PERCEPTION ANALYSIS OF THE HARMONIZED SYSTEM: A CASE STUDY OF TARIFF DISPUTES IN INDONESIA

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***ABSTRACT*:**

Classifying goods based on the Harmonized System (HS) is practical knowledge in Customs. This study analyzes the Harmonized System's perception differences in tariff disputes. The purpose of this study is to determine and analyze the considerations of the Indonesian Directorate General of Customs and Excise (DGCE) in determining the classification of tariff based on the Harmonized System, the review of the tax court judge in deciding dispute verdict and its overall effect on tax refund. This research is a case study with qualitative research methods in the form of document studies and interviews.

***Keywords*:** *Harmonized System, HS Code, Import Tax*

ABSTRAK:

Mengklasifikasikan barang berdasarkan Harmonized System (HS) adalah pengetahuan praktis dalam Bea Cukai. Studi ini menganalisis perbedaan persepsi Harmonized System dalam sengketa tarif. Tujuan dari penelitian ini adalah untuk menentukan dan menganalisis pertimbangan Direktorat Jenderal Bea dan Cukai Indonesia (DJBC) dalam menentukan klasifikasi tarif berdasarkan Harmonized System, pertimbangan hakim pengadilan pajak dalam menentukan putusan sengketa dan pengaruhnya secara keseluruhan terhadap pengembalian pajak. Penelitian ini adalah studi kasus dengan metode penelitian kualitatif dalam bentuk studi dokumen dan wawancara.

Kata Kunci: Harmonized System, HS Code, Pajak Impor

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1. INTRODUCTION

Disputes often occur due to the imposition of different rates between importers and DGCE's Functional Officers for Document Checking (FODC) towards Harmonized System (HS), leading to tariff imposition differences. According to the data, 896 HS different interpretations cases happened in 2016 - 2019. Based on the Appeal Verdicts, the tax court has wholly granted importers' appeal requests for at least 778 disputes with the following details:

Table.1
Appeal Verdicts related to Provision of Tariff Post Classification and Imposition of Tax Rates

Year	*Appeal Verdicts*			*Total*
	Rejected	*Partly Granted*	*Wholly Granted*	
2016	*31*	*9*	*435*	*475*
2017	*22*	*4*	*185*	*211*
2018	*34*	*10*	*152*	*196*
2019	*7*	*1*	*6*	*14*
Total	*94*	*24*	*778*	*896*

Source: Indonesia Tax Court Website (2019)

The payment in Tariff and Customs Value Provision determined by DGCE change following the Appeal Verdict. It happens in the event when the judge wholly granted the verdict. The Tariff and Customs Value Provision contains bills for Import Duty, Excise, VAT Import, Luxury Sales Tax, and Income Tax Article 22 for Import. The Appeal Verdict is the legal basis for the importer filing for tax refunds. It appears that the granted appeal petition in court reduces state revenue. The perception differences between the DGCE and tax court judges in carrying out their roles seem to affect similar and recurring disputes in the future.

2. LITERATURE REVIEW

2.1 International Trade

International trade has fundamental implications for the wage ratio between large and small economies. It is not only shaped by the primitive that determine agglomeration economies and comparative advantage but also, and differently, by the sectoral levels of trade costs (Pflüger, M. and Tabuchi, T.,2019). In line with the protection theory put forward by List (1841), a moderate tariff is justifiable at certain times in economic development. International trade regulation is needed to ensure that markets function properly and to protect the local market. Market inefficiencies can hinder the benefits of international trade, and they aim to guide markets according to regulation.

Protectionism takes many forms, but the most common are tariffs, subsidies, and quotas. These strategies seek to

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correct any inefficiencies in the international market. In Indonesia, the institution that has the international trade protection authority is the Directorate General of Customs and Excise (DGCE) under the Ministry of Finance.

2.2 Harmonized System

Indonesian Minister of Finance Regulation Number PMK 6/PMK.010/2017 concerning Determination of the Harmonized System and Imposing Import Duty Tariffs on Imported Goods that was changed to PMK 213/PMK.010/2017 and amended again to PMK 17/PMK .010/2018 and to PMK 17/PMK.010/2020 regulates the purpose of the Harmonized System. Description of goods (Harmonized System Code/HS Code) is a list of item groups made in a structured and systematic manner which consists of post, sub-post, and tariff post. Since June 14, 1983, the World Customs Organization (WCO) launched the HS Code. Later, on January 1, 1988, HS Code became an international standard for the naming and numbering system used for trade product classification and their derivatives. Indonesia published the 2012 Indonesian Customs Tariff Book according to WCO as an official reference for its members.

Indonesia has ratified the use of the HS Code issued by WCO through Law Number 7/1994. Classifying goods using the HS Code aims to provide uniformity in a systematically prepared list of goods, determine Customs Tariffs, facilitate the collection, analyze trade statistics, and adjust international coding standards for trade purpose goods. These provisions will also bind Indonesia in the event of a change or amendment to the HS Code carried out by the WCO.

The classification of goods also needs additional references such as Explanatory Notes. It is a collection of HS Code official interpretations approved by the WCO and studied for many years in Brussels since 1951 (Anwar, 2015). In addition, there are other reference sources such as Supplementary Explanatory Notes that apply in ASEAN called the ASEAN Harmonized Tariff Nomenclature (AHTN) and Compendium of Classification Opinions or Summary Opinions on Classification Alphabetical Index.

