

Proof Of Goods Grant Procedure Phase Investigation Of Customs Criminal Act

Zilzaliana¹, Mohd. Din², Mahdi Syahbandir³

¹ Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

² Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

³ Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

Abstract: The process of law enforcement confirms that there is a seizure act of legal action in the form of a takeover of the possession for a while the goods from the hand of a person or group for the sake of investigation, prosecution and Judicial. The practice of law enforcement on criminal goods as evidence of crime in a penal process often does not conform to the procedure. Implementation of goods grant mechanism of criminal offence in process at the investigation level is an example where there is a legal void in the implementation. The case of a proof of goods at the stage of investigation occurs on goods that are easily damaged or rotten, so that the authorized apparatus then asks for the approval of the Court so that the goods are given to the community. While in the Criminal Code is only governed by the authority of the law enforcement officers (i.e. investigators, prosecutors and Majelis judges) related to the management of goods is limited to the auction process and destruction of evidence of criminal acts. KUHAP does not authorizes law enforcement authorities: Investigators, prosecutors, and tribunal judges to carry out the grant process on evidence of criminal litigation. This research aims to determine the legal basis and procedure of implementation of the evidence grant process at the level of investigation considering that in the criminal Procedure Code itself does not govern explicitly and implicitly against The process of grant of goods at the level of investigation before the court ruling obtained a fixed legal force (In Kracht van Gewijsde). The results of the study indicated that: (1) on the legal basis of grant of evidence there has not been any rules/legal bases written in relation to this, the grant process is carried out due to the factors of immorality and the discovery/renewal of law, so that with a grant action can provide maximum benefit to the community and this is in line with the implementation of the theory of (2) The procedure of grant proof of goods in the level of investigation is carried out by mechanisms: in advance a statement from the party who control the red onion explaining that the concerned agree to the action of shallot, and to the evidence of the red onion is conducted free test/certification Examination HPHK/OPTK and fulfill food safety requirements from the plant Quarantine Hall, a letter of willingness to receive a red onion grant from the local head The Regency/city of the party who receives the grant and comes with the signing of the news event handover grants and a photo of the grant documentation attached in the docket.

Keywords: Proof of Goods Grants; Customs Criminal Act; Procedure of Implementation.

Date of Submission: 11-03-2020

Date of Acceptance: 26-03-2020

I. INTRODUCTION

The evidence tool or item has significant significance in the process of fact disclosure of truth in front of the Judicial Council. The function of proof tool as an indicator for the judge in determining whether there is a criminal deed to be paid to a person. In its reality the management practices of evidence seized are not uncommon to be in accordance with the prescribed procedures. Such as the implementation of a criminal evidence grant mechanism in the case of the investigation is still in progress. Basically grants made by the agency or state institutions can only be done to goods that are indeed state owned or state-controlled.

In relation to evidence that becomes the spoils of the country, such goods may be regarded as the loot of the state only if it has gained a fixed legal force). This means that in the case of a lawsuit has not yet had a fixed legal force, but the evidence is used for the sake of evidences in front of the Court of Session is precisely then given with certain considerations, generally consideration Aspects of the utilization of interests and community benefits.

The case of proof of goods in the investigation usually occurs in a state of perishable or rotten goods, so that the authorized apparatus then asks for the approval of the Court so that the goods are given to the community. In the Criminal Code is only governed by the authority of the law enforcement officers (i.e. investigators, prosecutors and Majelis judges) related to the management of limited evidence of the auction

process and destruction of evidence of criminal acts. KUHAP does not authorize law enforcement authorities to carry out a grant process against the evidence of criminal acts.

