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Disparity in the Charges of Customs Crimes: A Study of Decision Number 42/Pid.B/2024/PN Rhl and Decision Number 43/Pid.B/2024/PN Rhl

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ABSTRACT

*This research aims to analyze the disparity in the charges of customs crimes in a case study of Decision Number 42/Pid.B/2024/PN Rhl and Decision Number 43/Pid.B/2024/PN Rhl. This normative legal research employs a tripartite approach, encompassing a statute approach, a comparative approach, and a case study approach. Data analysis uses a qualitative content analysis approach to describe the problems and address the research objectives. The research results indicate a significant disparity in the charges between the two decisions, while both defendants were proven to have jointly committed acts that fulfil the elements of a criminal offence as regulated and punishable under Article 102 point an of Law Number 17 of 2006 Juncto Article 55 section (1) of the Penal Code. Conversely, the Public Prosecutor presented substantially different charges: two years imprisonment for one defendant and four years for the other defendant. This disparity in the charges, which reached twice as much, raises serious issues regarding proportionality and fairness, violates the principle of equality before the law, negatively impacts legal certainty (*rechtszekerheid*), which in turn can erode public trust in the judicial system and hinder fair law enforcement. To mitigate the disparity in the charges, comprehensive and systemic efforts are needed, including the establishment of detailed and structured sentencing guidelines, increasing the capacity and professionalism of Public Prosecutors, strengthening oversight and evaluation mechanisms of the Public Prosecutor's performance, and implementing an effective case management system to identify potential disparities early on.*

Keywords: *Charges; Customs Crimes; Disparity; Indictment; Public Prosecutor.*

INTRODUCTION

International trade forms a crucial foundation for national economic growth and stability (Hasyim et al., 2023). This economic interaction between countries not only facilitates the exchange of goods and services but also encourages innovation, technology transfer, and enhanced competitiveness (Simbolon, 2023). In this context, the effectiveness of the customs system plays a central role in ensuring the smooth and secure flow of cross-border trade (Parthiban et al., 2020). A reliable customs system serves as a vital instrument in facilitating the efficient movement of goods, securing state revenue through import and export duties, and protecting national interests from illegal trade practices, such as smuggling and counterfeiting. In an era of economic globalization and the rapidly evolving dynamics of international trade, the demands on customs systems have become increasingly complex, requiring adaptation and responsiveness to changes in international regulations, technological advancements, and new challenges in law enforcement. Therefore, strengthening and modernizing customs systems has become a primary priority in maintaining economic competitiveness and national sovereignty (Borysenko et al., 2022).

As the legal basis that comprehensively regulates customs aspects in Indonesia, Law Number 10 of 1995 addresses the need for clear and adaptable regulations. This law is designed to provide legal certainty for businesses, simplify customs administration, and improve the efficiency of import and export processes. Furthermore, the enactment of this law also responds to the current economic globalization, which demands the

harmonization of international regulations and standards. The Directorate General of Customs and Excise, as the institution mandated to implement customs provisions, has a strategic role in supervision, service, and law enforcement. The Directorate General of Customs and Excise is responsible for ensuring compliance with customs regulations, facilitating legitimate trade, and combating criminal acts in the customs sector (Ariyanto et al., 2024). Actions that violate the provisions in [Law Number 10 of 1995](#), along with its amendments in [Law Number 17 of 2006](#), are categorized as customs crimes, the criminal sanctions for which are specifically regulated in the relevant articles. The amendments in [Law Number 17 of 2006](#) are themselves an effort to align the law with the latest developments in international trade and the need for more effective law enforcement.

The implementation of customs law in practice often gives rise to complex cases that require careful handling. One such example is the case involving Aris Miyanto and Marzuki. Based on the trial facts, both were proven to have jointly transported used clothing (ballpress) from Port Klang (Malaysia) to the waters of Rokan Hilir (Indonesia), using the Motor Vessel Rifqi Wijaya 34 GT (MV Rifqi Wijaya). This action was further aggravated by the fact that the imported goods being transported were not listed in the manifest, a document listing commercial goods loaded on a ship. The discrepancy between the physical cargo and the manifest document substantially indicates a violation of customs provisions. Therefore, the joint actions of Aris Miyanto and Marzuki are strongly suspected of constituting a customs crime as stipulated in Article 102 point a of [Law Number 17 of 2006](#) juncto Article 55 section (1) of the [Penal Code](#).