Table 2. Indonesian Customs Tariff Book Chronological Table of Changes

Amendment	*Current Regulation*	*Past Regulation*
Original Provision	*PMK-6/PMK.010/2017*	PMK 213/PMK.010/ 2011

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First Amendment	PMK-213/PMK.010/2017	PMK- 133/PMK.011/2013
Second Amendment	PMK17/PMK.010/2018	PMK-- 97/PMK.010 / 2015
Third Amendment	PMK-17/PMK.010/2020	PMK-132/PMK.010 / 2015
Fourth Amendment		PMK-35/PMK.010/2016
Fifth Amendment		PMK-134/PMK.010 / 2016

2.3 Import Tax

Import Tax consists of Import Duty, VAT Import, and Income Tax Article 22 for Import. A value-added tax (VAT) is a consumption tax placed on a product whenever there is an additional value at each stage of the supply chain, from production to the point of sale. The VAT amount users pay is product cost minus the product's material fee used (taxed). The legal basis for VAT is Basic Law No. 42/2009. Article 7 of Indonesian Law No. 42/2009 divides the import VAT rates in Indonesia into single rates and other rates based on economic considerations. For a single tariff in the customs or import area, taxable goods and taxable services are 10%. Meanwhile, the customs tariff or import areas for taxable goods and taxable services is 5-15% based on economic considerations and the increased funds needed for development.

Furthermore, Income Tax Article 22 is an income tax imposed on certain business entities, whether owned by the government or private parties, which carry out trade activities related to export, import, or re-import. The legal basis for the collection of Income Tax Article 22 for Import contained in Article 22 of Law Number 36/2008 concerning the fourth amendment to Law Number 7/1983 concerning Income Tax and Ministry of Finance Regulation Number PMK-34/PMK.010/2017 regarding Income Tax Collection Article 22 in connection with the payment for the delivery of goods and activities in the import sector or business activities in other fields.

Indonesia adopted the Customs Value provisions based on the WTO GATT 1994 agreement (Agreement on Implementation of Article VII of GATT 1994). The regulation outlined in Article 15 of Law No. 10/1995 as amended by Law No. 17/2006 concerning Customs and Regulation of the Minister of Finance Number 34/PMK.04/2016 concerning Amendments to the Minister of Finance Number 160/PMK. 04/2010 on Customs Value for Calculation of Import Duty. The

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Customs Value is the basis for calculating import duties and levies for other imports. Import value is the value for calculating Import Duty that consists of Cost Insurance and Freight (CIF) plus Import Duty and other levies imposed based on the provisions of customs legislation in the import sector. If the tariff used is based on the ad valorem tariff (the customs duty is calculated as a percentage of the product's value), import duty calculation uses customs value. (The World Bank, 2010). The size of the import customs levy depends on the size of the customs value and the tariff imposed on an imported good. In the self-assessment system, the importer independently notifies the imported goods data and calculates the compulsory fee. The notification of customs value by the importer must be accurate under the applicable regulations. If the customs value notification is lower than it should be, the importer must pay the underpayment and be subject to administrative sanction. Minister of Finance Regulation Number 160/PMK.04/2010 concerning Customs Value for Calculation of Import Duty as amended by Regulation Number 34/PMK.04/2016 stated the rules related to the Determination of Customs Value.

2.4 Tariff Dispute

Tariff classification determines the effective rate of duty, so it is common for disputes to arise between customs and importers over which it applies. Since DGCE has adopted a self-assessment system in fulfilling customs clearance, in this process, its officials often conduct determination mismatch errors or find a product that is not following the data and supporting evidence. Should such a disagreement arise, the importer has the right to object to the determination.

Through the tax judiciary as an administrative matter, tariff disputes are settled. Based on positive law theory, a person or civil legal entity who is dissatisfied with the decision of state governance takes objections procedure. (Black, 1891). Based on Minister of Finance Regulation Number 51/PMK.04/2017 concerning Customs Objections, the petitioner can file an objection regarding the stipulation of customs tariffs and values for import duties calculation resulting in underpayments of import duty, excise, and import tax, also the stipulation of the imposition of administrative sanctions, or stipulations other than customs tariffs or values. An objection is a way of resolving tax disputes to the taxpayer given by the

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government to get justice (Komariah, Rukiah, and Purwito, 2006).

An appeal occurs if one of the parties in a civil case does not accept a court decision because it feels its rights are affected per the decision or considers the decision to be incorrect or unfair then appeal (Kansil, 1984). In the appeal process at the Tax Court, the object of the appeal is an Objection Decision or a continuation of the objection process. Upon the rejected objection, importers may disburse the collateral staked at the Customs Office. Suppose the importer disagrees with the Objection Decision, they can file an appeal to the Tax Court. After that, they can submit a sign of debt settlement as one of the conditions for the appeal submission per Regulation of the Directorate General of Customs and Excise number PER-41/BC/2017 On Supporting Evidence, Overflow Duty, Education and Training, Competency Test, as well as The Time of Assessment and Determination of Credit Numbers functional Department of Customs and Excise Inspectors Sub-Elements of Objection Research, Customs and Excise Appeal and Billing Process.

