 3 Minister of Law and Human Rights Regulation 16/2014 concerning Procedures for the Management of State Confiscated Objects and State Confiscated Goods At the State House of Confiscated Objects Storage, and state confiscated objects (hereinafter referred to as Basan) are objects confiscated by the

state for the judicial process. Investigators or public prosecutors can confiscate this object for evidence in the judicial process, whereas State Confiscation (Baran) is a confiscated object based on a Court Decision that has obtained legal force and remains declared to be confiscated for the state.

Handling of evidence as a result of prosecution of customs criminal acts carried out by Investigators at the Regional Office of the Directorate General of Customs and Excise such as shallots are classified as Fresh Food Plant Origin (PSAT) based on Article 1 number 3 Regulation of the Minister of Agriculture Number: 55/ Permentan/ KR.040/ 11/2016 concerning Supervision of Food Safety Against Importation of Fresh Food from Plants, which states that: Fresh food of plant origin, from now on abbreviated as PSAT, is food from plants which have not undergone processing can be consumed directly and can become raw materials for food processing.

The status of shallots which are the products of action are included in the State Liquidated Goods (BDN) and must be determined by the Head of the Customs Office or other appointed official, this is based on the Minister of Finance Regulation No. 62 of 2011 concerning Settlement of Uncontrolled Goods, State Controlled Goods, and Goods Becoming State-Owned. By regulation, the applicable provisions of shallots cannot be said to be BDN and BMN legally if there is no decision on BDN and BMN based on article 5 paragraph (1) PMK No. 62 of 2011. It is relevant as regards the BDN clause, as it is not only a prerequisite for following the law, but is also the basis if the investigators wish to make a grant by reviewing Article 17 of PMK No. 62 of 2011.

Based on the statute regulations, in the absence and isolation of BDN, BMN proceeds from criminal acts which have no lasting legal effect of BDN, BMN as an administrative violation, and also in the absence of BDN grants proceeds are the product of criminal acts, it is evident that the provisions relating to evidence of criminal proceedings in the form of BDN are not sufficiently clear or stringent. BMN is the result of a criminal offense.

b. Evidence Grants are reviewed from the Progressive Legal Perspective

The legal vacuum of evidence grants can be seen from the perspective of progressive law. The idea of progressive law is how to anticipate the obstacles in the application of written law. This is in line with Renner's dictum that the law does not work and develops according to logic, but also elements or considerations of social benefit (reasonable). If the final consideration is not used, the law will stop, and society will not get protection.[1]If a problem occurs each time in and with the law, it is necessary to review and correct the law and not to force humans into the legal system. Progressive law does not accept the law as an absolute and final institution; it is instead based on the law's ability to serve human interests.[2]

Based on the interview of the author conducted to Sadri, SH., MH as Chairman of the Kuala Simpang District Court that issued the stipulation of a grant permit to the DJBC Aceh Investigator was because he wanted to achieve the principle of usefulness of the evidence referred to, and this was solely to see from the side of the benefit so that if the evidence in the form of red onion is left to rot until the trial process until the case is legally enforceable it will have a lot of effects on the spread of pests/ diseases/ bacteria to the environment due to the decay factor of shallots, and also requires high costs for carrying out the destruction of evidence in the form of shallots because they have to prepare a quarry far away from residential areas, and in this case also, of course, many people who expect and need onion because it is classified as one of the food sources of food, and before the grant is made then the onion has been the quarantine center is first examined so that the onion is declared free of HPHK/ OPTK and meets the food safety requirements as required by applicable statutory provisions.

Such a view from the perspective of progressive law is indeed correct. The law does not exist for its own sake but humans.[3]If the law rests on "rules and behavior," progressive law places behavioral factors more than rules. Human factors and contributions are considered more decisive than existing regulations. The human factor is a symbol of the element of pent-up emotions (compassion, empathy, sincerity, edification, commitment, dare and determination). Law is not driven by positive law but moves on non-formal. Evidence for this is an opportunity for progressive law.[4]

IV. CONCLUSIONS

a. Conclusion

Grants of evidence in the level of investigation conflict with the principle of presumption of innocence (the principle of presumption of innocence) which states that a person must be declared innocent until there is a

[1]SatjiptoRahardjo, *PenegakanHukumProgresif*, KompasGramedia , Jakarta, 2010, pp. 61

[2]SatjiptoRahardjo, *HukumProgresifsebuahSintesaHukum Indonesia*, Genta Publishing , Yogyakarta, 2009, p. 5

[3]*Ibid*,p. 7

[4]*Ibid*,pp. 10-11.

court decision stating his or her mistake (Presumption of innocence). The use of such proof without the decision of the lawyer shall, on the one hand, remain harmful to the defendant because the goods which should be his property were granted if it turned out that he was found not guilty. On the other hand, however, the use of the goods is consistent with the progressive legal objective and the theory of convenience. The law must act in order to demonstrate the good of the community as a whole.

b. Suggestions

While evidence grants have been exercised in several Indonesian legal spheres at the investigation stage, there is no formally strong legal base on the proof at the investigation level of customs crime. To avoid a legal vacuum, the Criminal Procedure Code should be revised by amending alternatives relating to the Article on the provision of evidence other than the auctioning and annihilation actions.

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