



Reconstruction of Regulation of Free Import Duty of General Goods Vehicle Based on Justice

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Abstract. In accordance with its business nature, the general goods transportation company must continuously renew its vehicle in order to survive. The vehicle renewal aforesaid may be performed, among others based on its business strategy, by importing vehicle directly from the manufacturing country. The company is entitled to obtain various facilities in respect of investment according to the prevailing regulations, one of which is in the form of free import duty of vehicle. The application to acquire such investment facility shall be submitted to the Head of Indonesia Investment Coordinating Board (BKPM), and for the said application the Head of BKPM on behalf of the Minister of Finance shall give approval or rejection. Prior to the enactment of Omnibus Law, there was a vacuum of license for the general goods transportation business. Business license as one of the requirements to obtain free import duty facility of vehicle, may not be obtained by the general goods transportation company because the existence of such business license was not regulated in any law relevant to the transportation sector. In this situation, BKPM had performed special discretion, including to perform coordination meeting with relevant ministries, so the general goods transportation company may get the investment facility without having any business license. Then, Omnibus Law and its implementing regulation stipulate that general goods transportation business must have business license which shall be applied through Online Single Submission-Risk Based Approach (OSS-RBA). This business license is also set as one of requirements to obtain free import duty of vehicle. The requirements to obtain business license via OSS-RBA are considered too technical and difficult to be fully achieved by transportation company, as proven that a few transportation companies have succeeded to obtain this business license. This is a sociological juridical research that will study the primary and secondary legal document supported by interview and experience of the author. The author will assess problems regarding the obtainment of free import duty facility of vehicle and evaluate on how far the prevailing regulation hinder the achievement of investment right of transportation company. As a type of business that is very important for general society, especially due to its function to transport many kind of daily needs, the general goods transportation business certainly shall receive justice and easiness to perform its business strategy.

Keywords: Investment · General Goods Transportation Company · Free Import Duty Facility of General Goods Vehicle · Justice

1 Introduction

Transportation could be defined as a process of moving goods or persons from the place of origin to the destination. In this matter, the factors of transportation include transported goods, vehicle, road, point of origin, point of destination and a person or an organization which could perform the transportation activity or provide the transportation service.¹ This research will discuss only about the transportation of goods. According to the means of transportation, transportation of goods may be divided into air, water (including by sea, lake and river) and land transportation. The air transportation uses airplane, and water transportation usually uses ship, boat and vessel. The means of land transportation could be further divided into train and vehicle. The management of train transportation in Indonesia is held by the Government,² with minor exception that some types of train are managed by private company. The vehicle transportation management mostly be performed and funded by private company through investment. The transportation by vehicle can provide “door to door” service, which unlikely can be performed by other means of transportation. Therefore, the land transportation by vehicle is very important in logistic supply chain and will always be needed by society.

According to the types of goods, the transported goods can be divided into special goods and general goods. The special goods can be further divided into non-hazardous goods, such as animal, plant, bulk, heavy equipment, car and motorbike³ and hazardous goods, such as explosive, liquid gas, flammable liquid, flammable material, poison, radioactive, corrosive goods and other hazardous goods.⁴ Meanwhile, the general goods could be varied from i) daily needs, such as foods, drugs and beverages, ii) industry material, such as plastic, glass, paper and cotton, up to iii) construction material such as precast concrete, steel, ceramic and cement. The general goods transportation is transportation of goods that is not dangerous and does not require special equipment.⁵

The type of transportation which will be discussed in this research is land transportation service of general goods provided by transportation company and performed using motorized vehicle, namely truck or tractor head. The truck is 6x4 drivetrain vehicle⁶ designed to tow a trailer⁷ which could carry a minimum weight of 45 ton of goods. To provide this kind of transportation service, one should have distinctive skill and special vehicle. The person who operates the vehicle must be an experienced driver and pass certain qualification. In the other hand, the vehicle, especially which may carry a huge quantity of goods, should be a high quality vehicle, pass the government vehicle test and be maintained regularly. Both the person and the vehicle shall implement a strict standard

¹ M.N. Nasution, 2015, *Manajemen Transportasi*, Bogor: Ghalia Indonesia, page. 3–4.

² *Undang-Undang Nomor 23 Tahun 2007 tentang Perkeretaapian*.