The decision of the Tax Court judge is taken based on an evidentiary assessment carried out in court. Should DGCE deny the administrative matter, importers can take legal measures. The taxpayer's application may be accepted in whole or in part following the decision of the Tax Court Judge.

2.5 Tax Refund

The tax that should not have been outstanding are taxes already paid by taxpayers who are not subject to payment or tax collection errors that result in tax withheld based on the provisions. In this context, importers are taxpayers. There is a facility for tax refunds paid in excess to protect taxpayer rights. The government provides this facility under the Minister of Finance Regulation Number 187/PMK.03/2015 concerning Procedures for Tax Overpayments Refund as legal certainty. The Directorate General of Taxes (DGT) assesses tax refund requests within three months after receiving the complete Overpayment Tax Assessment submission.

3. METHODOLOGY

In conducting this research, the author uses qualitative methods. The qualitative method, known as the artistic method, is more creative (less patterned) and is called an interpretive method because the research data is more concerned with interpreting the data found in the field (Sugiyono, 2017). The author also uses

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descriptive analysis to explain situations or events that overview tax disputes in this study. Four appeal decisions were subject to tax rate disputes won by taxpayers between 2016 to 2019. According to Sekaran and Bougie (2013), descriptive research aims to identify, understand, and describe the characteristics of humans, events, or situations that focus on research. The analysis provided an overview of the dispute subject challenged by taxpayers with the Directorate General of Customs and Excise at the Tax Court. In addition, it also describes the judge's consideration factors in deciding tax disputes with the subject of the Tax Rate dispute at the Tax Court.

In this study, the author produced an in-depth analysis of court decisions using the primary data as well as directly obtained through semi-structured interviews. This method was executed by meeting the object of research and conducting an interview. The aim was to see an implementation overview of import tax collection by obtaining data and information through data requests and interviewing practitioners, academics, and consultants related to the Harmonized System.

4. RESULT AND DISCUSSION

Table. 3
Samples of Tariff Dispute Case

Decision Number	***Dispute Subject***	***According to the Appellant (Importer)***	***According to Defendant Appeal (DGCE)***	***Judges Verdict***
PUT-004014.45/2018/PP/M.XVIIA Year 2019 (Wholly Granted)	*Goods Identification*	French Press Plastic is • a coffee brewing device with a basic shape in a metal filter attached to an iron rod (plunger). • To use it, press the iron rod into a pot containing coffee powder mixed with boiling water, and get a coffee drink without pulp.	French Press Plastic is • goods inspection result found 150 CT @ Box @ two teapots equipped with a filter inside the teapot. • The teapot body is plastic-made. • Tool for filtering, made of metal with a straight rod and a perforated circle. Its bottom is used for filtering together with the lid of the plastic-made teapot.	Based on the parties' explanations and looking at samples of goods, the Judges Assembly identified French Press Plastic as a mechanical device moved by hand used to prepare drinks in the form of tea or coffee.
	HS Code	*8210.00.00*	3924.90.90	8210.00.00
	Tariff	*Exemption of Import Duty*	*Import Duty 10%*	*Exemption of Import Duty*

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Decision Number	***Dispute Subject***	***According to the Appellant (Importer)***	***According to Defendant Appeal (DGCE)***	***Judges Verdict***
Put.87580/ PP/M.IXA/ 19/2017 (Wholly Granted)	*Goods Identification*	*For importers, waterproof footwear consists of a rubber or plastic sole and upper part or an outer layer of rubber or plastic that can be seen with the naked eye. The upper part is not attached to the sole and not assembled by sewing, riveting, nailing, screwing, puncturing, or similar processes because the assembly process will create gaps or holes in the footwear so that water can enter through the gaps/holes. Footwear whose sole or upper part is rubber or plastic produced by injection molding does not necessarily become waterproof footwear. Still, the most important thing is that waterproof footwear must meet the criteria of heading 6401, namely that it can protect against the ingress of water or other fluids so that when the footwear is worn and exposed to water, it does not make the user's feet wet.*	*For DGCE, imported goods are identified as waterproof footwear made of plastic. Its upper is not attached to the sole and not assembled by sewing, riveting, nailing, screwing, puncturing, or similar processing (unseparated upper and sole) made through an injection molding process, with a shape that does not cover the ankles.*	*The items were identified as non-waterproof footwear made of plastic (qualifies to be classified in heading 6402), in the form of sandals and shoes with a perforated top so that water can enter (eligible to be classified in tariff heading 6402.99.9000).*
	HS Code	*6402.99.9000*	*6401.99.0000*	6402.99.9000
	Tariff	*Exemption of Import Duty*	*Import Duty 15%*	*Exemption of Import Duty*
PUT-116883.19/ 2017/PP/M. VIIA Year 2018 (Wholly Granted)	*Goods Identification*	*Importers identify Feed Curb Dry as "feed additives, namely processed products in the form of feed additives containing propionic acid. Carriers added to raw materials for animal feed for the manufacture of final products in the form of poultry, pork, and other livestock feed, which functions as a preservative, ready-to-eat (end product), and not a fungicide. Its existence is not intended to destroy pathogens, insects, moss and fungi, sugar, rats, wild birds, etc.*	*DGCE identifies Feed Curb Dry as a chemical preparation containing propionic acid (anti-mould), silica compound, sodium chloride, calcium compound, and other compounds in powder form, which can be used as an anti-fungal in animal feed.*	*Feed Curb Dry are feed additives/supplements that are used to inhibit/prevent fungi in the manufacture of animal/human feed.*
	HS Code	*2309.90.20*	*3808.92.90 (classified as "Fungicide")*	*2309.90.20*
	Tariff	Exemption of Import Duty	*Import Duty 5%*	*Exemption of Import Duty*
Put-84810/PP/ M.VIIA/19/ 2017 (Wholly Granted)	*Goods Identification*	*Imported goods Paraquat 42% TC Salt (Naraxone 320 SL) is an organic compound of the type of paraquat salt, which is the active ingredient of pesticides, used as raw material in the manufacture of the herbicide Ridatop 288 SL (equivalent to 208 g/l paraquat ion) which is not ready for use but needs*	*Imported goods in the form of Paraquat 42% TC Salt (Naraxone 320 SL) were identified as a liquid herbicide preparation containing 42% paraquat dichloride in the aqueous solvent with the addition of effective emetic (PP796), in the form of a*	*The goods were identified as a heterocyclic compound (N, N'-dimethyl-4,4'-bipyridinium dichloride) in the form of a salt-containing paraquat*