An interesting aspect of this case lies in the mechanism of law enforcement officials' handling of the case. Although this case involved both defendants who committed the crime jointly and was handled by the same three Public Prosecutors, the legal process was separated into two different case files, as indicated by the different case referral letter numbers. Nevertheless, it should be noted that the referral and registration of both case files were carried out at the same time. Consequently, the court produced two separate decisions, namely [Decision Number 42/Pid.B/2024/PN Rhl](#) with defendant Aris Miyanto and [Decision Number 43/Pid.B/2024/PN Rhl](#) with defendant Marzuki. Furthermore, at the prosecution stage of the trial, although both defendants faced the same article, namely Article 102 point a of [Law Number 17 of 2006](#) juncto Article 55 section (1) of the [Penal Code](#), the Public Prosecutors presented a significant disparity in the charges. Aris Miyanto was charged with two years' imprisonment, while Marzuki was charged with four years' imprisonment.

The substantial difference in the prosecution of two individuals who committed a crime jointly raises a crucial question regarding the possibility of a disparity in the charges. The disparity in the charges, which is defined as a disproportionate

variation in the application of criminal sanctions for similar cases, is an important issue in the criminal justice system (Feigenberg & Miller, 2021). This phenomenon can undermine the principle of equality before the law and create a perception of injustice in society, which can ultimately erode public trust in the integrity and objectivity of law enforcement (Santoso & Sinaga, 2022). Therefore, an in-depth analysis of the potential disparity in the charges becomes highly relevant and important to conduct.

Based on the problems that have been described, this research specifically focuses its analysis on the disparity in the charges of customs crimes committed by Aris Miyanto and Marzuki, as manifested in [Decision Number 42/Pid.B/2024/PN Rhl](#) and [Decision Number 43/Pid.B/2024/PN Rhl](#). This research will comprehensively examine the factors that contributed to the disparity in the charges, evaluate its implications for the principle of justice, and ultimately formulate constructive and applicable recommendations to minimize the occurrence of disparity in the charges in the future.

METHOD

This research employs a normative legal research methodology with a tripartite approach, encompassing a statute approach, a comparative approach, and a case study approach (Qamar & Rezah, 2020). This methodological framework is pertinent to the research objective, which is to analyze the disparity in the charges of customs crimes. The statute approach will focus on [Law Number 10 of 1995](#), along with its amendments in [Law Number 17 of 2006](#). The comparative approach facilitates the identification of similarities and differences in the indictments submitted by the Public Prosecutors in separate case files. The case study is conducted through an in-depth examination of court decisions to provide comprehensive insights into the practical application and interpretation of legal norms. In addition to primary legal sources in the form of statutory regulations and court decisions, this research utilizes secondary legal materials, including legal doctrines, scholarly journals, and other relevant literature obtained through library research. Data analysis employs a qualitative content analysis approach to examine and interpret non-numerical data, such as legal texts and court decisions, systematically. This technique allows for the identification, classification, and interpretation of key themes, patterns, and arguments contained within the data. Through this rigorous methodological approach, this research endeavors to produce a comprehensive and systematic analysis to describe the problems and address the research objectives (Sampara & Husen, 2016).

RESULTS AND DISCUSSION

A. Chronology of the Customs Crime and Indictment by Public Prosecutor in Separate Case Files

Based on [Decision Number 42/Pid.B/2024/PN Rhl](#) and [Decision Number 43/Pid.B/2024/PN Rhl](#), it is known that both defendants were brought to trial by the Public Prosecutor with the same case description in the indictment letters, albeit through separate case files. Both defendants who were to be indicted ordered the commission of and participated in the act of transporting imported goods not listed in the manifest. This indictment became the basis for a series of events subsequently revealed in the following chronology.

The sequence of events began on Tuesday, September 19, 2023, when the MV Rifqi Wijaya commenced its voyage from Port Klang. The vessel was loaded with used clothing in ballpress form and destined for the waters of Rokan Hilir. This maritime journey proceeded without any detected incidents until the following day. On Wednesday, September 20, 2023, at approximately 06:00 Western Indonesian Time, in the northern waters of Sinaboi, the presence of the MV Rifqi Wijaya began to be monitored by maritime patrol units. More specifically, the Indonesian Navy Patrol Boat Tedung I-1-37 (Navy Patrol Boat Tedung), which was conducting surveillance duties in the aforementioned waters, detected a suspicious contact through its radar equipment. This detection marked the starting point of a further investigation into the vessel.