One of the cases of proof of goods in the investigation stage occurred in the case of customs crimes within the jurisdiction of the District Court of Kuala Simpang. In accordance with the case study the researcher did against the matter of customs criminal in the name of the defendant Sabaruddin Rambe Bin Rambe with the Register of matters Number: 10/KSP/11/2017, acquired the fact that: convicted Sabaruddin Rambe Bin Umaruddin Rambe indicted in the import of customs crimes in the field of transporting imported goods in the form of shallots 1,330 (thousand three hundred and thirty) sack 9 (Nine) kilograms, from the port of jetty, Seberang Perai, Penang, Malaysia around the groove Cot, Kec. Treasurer, Kab. Aceh Tamiang, Prop. Aceh, Indonesia, on Friday 21 July 2017 at 20.00 WIB by using Motor ship (KM) thanks to Jaya II Gt. 13 Destinations Punti Hamlet, Tangsi Lama Village, Seruway Sub-district, Aceh Tamiang Regency, Aceh Province, Indonesia, convicted deeds have been shown to commit a criminal offence as referred to article article 102 letter A of Law 10 year 1995 concerning customs as amended by Law No. 17 year 2006.

Researchers derive the fact that the evidence of the goods is: shallot 1,330 (thousand three hundred and thirty) Sack 9 (nine) kilograms have been carried out the process of grant to the government of Langsa City on 02 August 2017 by Regional Office Investigator Directorate General of Customs and Excise Aceh and the implementation of the grant has received approval from the District Court of Kuala Simpang with number: 02/Pen. Pid/2017 2018.

On the approval of the grant permit from the head of the Kuala Simpang District Court, the first regional Office investigator of the Directorate General of Customs and Excise (DBJD) of Aceh filed a written request in the form of a letter to the Local Court chairman, Grant approval shall be issued by the Chairman of the court concerned in the form of entitlement. The grant process must be approved by the Chairman of the Kuala Simpang District Court.

Researchers study and analyze analysis of the procedures Pursued by law enforcement officials in the evidence of goods grant implementation of the Customs Criminal act against the evidence of goods grant at the level of investigation, given that in The book of criminal proceedings itself does not govern explicitly and implicitly the grant process of goods at the level of investigation before a court ruling acquires a fixed legal force.

The method used in the study was the juridical research empirical. According to Asri Wijayanti, empirical law research is a positive legal study of the attitudes of the community in the relationship of community life (Ahmad, 2011). In other words, the study sought to analyze in depth the action of the Evidence for the grant of goods in the case of customs crimes. The research approach used in this research is the approach of legislation and approach of the concept of the statutory approach conducted to examine the articles relating to the implementation of the grant of goods evidence in the of customs criminal proceedings in the KUHAP as well as related to the handling of the evidence of grant implementation in the case of customs criminal acts at the investigation stage. While the concept approach is used to understand the concepts relating to the process of the implementation of the evidence of grant goods in the case of customs crimes at the investigation stage.

The location of this research was conducted in the jurisdiction of the courts of Kuala Simpang, the chosen area as a representation of the sample for the case of the evidence of customs crimes in the province of Aceh.

II. LITERATURE REVIEW

According to the doctrine the elements of criminal acts are divided into two elements, namely subjective elements and objective elements. The subjective element is the element that comes from the inside of the, including everything contained in his heart, this element consists of (Marpaung, 2009):

1. Intentional or accidental (*dolus or culpa*), in general, experts have agreed that the "deliberate" consists of three forms, namely the intention of (*Oogmerk*), intentional with a certain conversion (*Opzet als Zekerheidsbewustzijn*), and misery to the possibilities (*Dolus eventualis*).
2. Intent on an experiment, as determined in article 53 paragraph (1) of the Criminal Code.
3. The kind of intent is found in the evils.
4. Plan in advance.
5. A feeling of fear as it is in article 308 of the Criminal Code.

While the objective element is an element of outside self-perpetrator consisting of:

1. Human deeds, an active deed or a positive deed and a passive deed or a negative deed, that is the act of silence or leave.
2. The consequences of human deeds. The consequences are harmful or destructive, even eliminating the interests retained by the law, such as life, body, independence, property rights, honour, and so on.
3. Circumstances, in general, the situation is differentiated into conditions at the time of the deed and the circumstances after the Act.