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Decision Number	*Dispute Subject*	*According to the Appellant (Importer)*	*According to Defendant Appeal (DGCE)*	*Judges Verdict*
		further processing in the formulation process by adding several other supporting chemicals.	*green enter liquid packed with a 220 kg drum to make it only suitable for particular use name as a herbicide.*	*dichloride 42.1-42.2%, emetic (PP796) 0.8g/L.*
	HS Code	*2933.39.30.00*	*3808.93.19.00*	*2933.39.30.00*
	Tariff	*Exemption of Import Duty*	*Import Duty 5%*	*Exemption of Import Duty*

4.1 Causative Factors of Tariff Differences

4.1.1 Different ways of interpretation

In Appeal Verdict Number Put.87580/PP/M.IXA/19/2017, DGCE identifies imported footwear as waterproof footwear. It consists of rubber or plastic's outer sole and upper part. It can withstand water so the user's feet will remain safe from water exposure. However, importers interpret 'waterproof' per the Indonesian Customs Tariff Book. According to the book, imported footwear must withstand water penetration, cover the ankles, and not produce in one production cycle. So, based on the interpretation, importers do not consider the footwear they imported as waterproof footwear. Based on an interview with Harmonized System Lecturer, Customs Education, and Training Center, Ministry of Finance, he explained that importers often translate it using their assumptions because of their little knowledge of the HS Code. (Jafar, M., Personal interview. 2019, November 7)

Table.4
Imported Goods Amount on Each Appeal Verdict

Appeal Verdict Number	**Item Name**	**Amount of Each Item**
PUT-004014.45/2018/PP/M.XVIIA The year 2019	French Press Plastic	4000 sets
PUT-116883.19/2017/PP/M.VIIA Year 2018	Feed Curb Dry	20.000 kg
PUT-84810/PP/M.VII A/19/2017	Paraquat 42% TC Salt (Naraxone 320 SL)	80 Drums @200 kg = 16.000 kg total

Source: Indonesia Tax Court Website (2019)

4.1.2 Goods amount and provision deadline

Based on the verdict in the research objective and shown in Table 4, the number of goods was quite enormous. It illustrates how many items must be examined by the FODC for each type in one import declaration per day. Documents checked can be tens of documents with thousands of items per document. Meanwhile, according to Indonesian Customs Law Article 16, the

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provision must be published within 30 days after customs notification registration to provide service certainty to the public. Meanwhile, importers' providing incomplete documents requested before provision also causes inaccuracy in classifying goods. Based on an interview with Head of Objection Section II, Prime Customs and Excise Office type A Tanjung Priok, Directorate General of Customs and Excise, she explained small items, amount items, and time limitations had challenged the officers in the field. (Rizain, Nanik Susilawati. Personal interview. 2019, November 11). These are the limitation of DGCE officials to classify goods.

4.1.3 The flow of goods acceleration

In the process of releasing imported goods from the customs area, DGCE determines import routes for risk management to accelerate the flow of goods and enforce the red, yellow, and green lanes. Import documents are bound to be completed in less than 4 hours to receive Customs Declaration and lane determination. If the goods get the red lane, an official will carry an inspection within 12 working hours of receiving the Customs Declaration followed by the issuance of Release of Goods Approval within 48 working hours of receiving customs declaration, apart from unusual events. The red lane is the imported goods supervision process by physical inspection and document checking prior Release of Goods Approval issuance.

The yellow lane is a similar process without goods inspection. Green Lane is a process without goods inspection, but there will be a document checking step after the Release of Goods Approval issuance. Importation conducted with one of the following conditions: new importers, high-risk importers, imported goods which include temporarily imported goods, operational petroleum goods class II, re-imported goods, random inspection goods, and certain imported goods stipulated by the government will be in the red lane.

Meanwhile, the yellow lane determined if there is a deficiency in the customs declaration and its supporting documents. Some importers get priority facilities without a goods and documents inspection if they have government approval as priority lane importers (Main Partners). According to the Minister of Finance Regulation, Main Partners are regulated to resolve dwelling time problems in unloading goods, so they get green lane facilities for six months.