Following initial identification via radar, the Navy Patrol Boat Tedung attempted radio communication with the detected vessel. However, a series of radio calls went unanswered, raising further suspicion. Based on this situation, at 06:10 Western Indonesian Time, the commander of the Navy Patrol Boat, Tedung, initiated a pursuit of the suspicious contact. The pursuit manoeuvre was carried out carefully, heading towards the position identified west of Berkey Island. This pursuit operation lasted for some time until finally, at approximately 09:30 Western Indonesian Time, the MV Rifqi Wijaya was successfully intercepted and forced to come alongside the port side of the Navy Patrol Boat Tedung. This successful interception marked the beginning of further inspection of the vessel and its crew.

Following the interception, members of the Navy Patrol Boat Tedung team immediately carried out inspection procedures on the MV Rifqi Wijaya. This inspection included the identification of the crew members and the checking of the cargo. The results of the inspection showed that the vessel was manned by five crew members and a captain. Furthermore, the inspection also revealed the presence of a significant amount of cargo, consisting of hundreds of bales of used

clothing. At this stage, two members of the Navy Patrol Boat Tedung, namely Agung Dwi Yandik and Rudi Alrianto, conducted interviews and took initial statements from the crew members, including the two individuals who were later identified as the defendants, Aris Miyanto and Marzuki. This identification and statement-taking process formed the basis for the subsequent investigation.

During the interviews and statement-taking process, Aris Miyanto and Marzuki provided crucial information to the two members of the Navy Patrol Boat Tedung team. Both admitted that the MV Rifqi Wijaya sailed from Port Klang with the destination of Rokan Hilir, carrying cargo estimated at approximately 700 bales of used clothing. Furthermore, they admitted that the transportation of the used clothing was not accompanied by valid customs documents and manifests in accordance with the prevailing statutory regulations. Additionally, both defendants also described their respective roles in the activity. Aris Miyanto admitted responsibility for recording, counting, and overseeing the loading process of the used clothing onto the vessel at Port Klang. Meanwhile, Marzuki admitted his role as the captain responsible for the operation and navigation of the vessel during the voyage.

The statements provided by Aris Miyanto and Marzuki were not limited to their own roles. They also provided information regarding the involvement of other parties in this illegal activity. Based on their statements, two individuals named Busri (fugitive) and Panji (fugitive) were identified as the parties who arranged the loading and transportation of the used clothing from Malaysia to Indonesian territory. This disclosure broadened the scope of the investigation and indicated a wider network behind the activity. Based on the facts revealed, including the defendants' confessions and the absence of valid documents, it can be concluded that the transportation of approximately 700 bales of used clothing, which falls under the category of prohibited import goods, by both defendants using the MV Rifqi Wijaya from Port Klang to Rokan Hilir, was carried out illegally and in violation of applicable statutory regulations, particularly related to the Vessel Arrival Plan Document and the Inward Manifest Document.

Based on the series of events and the facts revealed above, the Public Prosecutor, in their indictment, charged that the actions of Aris Miyanto and Marzuki fulfilled the elements of a criminal offence as regulated and punishable under Article 102 point a of [Law Number 17 of 2006](#) juncto Article 55 section (1) of the [Penal Code](#). This indictment was based on the actions of both defendants who jointly transported imported goods, namely used clothing, which were not listed in the manifest, which constitutes a violation of [Law Number 10 of 1995](#), along with its amendments in [Law Number 17 of 2006](#).

B. Legal Analysis of Disparity in the Charges of Customs Crimes: A Comparative Study of Decision Number 42/Pid.B/2024/PN Rhl and Decision Number 43/Pid.B/2024/PN Rhl

Prosecution, as an integral part of the criminal justice system, is defined in Article 1 point 7 of [Law Number 8 of 1981](#) as the action of the Public Prosecutor to submit a criminal case to the competent court. This action represents the embodiment of the *actus formalis* function in the judicial process, namely a formal and procedural legal action. The fundamental objective of prosecution is to seek and uphold material truth (*materiële waarheidsvinding*), a concept rooted in the civil law tradition that emphasizes the search for the actual facts to achieve substantive justice ([Sufriadi, 2024](#)). The principle of single prosecution (*het Openbaar Ministerie*), adhered to in the Indonesian criminal legal system, places the authority of prosecution exclusively with the Prosecutor mandated by [Law Number 8 of 1981](#) ([Sudirdja et al., 2023](#)). This is in line with the *monopoliebeginsel* doctrine, which states that the state has a monopoly on criminal law enforcement ([Rony et al., 2022](#)). The administrative prosecution process is marked by the transfer of responsibility for the suspect and evidence, which is then formally registered.