4. Nature can be punished and the nature of resisting the law, the nature can be punished with regard to the reasons which liberate the perpetrator from punishment, as for the nature of the law is when the perpetrators act contrary to the law, namely with respect to Prohibitions or orders.

According to Law No. 17 of 2006 about the amendment to Law No. 10 of 1995 on Customs (hereinafter referred to as the Customs Law), customs is anything related to the supervision over the traffic of goods In or out of customs territory as well as the voting of customs duties and customs exits. Criminal offence in the field of Customs is a special criminal offence governed by legislation outside of the Criminal Code.

This particular criminal offence law is governed by legislation outside of general criminal law, irregularities of criminal law provisions contained in criminal law become an indicator of whether the criminal law is a special criminal law or not , so that a special criminal law is said to be a criminal law or criminal law governed by a criminal law in its own, outside of the Penal Code (Syamsuddin, 2011).

III. PROCEDURES TAKEN BY LAW ENFORCEMENT OFFICIALS IN THE IMPLEMENTATION OF GOODS GRANT PROCESS EVIDENCE OF CUSTOMS CRIMINAL MATTERS

Article 45 Act number 8 year 1981 about the code of Law of the Criminal program, is expressly only governed by the authority of the law enforcement officers (i.e. investigators, prosecutors and Mejlis judges) related to the management of limited evidence of goods and destruction of criminal litigation evidence. KUHAP does not authorizes law enforcement authorities: Investigators, prosecutors, and tribunal judges to carry out the grant process on evidence of criminal litigation.

Basically grants made by the agency or state institutions can only be done to goods that do belong to the state. State owned goods (BMN) are all goods purchased or acquired on the expense of the APBN or derived from any other legitimate acquisition. Related to evidence is to be a booty of the state, such goods may be regarded as the booty of the state only when it has gained a fixed legal force (*In Kracht van Gewisjde*).

The red onion-based evidence according to the authors ' research object is categorized as fresh tuber vegetable which is restricted to import as stipulated in article 14 of the Ministerial regulation of agriculture number: 43/Permentan/OT. 140/6/2012 about action of plant quarantine for the inclusion of fresh-layer vegetables into the territory of the Republic of Indonesia. And the status of shallots which is a result of action when stated including uncontrolled goods (BTD), state controlled goods (BDN), and goods belonging to the State (BMN) and shall be through the determination by the Head of Customs office or other appointed official this is based on article 1 paragraph (3) of the Minister of Finance regulation No. 62 Year 2011 on the settlement of uncontrolled goods, state goods, and goods belonging to the state.

The handling of goods evidence of the result of the enforcement of customs criminal proceedings conducted investigators on the Regional Office of the Directorate General of Customs and Excise in the form of shallots classified as fresh food origin plant (PSAT) based on article 1 Number 3 Regulation of the Minister of Agriculture number: 55/Permentan/KR. 040/11/2016 concerning food safety surveillance on fresh food origin of plants, which stated that: fresh food from plant origin that is hereinafter abbreviated as PAST is food origin plant not yet Experiencing processing can be consumed directly and/or can be the raw material of food processing.

According to the researchers, the legal vacancy related to the evidence grant procedure at the level of investigation or before the decision of the judge, can be likened to the logic of the auction carried out before the ruling on the legal force remains.

As stated by Yahya Harahap, the sale of the auction object does not contradict the presumption of innocence principle. If the relevant officials face the "extraordinary difficulties" or are in trouble (difficult) in order to save and keep the integrity of objects or objects that are easily explosive is a chemical that is easy to explode with a compatible storage space for it does not exist, the officials concerned are faced with a situation outside the extraordinary. According to Yahya Harahap, he became a forgiving foundation for the officials who did the evidence auction before in the judge's verdict (Abdurrahman, 1980).