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Privileges obtained by Main Partners and other green lane importers can cause deficiencies in goods inspection because they are not checked one by one. Non inspected items will be classified based on the DGCE Officials' assumptions and allow classification differences. Although the official has the authority to request samples of goods from the green lane importer and the required supporting documents, this will depend on the importer's response and cooperation. Importers usually only state the brand of the goods, not the name of the goods according to the Customs Tariff Book. Based on an interview with Head of Objection Section II, Prime Customs and Excise Office type A Tanjung Priok, Directorate General of Customs and Excise, due to time constraints, if the importer does not respond nor cooperate in submitting documents, officials will search the specifications of goods through the internet or use assumptions (Rizain, Nanik Susilawati. Personal interview. 2019, November 11).

4.1.4 Importer's lack of knowledge in Harmonized System

The DGCE already requires certified customs experts such as Customs Service Management Companies and pre-entry classification to reduce disputes, but that was not enough because the Harmonized System is quite complex and cannot be studied partially. Sometimes importers already think that the Harmonized System can be learned at the same time while importing goods. Based on an interview with Customs Consultant in MUC Consulting, many are reluctant to learn because it was time-consuming. (Sabur, Bambang. Personal Interview. 2019, November 28). Importers often classify by directly assigning the classification and tariff heading regardless of section notes. In addition, many importers do not include specifications of goods, do not see goods records, and do not understand the process. This lack of knowledge also affects their document's incompleteness. It can occur due to various factors, one of which was because imported goods have been entered before document completion, so there was no time to classify goods appropriately.

4.2 Judge Considerations in Determining Appeal Verdict

4.2.1 Evidence and legal materials

Judges often consider several factors to determine verdicts, such as extracting facts on items, arguments between parties involved, and evidence. The appellant or defendant uses the opportunity given to

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present goods as evidence in court. Even so, not all items were presented during the trial. Animals or too large items are impossible to be shown in court. The judge will conduct a mild test to verify the item classification. If it is still not possible, the appellant can use documents that support proof of goods, such as photos, brochures, or supporting certificates.

The judge does not have to visit the factory or location where the goods are placed or stored. If the goods are still under the DGCE's ability and supervision, they are presented under their permission and supervision. Based on an interview with Customs Consultant in DDTC Consulting, the appellant or defendant appeal can both present evidence in the form of their respective laboratory tests. It will follow the proper classification of goods and be decided later by the judge. (Asyir, Riyhan Juli. Personal Interview. 2019, December 3)

4.2.2 Judge basis of a decision

Judges use legal sources such as the Indonesian Customs Tariff Book, Explanatory Notes, international treaties, WCO decisions, and related regulations. Based on an interview with the Substitute Registrar of Assembly VIIA, Indonesia Tax Court, in the HS case, they cannot always use jurisprudence because it was not always the same kind of good. If the specification was slightly different, the previous dispute cannot be used as a source of law for the current dispute. The evidence can be more comprehensive than other cases or have different characteristics and specifications. Even though the differences were not significant, it was still different, so the verdict was different (Rachmasari, Yosephine Riane Ernita. Personal Interview. 2019, December 4).

Judges can also dig up information by meeting expert witnesses. Both appellant and defendant can bring expert witnesses. Other authorities may also issue documents or regulations that determine the HS Code. Even so, these documents were not considered valid evidence and were not taken into consideration by judges if presented in court. Documents issued from authorities other than the DGCE are deemed to be improperly classified.

4.2.3 Judge obstacles in making decisions

Each judge has a different style of decision-making. Some judges tend to pay more attention to material requirements than formal, and there was the opposite. Many cases occurred without following the field procedures, so they did not meet

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the dispute filing standard requirements and eventually lost the appeal. The judges paid great attention to documentation both from DGCE and importers. For example, the assignment letter of the field officer who was given authority in the classification process must comply with the regulations and standard operating procedures. If the process is missing and clashes with the rules, the judge will grant the appeal because the formal requirements are unfulfilled.

4.3 Harmonized System regulations gap

The regulatory loophole often carried out by importers was the existence of a lawful duty. Lawful duty means carrying out responsibilities based on law and under regulations. Imported goods do not have to be imported when they are installed. They can be disassembled but have already reflected the actual character of an item. One of the conversions of quantities indicators is dismantled goods that are complete when put together.

Before smartphones existed, cell phones were disassembled in parts (battery, camera, LCD, and case). If the cellphone cases are 1000 and the batteries are 500, it does not match. So, the two items were considered as spare parts, not cell phone units. Another example is bicycles. The bicycle has one handlebar and two wheels. If converted, the number of imported goods consists of 500 handlebars, 1000 tires, and 500 bicycle bodies, which means it is suitable and feasible to convert into 500 bicycles. If the importer intends to avoid high rates for finished imported goods, he will split the goods into separate parts. For example, importers split handlebars, wheels, and bicycle bodies via different containers. Although the three items are classified under the spare parts post-classification, not bicycles, this action does not violate the law. The spare part rates are lower than the finished goods rates to create a multiplier effect from processing semi-finished goods.