³ *Peraturan Menteri Perhubungan Republik Indonesia Nomor PM 60 Tahun 2019 Tentang Penyelenggaraan Angkutan Barang Dengan Kendaraan Bermotor Di Jalan*.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ A 6x4 (six by four) drivetrain is a truck with a drivetrain of three axles delivering power to two axles, which is the center axle and the rear axle.

⁷ The tractor head is a vehicle specially designed to tow a trailer. The trailer is an equipment to carry the load which weight is supported the trailer and the tractor head altogether. Rabiman, 2017, *Pengetahuan Dasar Teknik Otomotif*, Yogyakarta: Liberty, page. 9.

operating procedure and excellent safety method in order to successfully transport the goods without any delay, diminution or damage, since it is already well-known that the condition of infrastructures in Indonesia could be very challenging.

A truck is a movable asset and has a limited operational life. As the truck gets older the operational expense for the truck will increase until it is no longer safe or profitable to be operated. Therefore, in order to continue its business activity, a transportation company must always renew its armada in a certain period of time, otherwise, the company will cease to exist. This renewal is executed with the purpose to replace the old truck with the new truck. There are several ways for a transportation company to buy some brand new trucks. The company may purchase the truck from the authorized dealer in Indonesia. For some types of truck which have been manufactured in Indonesia, purchasing the truck from the local dealer would be the best way to go. However, what if the company intend to purchase other type of trucks which has not been manufactured in Indonesia? Some international vehicle brands have their exclusive dealer (*Agen Tunggal Pemegang Merek* or ATPM) positioned in Indonesia, so the company may purchase the said trucks from the said dealer. For this purchase, the dealer will import the desired trucks which will be encumbered by import-duty and value added tax (VAT) of import, then sell it to the transportation Company. With this scheme, the expenses of the import will ultimately be borne by the transportation company and would add a significant amount to the purchase price.

In this situation, some transportation companies decide to implement other business strategy, which is to import the truck directly from the manufacturing country. This importation is performed especially for the type of trucks which has not been manufactured in Indonesia. The reason why the company choose this strategy is because, among others, a) to find a high-quality truck which can endure the difficult and challenging road of Indonesia, b) the factors of price, operational expense and operational lifespan. If between two types of trucks or machines, both have similar capacity, relatively similar price and similar lifespan but one of them has lower operational expense, then the company will obviously prefer the one with the lower operational expense,⁸ and c) because the transportation company will obtain the free import duty facility as stipulated under the Investment Law. The obtainment of this investment facility will decrease the purchase price to acquire the trucks. Based on the author research in a transportation association, this business strategy is rarely performed by transportation companies because the consequences of this strategy are the company has to be prepared with the availability of spare parts, the readiness of skillful mechanics to maintain the trucks and the resale price that could be very low.

The transportation company which decided to import the truck directly from the manufacturing country was possible to obtain the free import duty of vehicle by submitting the application to Indonesia Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or BKPM). BKPM would examine the submitted requirements and consider whether the transportation company may be entitled to obtain the free import duty facility. The import duty released for such import is in the amount of 5% of the

⁸ Suad Husnan dan Enny Pudjiastuti, 2018, *Dasar-Dasar Manajemen Keuangan*, Yogyakarta: UPP STIM YKPN, page. 221.

total purchase price of the trucks.⁹ However, this situation is changed by the time of the enactment of Omnibus Law and its implementing regulation. From the explanation as mentioned above, this paper will try to figure out and answer the problem on: How the regulation of free import duty of vehicle should have been composed to achieve justice?

2 Research Methods

In the preparation and research, the author uses sociological juridical research method, which will study the primary and secondary legal document supported by interview and experience of the author. Sociological juridical approach emphasizes to obtain legal information empirically by direct interaction with the object.¹⁰

Sources and types of data used in this study are primary and secondary data, including the interview with the relevant authority and stakeholders and review the prevailing laws and related literatures. The data collection technique in this research is interview and literature study. Interview is a method to obtain information or data by directly questioning the relevant sources and stakeholders.¹¹ Literature study is a technique of collecting data by reviewing books, documents and other written materials, including the document that obtained by the Authors during his employment in a transportation company. After the data are collected the authors will analyze the data using qualitative analysis.¹²