Based on regulation of the regulation of the Decree-the invitation to see that provisions concerning the evidence of goods grant of the criminal result of BDN is not clear enough and firmly in terms of separation between BDN grants, BMN results of criminal acts that have not been legal force remains With BDN, BMN which is of administrative offence and also with the absence of BDN grant procedure, BMN which is the result of a criminal offence.

Article 194 paragraph (1) KUHAP states that in the case of a contrived or free or loose decision of the law, the Court stipulates that the goods seized to be handed over to the most recited party whose name is stated In the break, except if according to the provisions of the law, the evidence must be deprived for the interests of the country or be destroyed or dispossessed so as not to be used again.

On evidence of deprived goods for the benefit of the state usually against a criminal offence that is detrimental to the state, for example in the smuggling criminal act or in the Corruption criminal act in the case

of corruption by defendants traded on moving assets or It is not moving, then the item is sold auction and the proceeds are returned to the state. Pursuant to article 45 paragraph (4) of the Criminal Code, the item shall be submitted to the relevant Department in accordance with the provisions of the applicable law. Related to the grant process of evidence in the investigation phase, article 45 KUHAP does not regulate the grant mechanism of proof of goods at that stage (Rahardjo, 2009).

Based on the information from Zufida Hanum, SH (Vice chairman of PN Kuala Simpang since 23 September 2016 until 21 January 2019), the procedure done in the grant of red onion evidence is first: the investigation of the regional office Directorate General of Customs and Excise of Aceh Province made a statement from the party who control the onion at the core of the letter explained that the suspect Sabaruddin Bin Rambe approve of the act of shallot that will be Conducted by investigators and the statement letter is made with awareness from the party who mastered and without any elements of compulsion (Zufida Hanum, 2020).

Secondly, investigators on the Regional Office of the Directorate General of Customs and Excise of Aceh Province requested a test of the Onion Testing Certification lab conducted against the Food Safety permit certification include residual test, sarmonela test and chemical contamination test. The examination procedure is done by the private party, namely PT. Angler Bio Chamb Lab, headquartered in Surabaya, while the free testing of quarantined plant destruction organism (OPTK) was carried out by class I Banda Aceh Agricultural Quarantine Station. The examination procedure refers to the regulation of the Minister of Agriculture RI number 31/Permentan/KR. 010/07/2018 concerning the Second Amendment to regulation of the Minister of Agriculture number 93/Permentan/OT. 140/12/2011 concerning type of organisms that interfere with quarantined plants. In the event that the Onion has fulfilled the requirements of food safety and free of HPHK/OPTK, then the onion can be diced, but if it does not meet the requirements of the action taken is to destruction according to Law No. 16 year 1992 Article 16 paragraph (1).

Thirdly, after obtaining the certification of security permits and certification of OPTK and then obtained the conclusion of the results of the test that the red onion tested is free from quarantines/plant destruction organisms, the next stage of the investigator asked the letter of determination of grant permission State of:

1. Permit certification of food security and free certification of OPTK,
2. A statement letter from the party that controls the onion that in question does not mind to do grant action against shallots.
3. Letter of willingness to receive the red onion grants from the District government/city.

So that on the basis of the letters, the letter of determination of grant permission of the state's confiscated in the form of shallots by the chairman of the District Court in the criminal jurisdiction occurred, against all measures and efforts carried out through Coordination with the public Prosecutor and the state Court of the criminal jurisdiction to occur.

Then investigators on the Regional Office of the Directorate General of Customs and Excise of Aceh Province coordinate with the head of the district to request a letter of willingness to receive grants, hereinafter investigators at the Regional Office of the Directorate General of Customs and Excise province Aceh immediately made a letter of permit to conduct a proof of goods grant by attaching: foreclosure warrant and news of foreclosure event, seizure determination of the District Court, statement letter of the suspect, news of the expert examination, letter Laboratory test results, and a letter of willingness to receive grants. After obtaining a grant from the district court which prosecuted, investigators at the Regional Office of the Directorate General of Customs and Excise of Aceh Province notified the schedule of grants to the ACEH high attorney and the District Court where Things will be judged.