4.4 Harmonized System limitations

The Indonesian Customs Tariff Book is a book that was compiled last 2017 and compiled every five years. Indonesia has ratified the use of the HS Code issued by the World Customs Organization (WCO) based on the Indonesian Law Number 7/1994. Indonesia is also bound by these provisions in a change or amendment to the HS Code carried out by WCO. The book is still sufficient based on the existing requirement. If there is still a shortage, only one or two items are unavailable in the tariff chapter and will

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likely appear in the upcoming publication. In ASEAN, there was already a notes section called Supplementary Explanatory Notes (SEN). It is equipped with more complete detailed descriptions and pictures. It is good enough to minimize perception between DGCE and importers. However, not all items in the Additional Explanatory Notes have a picture caption.

The HS Code is not a list of goods but a grouping of goods. Although it changes every five years, the Indonesian Customs Tariff Book is static and is published only at the beginning of the period. DGCE officials can see the latest updates through the Indonesian National Single Window (INSW), but only for the import duties rate. Meanwhile, the export duties rate, VAT, and Income Tax rate are not renewed or added. The Harmonized System is subjective and consensual. Customs authorities also follow the determination of the Harmonized System at WCO around the world with different scientific backgrounds.

Based on an interview with Customs Consultant in MUC Consulting, goods will continue to change and develop due to the advancement of time and technology. The Variation in many goods causes misclassification of similar items, even though the composition, function, and process are different. In addition, not every item's role has been described in detail (Sabur, Bambang. Personal Interview. 2019, November 28). The rapid development of science and technology goes hand in hand with the development of goods variants, resulting in a blank chapter that can accommodate these new variant items or old items but has functionally developed very far. An example of this is the 'radio in the car' item, which over time transformed into navigation. These two goods appear to be the same, but their uses and their import values are different. However, the existing Harmonized System has not stated this, especially in Indonesia, because the navigation device in the car is still in the 'radio' post.

The other shortcomings are related to the references used in Indonesia referred to the ASEAN Harmonized Tariff Nomenclature (AHTN). Based on an interview with Customs Consultant in DDTC Consulting, the eight-digit translation lacks clarity due to reference limitation from the Supplementary Explanatory Notes adopted by ASEAN. Even in SEN, though it was equipped with pictures, not all items were broken down by a heading. As a result, this becomes a trigger for disputes and a legal vacuum.

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(Asyir, Riyhan Juli. Personal Interview. 2019, December 3).

4.5 Appeal Verdict impact on tax refunds

The number of Appeal Verdicts regarding Harmonized System disputes from 2016 to 2019 showed a decreased trend in quantity. In 2016, the verdict granted materially and formally was quite a lot, although a smaller number than those rejected entirely. Meanwhile, in terms of dispute value, the granted dispute increased in 2017. It was either partially or wholly, formally, and materially, with a ratio of 9:1. Furthermore, in 2018, although the total number of disputes decreased, the number of granted verdicts was still lead than those rejected in a ratio of 63%:37%. This figure drops in 2019 with more rejected disputes (72%) than those granted formally or materially (28%).

The emergence of tariff exemption regulations and no value-added tax regulated in Regulation of Indonesian Minister of Finance Number 160/PMK.04/2018 Concerning Tariff Exemption Regulations and No Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods on Imports of Goods and Materials to be Processed, Assembled or Installed on Other Goods to be Exported, by the end of 2018 was the cause of the significant decrease in disputes. Companies get facilities for an ease in imports for export purposes, primarily manufacturing companies. The result was in line with the government's desire to deregulate and simplify regulations, expand the supply chain of materials as substitution of imported goods, expand the export channels of production, accommodate the development of business processes of business activities, and most importantly, decrease disputes. Overall, the value of granted, both formal and material, reached a total of Rp677.149.862.055, - as shown in Table 5.

The verdict on appeal will certainly affect tax refunds. Import Tax has components: Import Duty, Income Tax Article 22 for Imports, and Import VAT. For Import Duty, the importer as taxpayer submitted a refund of the value granted to DGCE. Meanwhile, for Income Tax Article 22 for Imports and Import VAT, apply the refund submission to the DGT through an application for Tax Refunds. Table 6 illustrates Tax Refunds from Notice of Overpayment Assessment regarding Tax Article 22 for Imports and Import VAT from 2016 to 2019.

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Table 5.
Appeal Verdict on the Harmonized System Dispute in 2016 – 2019

Year	Materially Granted				Formally Granted		Overall Rejected		Total	
	Wholly		Partly							
	Cases	Value (million)	Cases	Value (million)	Cases	Value (million)	Cases	Value (million)	Cases	Value (million)
2016	309	24,001	83	-	0	-	528	59,740	920	83,741
2017	433	203,170	137	-	59	366,145	397	64,725	1026	634,036
2018	201	32,101	107	-	38	35,046	338	38,720	684	105,867
2019	44	16,307	139	-	2	382	147	42,190	332	58,879
Total	**987**	**275,575**	**466**	**-**	**99**	**401,573**	**1410**	**205,375**	**2962**	**882,523**

Source: Directorate of Appeals and Regulations, Directorate General of Customs and Excise (2019)

Table 6.
Tax Refunds from Notice of Overpayment Assessment regarding Income Tax Article 22 for Imports and Import VAT in 2016 - 2019 (In Million Rupiahs).