3 Result and Discussion

The line of business of general goods transportation company is detailed in the Indonesia Standard Industrial Classification (*Klasifikasi Baku Lapangan Usaha Indonesia* or KBLI) number 49431 General Goods Motorized Vehicle Transportation. The scope of KBLI 49431 is transportation business using motorized vehicle, such as truck, car and container, and may transport more than one types of goods.¹³ Legal substance regulating traffic and transportation in the road regulated by the Traffic and Road Transportation Law and its implementing regulation. Further, the legal structure of traffic and road transportation, for the matter related to registration and identification of the vehicle and the driver are handled by the Police, while the infrastructure of the road and transportation is handled by the Ministry of Transportation.¹⁴

⁹ Peraturan Menteri Keuangan Nomor 6/PMK.010/2017 Tentang Penetapan Sistem Klasifikasi Barang dan Pembebanan Tarif Bea Masuk Atas Barang Impor.

¹⁰ Soerjono Soekanto, 2007, *Pengantar Penelitian Hukum*, Jakarta: UI Press, p. 51.

¹¹ Suteki dan Galang Taufan, 2020, *Metodologi Penelitian Hukum (Filsafat, Teori dan Praktik)*, Depok: Rajagrafindo Persada, page. 226.

¹² Suteki, *Ibid.*, page. 139–140.

¹³ KBLI 49431, Peraturan Kepala Badan Pusat Statistik Nomor 2 Tahun 2020 Tentang Klasifikasi Baku Lapangan Usaha Indonesia.

¹⁴ Meta Suryani, Anis Mashdurohutun, 2016, *Penegakan Hukum Terhadap Eksistensi Becak Bermotor Umum (Bentor) Berdasarkan Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas dan Angkutan Jalan*, *Jurnal Pembaharuan Hukum*, Volume III No. 1, Januari–April 2016, page. 27–35.

Article 1 Point 1 Investment Law states that investment is any form of activity to invest, both by local investor and foreign investor to perform business in Indonesia.¹⁵ The action of the transportation company in purchasing trucks so it can perform business and provide service the customer in Indonesia shall be considered within this definition. According to Article 14 Investment Law, every investor is entitled to obtain a) certainty of right, law and protection, b) open information regarding its business, c) right to receive appropriate service and d) various form of facilities and easiness according to the prevailing laws.¹⁶ The central government shall grant investment facilities to the investors.¹⁷ The investment facilities may be granted to the investor who perform business expansion or new investment.¹⁸ In BKPM point of view, business expansion is adding or expanding the business activity by increasing the investment capacity, adding line of business and/or adding business location. Purchasing of new trucks in respect of renewal or replacement of the old trucks shall be considered as business expansion.

Prior to the enactment of Omnibus Law, the Investment Law stipulates that the investment facilities which could be granted to the investor could be in the form of:¹⁹ a) tax holiday, b) exemption or relief of import duty for capital goods, machinery and equipment for the need of production which had not been manufactured in Indonesia, c) exemption or relief of import duty for raw and auxiliary material for the need of production for certain period of time and certain requirement, d) exemption or suspension of import VAT for capital goods, machinery and equipment for the need of production which had not been manufactured in Indonesia and for certain period of time, e) accelerated depreciation or amortization and f) relief of building and land tax, especially for certain business in certain area. Then, this stipulation is amended by Omnibus Law by stating that the form of investment facilities granted to the investors shall be in accordance with the prevailing laws related to the tax sector.²⁰

The laws in tax sector relevant to the free import duty of vehicle is the Regulation of Minister of Finance Number 176/PMK.011/2009 regarding Free Import Duty of Machinery and Material for the Construction and Development of Industry in respect of Investment, which had been amended firstly by Regulation of Minister of Finance Number 76/PMK.011/2012 and secondly by Regulation of Minister of Finance Number 188/PMK.010/2015 (hereinafter shall collectively be referred to as PMK 176/2009).²¹ This regulation stipulates that for the import of machinery and material performed by company in the line of business of i) industry that produce goods and/or ii) industry that produce service may be granted with free import duty. The type of industries that produce

¹⁵ Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal (Investment Law).

¹⁶ Ibid.

¹⁷ Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja (Omnibus Law), as the amendment of Article 18 Point 1 Investment Law.

¹⁸ Amendmend of Investment Law (Omnibus Law).

¹⁹ Investment Law.

²⁰ Point 4, Amendment of Investment Law (Omnibus Law).