The implementation of prosecution in judicial practice is often faced with complexities and challenges, one of which is the potential for disparity in the charges. The disparity in the charges, in this context, refers to a significant difference in the prosecution brought by the Public Prosecutor against defendants in similar cases, with very similar contexts, or committed jointly ([Nasrullah, 2020](#)). This case study focuses on a customs crime case involving Aris Miyanto and Marzuki, where both were indicted for committing an act jointly, handled by the same team of Public Prosecutors, but received substantially different charges. This phenomenon raises critical questions regarding the application of the principle of equality before the law and the principle of legal certainty (*rechtszekerheid*) ([Murti et al., 2024](#)).

Both defendants who were to be indicted violated Article 102 point a of [Law Number 17 of 2006](#) juncto Article 55 section (1) of the [Penal Code](#) related to the act committed jointly to transport imported goods not listed in the manifest. Formally, there was a difference in roles within the crew structure. Aris Miyanto held the status of a crew member, while Marzuki held the position of Captain of the MV Rifqi Wijaya. This difference in formal roles usually has implications for the division of tasks and responsibilities on board the ship.

Although there was a formal hierarchical difference, an in-depth analysis of the trial facts indicates the existence of shared criminal intent (*mens rea*) between

both defendants in committing this custom crime. The difference in positions does not automatically reflect a significant difference in the level of involvement or criminal liability. The principle of *mens rea* emphasizes the existence of intent or will to commit a criminal act (Idrus & Sudiro, 2024). In this case, the evidence revealed at trial showed that both Aris Miyanto and Marzuki had the same knowledge and awareness of the illegality of their actions.

As concrete evidence, the testimony revealed at trial explicitly showed that Aris Miyanto, despite being a crew member, played a significantly active role in this crime. He admitted responsibility for recording, counting, and overseeing the loading process of used clothing onto the vessel at Port Klang. This responsibility goes beyond the routine duties of a crew member and demonstrates direct involvement in the core of the crime. Aris Miyanto's active role refutes the assumption that the difference in formal positions automatically implies a difference in the level of criminal responsibility.

Aris Miyanto's contribution, which went beyond the routine duties of a crew member, negates a strong justification for the significant disparity in the charges. In other words, although Marzuki formally held the position of Captain, Aris Miyanto's active role and awareness in the loading and transportation process of the illegal goods placed both of them in an equal position in the context of criminal liability. Therefore, the disparity in the charges, which reached twice as much between the two, raises serious questions regarding proportionality and fairness in the application of the law, given the equality in *actus reus* and *mens rea* in this crime (Riyadi et al., 2020). This disparity in the charges further needs to be analyzed to find a strong legal justification, or conversely, to identify the potential for inconsistency or disproportionate application of the law.

Disparity in the charges, as occurred in this case study, has broad implications for the legal system. From the perspective of justice theory, a disparity that is not based on rational and proportionate reasons can violate the principle of distributive justice, where everyone has the right to equal treatment before the law (Noviyantho, 2021). This disparity also has the potential to undermine legal certainty, which is one of the important pillars of a state of law (*rechtsstaat*) (Prasetya et al., 2023). Legal certainty requires that the law be applied consistently and predictably so that everyone can know the consequences of their actions (Laia, 2024). The existence of disparity creates uncertainty and the potential for forum shopping. In addition, the disparity can also violate the principle of equality before the law (*gelijkheidsbeginsel*), which is a fundamental human right (Busthami, 2022).

Furthermore, systemic disparity in the charges can erode public trust in the judiciary. A society that witnesses inconsistencies in law enforcement has

the potential to lose faith in the integrity and objectivity of the judicial system. This can weaken legal legitimacy and reduce the effectiveness of law enforcement as a whole. In a broader context, disparity can hinder efforts to build a just and equitable legal system. This is consistent with legal culture theory, which states that the effectiveness of the law is strongly influenced by the legal culture of society and law enforcement officials (Rezah & Muzakkir, 2021).