Year	**2016**	**2017**	**2018**	**2019**	**Total**
Income Tax Article 22 for Import	204	384	874	275	1,737
Import VAT	12,908	3,659	10,169	41,770	68,506
Total	**13,112**	**4,043**	**11,043**	**42,045**	**70,243**

Source: Directorate of Tax Information, Directorate General of Taxes (2019)

Directorate General of Taxes issues a Notice of Overpayment Assessment if the research report has an overpayment of taxes. The amount of this disbursement comes from the importer application submitted after receiving an Appeal Verdict. Based on the Minister of Finance Regulation Article 5 PMK-187/PMK.03/2015 concerning Procedures for Tax Overpayment Refunds That Should Not Have Been Outstanding, the DGT must examine the accuracy of tax payments as stated in refund requests. The request is granted if it meets the following conditions: the amount referred to the state treasury and has not been credited in the Tax Report.

The two tables above show a significant comparison between the results of the Appeal Verdict received by the judge and Notice of Overpayment Assessment value disbursed due to the differences in import duty refund directly submitted to DGCE. The importer must apply for an import duty refund first, not when the Appeal Verdict is issued. Therefore, there is a timeframe between the events when the dispute started, the issuance of the Appeal Verdict, and the importer's refund request in the Tax Office. These three events can happen in different years.

Even though the value is not large, applications for tax refunds submitted to the Tax Office where the disputing

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importers are registered as taxpayers continue to exist.

For Income Tax Article 22 for Imports, there are different rates between importers with Import Identification Number (7.5%) and without Import Identification Number (2.5%). The Import VAT rate is the same (10%). Although the dispute only affects the Import Duty rate listed on the Indonesian Customs Tariff Book, dispute results will affect the Income Tax Article 22 for Imports and Import VAT shifting value because it is an integral part of the Import Tax. It is a concern, considering that DGCE and DGT are two different institutions under the Indonesian Ministry of Finance, and both have dissimilar powers and interests. Even though DGCE did Import Tax collection and recognized it as a work achievement, DGT acknowledged its value as revenue.

Tax refunds on Notice of Overpayment Assessment made through the issuance of the Disbursement of Refund Claim under the provisions of laws and regulations governing the calculation and return of tax overpayments (30 days after the Notice of Overpayment Assessment is issued). The Ministry Regulation did not mention the period for disbursement since application submission to the Tax Office. There is no legal certainty for importers as taxpayers when the refunds will be processed as long as the Notice of Overpayment Assessment has not been issued.

5. CONCLUSION

In conclusion, the identification differences are due to technical problems such as interpreting methods, the large number of goods, time limitation, the flow of goods acceleration, the importer lack of knowledge on the HS Code, the incomplete documents provided by the importer, and the existence of regulatory loopholes exploited by importers. Furthermore, regulation amendments are needed to prevent an importer from using legal loopholes and directly discuss with WCO about items that are not clearly classified and frequently disputed. There should be easy access or free access to the Harmonized System reference to cope with reference limitations.

For Policy Recommendation, there must be administrative reform and joint programs improvement for both institutions to integrate data preposition compliance history with a single database to overcome complex systems on tax refund. Appeal Verdict documents should be duplicated and sent directly to the Tax Office. The disbursement process should begin since the Tax Office receive and

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confirm it online to the DGCE. In addition, DGCE systems need supporting applications to find references easier in the Harmonized System and monitor importers who use legal loopholes or have disputed repeatedly over the Harmonized System. It is also necessary to regulate the period between the Appeal Verdict issuance to the money being transferred to taxpayers to avoid the delay of taxpayer rights. It will be better if the DGCE has the authority to fully receive Import Tax revenue so that importers can disburse refunds more simply. Both DGT and DGCE will have the basis for conducting law enforcement and providing facilities and services to employees and users in the field.

REFERENCES

Anwar, Syaiful. 2015. *Cara Mudah Belajar Klasifikasi Tarif Bea Masuk Berdasarkan The Asean Harmonized Tariff Nomenclatures System. [An Easy Way to Learn Import Duty Classification Based on The Asean Harmonized Tariff Nomenclatures Systems]*. Jakarta: Yogyakarta: Gambang

Creswell, John W. 1994. *Research Designs: Quantitative and Qualitative Approaches*. New Delhi: Sage Publication

Direktorat Jenderal Pajak [Directorate General of Taxation]. 2018. *Laporan Tahunan 2017 [2017 Annual Report]*. Retrieved in: *https://www.pajak.go.id/id/laporan-tahunan-2017*

Direktorat Jenderal Pajak [Directorate General of Taxation]. 2017. *Laporan Tahunan 2016 [2016 Annual Report]*. Retrieved in: *https://www.pajak.go.id/id/laporan-tahunan-2016*

Ellet, William. 2018. *The Case Study Handbook: A Student's Guide*, Harvard Business School Publishing.

Hilala, Adam Syaiful., Lisna, Vera. (2019). *Pengaruh Dwelling Time pada Penerimaan Pajak Impor di Indonesia. [The Effect of Dwelling Time on Import Tax Receipts in Indonesia]*. Jurnal Ekonomi dan Pembangunan Indonesia [Journal of Indonesian Economy and Development], Vol 19 No. 2, 147–159.