Fourth, after the letter of determination of the state confiscated grant permission in the form of shallots that was signed by the Chairman of the state court received by investigators in the Regional Office of the Directorate General of Customs and Excise of Aceh Province then the grant action is carried out by inviting a number of stakeholders (stakeholders) including the head of the District government Red onion grants and legal counsel suspect.

Fifth, against the implementation of the reason for the reason for the cause of red onion is made news ceremony handover grants and news of the event signed by the parties and photographs of the implementation of the grant is attached in the case file (Zufida Hanum, 2020).

Based on the author's interview with SDR. Iwan Kurniawan (Head of enforcement and investigation of the head of Regional Office of Directorate General of Customs and Excise of Aceh/chairman of the investigation team at the Regional Office of Directorate General of Customs and Excise of Aceh) investigators in the Territory office of Aceh Customs and Excise so far gave grants to the Regency/city in Aceh province such as Banda Aceh, Langsa City, Sabang City, Aceh Besar Regency, Aceh Jaya District, West Aceh Regency and Aceh Tamiang Regency through head of Area of each region and channeled to the beneficiaries such as: social parlours, social community foundations, and to poor people in their respective territories, with consideration still many communities in the region in need as well as areas that are not the producer of shallots in the area is intended not to threaten the production of local shallots (Kurniawan, 2020).

IV. CONCLUSION

The procedure of grant proof of goods in the level of investigation is carried out with a mechanism: in advance a statement from the party who control the Onion that explained that the concerned approve of the act of shallot, and to the evidence of the red onion is carried out a test-free certification/OPTK and meet the food safety requirements from the plant Quarantine Hall, a statement letter received a The city of the party who receives grants and comes with the signing of news event handover grants and photographs the grant documentation attached in the docket.

Although the evidence grants at the stage of investigation has been practiced in a number of judicial sphere in Indonesia, but formally legalistic provisions of the provision for criminal evidence of goods in the investigation is not subject to legal basis Strong. In the implementation of the evidence grant procedure in the level of investigation is expected to have a clear and concrete legal reference mechanism, which is accompanied by a derivative of implementing rules so that this is in accordance with the expectations of the grant action that Legal certainty and in accordance with the authority of the respective officials in the implementation of the evidence grant.

REFERENCES

- [1]. Ahmad, Asri Wijayanti & Lilik Sofyan. *Strategi Penulisan Hukum*. Bandung : Lubuk Agung, 2011. p. 97.
- [2]. Marpaung, Leden. *Asas-Teori-Praktik Hukum Pidana*. Jakarta : Sinar Grafika, 2009. p. 10.
- [3]. Syamsuddin, Aziz. *Tindak Pidana Khusus*. Jakarta : Sinar Grafika, 2011. p. 12.
- [4]. Abdurrahman. *Pembaharuan Hukum Acara Pidana dan Hukum Acara Pidana Baru di Indonesia*. Bandung : Penerbit Alumni, 1980. p. 18.
- [5]. Rahardjo, Satjipto. *Hukum Progresif sebuah Sintesa Hukum Indonesia*. Genta Publishing : Yogyakarta, 2009. p. 5.
- [6]. Zufida Hanum, SH. *Prosedur Pengangan Hibah Sebagai Barang Bukti*. [interv.] Wakil Ketua PN Kuala Simpang. Januari 29, 2020.
- [7]. Kurniawan, Iwan. *Prosedur Penanganan Hibah*. [interv.] (Kepala Bidang penindakan dan Penyidikan Kepala pada Kantor Wilayah Direktorat Jenderal Bea dan Cukai Aceh/Ketua Tim Penyidik pada Kantor Wilayah Direktorat Jenderal Bea dan Cukai Aceh. Feberuari 3, 2020.

Zilzaliana. "Proof Of Goods Grant Procedure Phase Investigation Of Customs Criminal Act." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(3), 2020, pp. 55-59.