To mitigate the negative impact of disparity in the charges, comprehensive and systemic efforts are needed. *First*, the establishment of more detailed and structured sentencing guidelines is necessary to provide clear guidance for Public Prosecutors in determining charges. These guidelines must consider various relevant factors, such as the severity of the crime, the defendant's role, the impact on victims and society, and individual defendant factors. *Second*, increasing the capacity and professionalism of law enforcement officials, especially Public Prosecutors, through continuous training and education is also crucial. *Third*, the oversight and evaluation mechanisms of the public prosecutor's performance need to be strengthened to ensure the consistent and fair application of the law. *Fourth*, implementing a more effective case management system can help identify potential disparities early on and prevent unjustified disparity in the charges. The implementation of restorative justice can also be considered in certain cases as a more recovery-oriented alternative to criminal case resolution.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion, it can be concluded that the study of [Decision Number 42/Pid.B/2024/PN Rhl](#) and [Decision Number 43/Pid.B/2024/PN Rhl](#) clearly reveals a significant issue of disparity in the charges. This is further emphasized by the fact that both defendants who were to be indicted committed the same act, were handled by the same team of Public Prosecutors, and even the prosecution at trial was carried out on the same day, albeit with separate case files. These facts, in fact, highlight inconsistency in the prosecution process.

Although there was a formal difference in roles as crew members, this difference should not necessarily imply a significant difference in criminal liability. Aris Miyanto's contribution to the loading and supervision process at Port Klang went beyond the routine duties of a crew member, thus factually demonstrating a level of involvement equal to the Captain. The evidence at trial also described the existence of shared *mens rea*, so that the actions of both defendants fulfilled the elements of a criminal offence as regulated and punishable under Article 102 point a of [Law Number 17 of 2006](#) juncto Article 55 section (1) of the [Penal Code](#). In this case, both defendants were proven to have committed, ordered the commission of, and participated in the act of transporting imported goods not listed in the manifest.

However, regardless of the shared *mens rea*, the equal level of involvement, and the handling of the case by the same prosecution team at the same time, the Public Prosecutor presented substantially different charges: two years imprisonment for Aris Miyanto and four years for Marzuki. This disparity in the charges, which reached twice as much, raises serious questions regarding proportionality and fairness in law enforcement. The fact that both defendants faced an identical legal process but received different treatment in the prosecution further reinforces the existence of a problematic disparity.

The disparity in the charges, which is not based on rational and proportionate justification, has a strong potential to violate the fundamental principle of equality before the law. Furthermore, the disparity in the charges also has a negative impact on legal certainty (*rechtszekerheid*), which is an important pillar of a state of law. The legal uncertainty arising from this disproportionate disparity in the charges can erode public trust in the judicial system as a whole. The broader implications of such disparity can hinder the realization of just and equitable law enforcement, as revealed in legal culture theory.

Based on the above conclusions, several strategic steps are recommended to various related parties to mitigate disparity in the charges of customs crimes. The Directorate General of Customs and Excise and the Indonesian Navy are advised to strengthen coordination and synergy with other law enforcement officials to ensure the availability of comprehensive and complete information for Public Prosecutors, thus enabling a more accurate and fair assessment.

The Attorney General, as the highest leader of the Prosecutor's Office, is recommended to make a series of fundamental efforts. *First*, more detailed and structured sentencing guidelines should be established as a basis for public prosecutors to determine charges proportionally and consistently. *Second*, increasing the capacity and professionalism of Public Prosecutors through continuous training and education to strengthen their understanding of customs law and the principles of fair law enforcement. *Third*, the oversight and evaluation mechanisms of the public prosecutor's performance should be strengthened regularly and systematically to ensure accountability and minimize the potential for disparity. *Lastly*, an effective case management system should be implemented that allows for early identification of potential disparities in the prosecution process and facilitates internal coordination.

The Crew Members, as parties potentially involved in customs crimes, are recommended to increase awareness and understanding of the regulations in [Law Number 10 of 1995](#), along with its amendments in [Law Number 17 of 2006](#). Compliance with these regulations is essential to prevent involvement in illegal activities. Furthermore, Crew Members are encouraged to actively report to the authorities if

they find indications of legal violations in the customs sector as a contribution to law enforcement and national security.

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