International Monetary Fund. 2013. *How Can an Excessive Volume of Tax Disputes Be Dealt With?* (2013). retrieved in: https://www.imf.org/external/np/leg/tlaw/2013/eng/tdisputes.pdf

ISSN 2614-283X (online) / ISSN 2620-6757 (print)

Kansil, CST. 1984. *Pengantar Ilmu Hukum dan Tata Hukum Indonesia [Introduction to Indonesian Law]*. Jakarta: Balai Pustaka.

Kementerian Keuangan [Ministry of Finance]. 2017. *Laporan Tahunan 2016 [2016 Annual Report]*. Kementerian Keuangan. Jakarta: Kementerian Keuangan. Retrieved in: https://www.kemenkeu.go.id/media/11141/laporan-tahunan-kementerian-keuangan-2017.pdf

Kementerian Keuangan [Ministry of Finance]. 2018. *Laporan Kinerja 2017 [2017 Annual Report]*. Kementerian Keuangan. Jakarta: Kementerian Keuangan. Retrieved in: https://www.kemenkeu.go.id/media/14512/laporan-tahunan-kementerian-keuangan-2018.pdf

Komariah, Rukiah and Purwito. 2006. *Pengadilan Pajak: Proses Banding Sengketa Pajak, Pabean dan Cukai. [Tax Court: Tax, Customs and Excise Dispute Appeal Process.]* Jakarta. Badan Penerbit FHUI

List, Friedrich. 1841. *The National System of Political Economy by Friedrich List, trans. Sampson S. Lloyd, with an Introduction by J. Shield Nicholson.* London: Longmans, Green, and co.,

Nugroho, Budi; Hikmah, Muhammad. 2014. *Faktor Penyebab Kekalahan Direktorat Jenderal Bea dan Cukai Dalam Penyelesaian Sengketa Kepabeanan Melalui Pengadilan Pajak [Directorate General of Customs and Excise Defeat Causative Factors in Settling Customs Disputes through the Tax Court]*. Kajian Akademis BPPK Kementerian Keuangan. [Academic Study of Financial Education And Training Board, Ministry of Finance]

Purwito, A. 2008. *Kepabeanan dan Cukai (Pajak Lalu Lintas Barang): Teori dan Aplikasi [Customs and Excise (Traffic Tax): Theory and Application]*. Jakarta: Kajian Hukum Fiskal FHUI [Study of Fiscal Law, Faculty of Law, University of Indonesia].

Pengadilan Pajak Indonesia. [Indonesian Tax Court]. Risalah Putusan. 2019. Retrieved in: http://www.setpp.kemenkeu.go.id/risalah

Pflüger, M. and Tabuchi, T. 2019. Comparative advantage, agglomeration economies, and trade costs. *Journal of Urban Economics*, 109, pp.1–13

ISSN 2614-283X (online) / ISSN 2620-6757 (print)

Black, Henry Campbell. 1981. *Black's Law Dictionary (5th ed. Published in 1979).* St. Paul: West Publishing Co.

Pusdiklat Bea dan Cukai, Kementerian Keuangan [Customs Education and Training Center]. 2017. *Modul Materi Klasifikasi Barang [Harmonized System Material Module]*. Jakarta: BPPK Kemenkeu [Financial Education and Training Board, Ministry of Finance]

Santoso, Maulana Budi. 2019. Interview with Head of Appeal Section, Directorate of Appeals and Regulations, Directorate General of Customs and Excise.

Sekaran, U. and Bougie, R. 2016. *Research Methods for Business: A Skill Building Approach 7th Edition.* UK: John Wiley and Sons Ltd

Stanford Research Institute. 1951. *Chemical Economics Handbook*. Stanford: Chemical Economics Service, Departement of Business and Industrial Economics

Sugiyono, Prof. Dr. 2017. *Metode Penelitian Kebijakan [Policy Research Methods]*. Bandung: Alfabeta

The World Bank. 2010. Forms of Import Tariffs. Retrieved in https://wits.worldbank.org/wits/wits/witshelp/content/data_retrieval/p/intro/C2.Forms_of_Import_Tariffs.htm

LIST OF STATUTES AND REGULATIONS

Law Number 16/2000 regarding Second Amendment to Law Number 6/1983 Concerning General Provisions and Tax Procedures

Government Regulation of Republic Indonesia Number 29/2017 concerning Payment Methods and Goods Delivery Methods in Export and Import Activities

Regulation of the Minister of Finance of the Republic of Indonesia Number 51/PMK.04/2017 concerning Customs Objection

Regulation of the Minister of Finance of the Republic of Indonesia Number 225/PMK.04/2015 concerning Amendments to the Regulation of the Minister of Finance Number 139/PMK.04/2007 Concerning Customs Inspection in the Import Sector

Regulation of the Minister of Finance of the Republic of Indonesia Number 226/PMK.04/2015 concerning Amendments to the Regulation of the Minister of Finance Number

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155/PMK.04/2008 concerning Customs Declaration

Regulation of the Minister of Finance of the Republic of Indonesia Number 187/PMK.03/2015 concerning Procedures for Tax Overpayment Refunds That Should Not Have Been Outstanding

Regulation of the Minister of Finance of the Republic of Indonesia PMK 17/PMK.010/2020 concerning Determination of the Harmonized System and Imposing Import Duty Tariffs on Imported Goods

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