²¹ Peraturan Menteri Keuangan Nomor 176/PMK.011/2009 tentang Pembebasan Bea Masuk atas Impor Mesin serta Barang dan Bahan Untuk Pembangunan atau Pengembangan Industri Dalam Rangka Penanaman Modal berserta perubahannya.

service as meant thereto are as follows:²² a) tourism and culture, b) public transportation, c) public health service, d) mining, e) construction, f) telecommunication industry; and g) harbor; The free import duty is granted with the condition that the imported machine and material a) have not been manufactured in Indonesia, b) have been manufactured in Indonesia but do not met the required specification or c) have been manufactured in Indonesia but its amount is not sufficient for the need of the industry, according to machine and material list regulated by the Ministry of Industry or appointed authority after coordinating with relevant institution.

PMK 176/2009 stipulates that in order to obtain free import duty of machinery and/or material for the construction and development of industry, the applicant shall submit the application to the Head BKPM, and for the said application the Head of BKPM on behalf of the Minister of Finance shall give approval or rejection. If the application is approved, the Head of BKPM on behalf of the Minister of Finance issued a decree about the granting of the free import duty attached with the list containing at least amount, type, specification and price estimation of the imported machinery with its entering port.

Based on the author's research to the Integrated License Service Office (*Perizinan Terpadu Satu Pintu* or PTSP) of Semarang City, Transportation Service Office of Semarang City (*Dinas Perhubungan Kota Semarang*) and Directorate General of Land Transportation, Ministry of Transportation, prior to the enactment of Omnibus Law, there was a vacuum of license for the general goods transportation business. The Traffic and Road Transportation Law and its implementing regulation did not regulate any business license for KBLI 49431. The existence of any business license was not regulated in the said law. In the other hand, one of the requirements to obtain the free import duty facility is to submit business license.²³ The author conducted further research and interview to the relevant official of BKPM regarding this matter and find out that in this situation, BKPM hold a coordination meeting with the Ministry of Finance and the Ministry of Transportation to decide whether or not the company may obtain the investment facility. Based on BKPM discretion and discussion with other ministries, the essence of the stipulation under PMK No. 176/2009 is to grant the free import duty to the company that perform investment, produce service and be categorized as public transportation. The transportation company with KBLI 49431 shall be considered fall into that category. Therefore, the transportation company may be granted with free import duty even without having any business license.

By the enactment of Omnibus Law, OSS version 1.1 is upgraded to Online Single Submission-Risk Based Approach (OSS-RBA). OSS RBA is a platform for a company to apply for business license. The company has to obtain business license according to its business risk. The risk of business is classified into low level, middle-low level, middle-high level and high level. The business classified as low risk shall obtain Business Identification Number (*Nomor Induk Berusaha* or NIB).²⁴ The business classified as

²² *Ibid.*

²³ *Peraturan Badan Koordinasi Penanaman Modal Nomor 5 Tahun 2019 tentang Perubahan atas Peraturan Badan Koordinasi Penanaman Modal Nomor 6 Tahun 2018 tentang Pedoman dan Tata Cara Perizinan dan Fasilitas Penanaman Modal.*

²⁴ *Peraturan Pemerintah Nomor 5 Tahun 2021 tentang Penyelenggaraan Perizinan Berusaha Berbasis Risiko.*

middle-low risk shall obtain NIB and Standard Certification (*Sertifikat Standar* or SS).²⁵ The business classified as middle-high shall obtain NIB and SS which should be verified by the relevant authority.²⁶ The business classified as high risk shall obtain NIB and the License.²⁷

According to PP No. 5/2021, KBLI 49431 is classified as middle-high risk business. The company shall obtain NIB and SS, which according to the author research, the SS should be verified by the official of Provincial Transportation Service Office (*Dinas Perhubungan Provinsi*). The requirements that has to be fulfilled by the company to obtain SS are as follows a) use cargo truck and/or trailer, b) fulfil the technical requirements of roadworthiness, c) operating in designated road class, d) provide loading-unloading facility, e) acquire delivery order, f) fulfil the minimum of general goods service standard, g) install speed recorder that may record the speed and habit of the driver, h) install Global Positioning System (GPS) in every trucks, i) fulfil the safety management standard and j) provide transportation agreement;

Based on the author research in the Provincial Transportation Service Office of Jawa Tengah, by the end of 2021, only 2 transportation companies that have consulted about the application of business license via OSS-RBA and none of them has obtained the business license yet. The requirements to obtain business license via OSS-RBA are considered too technical and difficult to be fully achieved by transportation companies, as proven that just a few of the transportation companies have succeeded to obtain this business license. In the other hand, the Provincial official explained that they have to implement their own discretion in the fulfilment of each of requirements because of the lack of technical guidelines and training from the central government. The official acknowledged that general goods transportation business was not required to obtain any license before, and now they have to handle a new kind of business licensing procedure.

The Regulation of BKPM Number 4 of 2021, as one of the implementing regulations of Omnibus Law states that in order to obtain free import duty facility the company have to submit, among others, business license from OSS RBA.²⁸ Since now there is no vacuum of license for KBLI 49431, then it is unlikely that BKPM would perform discretion to grant free import duty facility without any business license as happened before. The author is in the view that this situation is not fair for the transportation company. The government should not allow any minor technical inadequacies hinder the obtainment of the right of the investor. It is not fair for the transportation company to fail in obtaining free import duty facility, which is in the amount of 5% of the total trucks price, just because the company, for instance, does not have any loading/unloading facility or does not install speed recorder and GPS in every trucks, all of which have never been a requirement before.

Through a procedural theory of justice put forward by John Rawls, it is hoped that it will be able to guarantee the implementation of rights and at the same time distribute

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Peraturan Badan Koordinasi Penanaman Modal Republik Indonesia, Nomor 4, Tahun 2021 tentang Pedoman dan Tata Cara Pelayanan Perizinan Berusaha Berbasis Risiko dan Fasilitas Penanaman Modal.*

obligations fairly for all people so as to realize peace, order and fairness in a complete and comprehensive manner. Justice is fairness. Rawls argues that liberty and equality can be combined in one principle of justice. Namely: "Everyone has the same rights of basic freedoms, and if there is injustice then the people who are left behind must be benefited by it."²⁹ Definition of justice according to John Rawls that the maximum utilization of goods shall be distributed equally without prejudice to the condition of every person.³⁰ The free import duty facility is a right of the investor eligible to obtain it. The essence of this eligibility is a company shall perform investment, produce service and be categorized as public transportation. Any minor technicalities should not make this eligibility void.

The success of a license instrument is not only based how many of the said license is issued or the amount of received retribution, but it should also be based on how far the said license could accelerate the economy activity and investment of society.³¹ By granting free import duty to the transportation company which apply for it, it is hoped that i) it will decrease the transportation price in general for the benefit of the people, ii) ensure the sustainability of the transportation company, so it may continue its business activity and iii) presumably break the oligopolistic vehicle manufacturing business in Indonesia. In order to achieve this expectation, the author suggest that the government should prioritize the granting of the free import duty of vehicle for the transportation company by allowing BKPM to perform their discretion in determining whether a company is suitable to obtain the investment facility, within the highlights of investment matters including the suitable line of business, the size of annual business capacity and the realization of the investment. Any regulation and clause regarding the granting of free import duty facility shall stipulates that BKPM should be allowed to implement their discretion and consideration in the area investment matters to achieve justice.

4 Conclusion

Some transportation companies decide import truck directly from the manufacturing country, as their business strategy. This importation is performed especially for the type of trucks which has not been manufactured in Indonesia. The reason why the company choose this strategy is because, among others, a) to find a high-quality truck which can endure the difficult and challenging road of Indonesia, b) the factors of price, operational expense and operational lifespan and c) because the transportation company will obtain the free import duty facility as stipulated under the Investment Law. The obtainment of this investment facility will decrease the purchase price to acquire the trucks. After the enactment of Omnibus Law, the transportation company is obliged to obtain business

²⁹ Noor Saptanti, Adi Sulistiyono dan Burhanudin Harahap, Debt Guarantee Charging Based On The Justice Principal, *dimuat dalam Journal of Advances In Social Science And Humanities*, Volume 7, No. 4, ISSN (0) 2395–6542, April 2021. Page 12.

³⁰ Darji Darmodiharjo dan Shidarta, 2008, *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia*, Jakarta: Gramedia Pustaka Utama, page. 168.

³¹ Adrian Sutedi, 2019, *Hukum Perizinan: Dalam Sektor Pelayanan Publik*, Jakarta: Sinar Grafika, page. v–viii.

license via OSS-RBA. The transportation company with KBLI 49431 is classified as middle-high risk business. The company shall obtain NIB and SS, which according to the author research, the SS should be verified by the official of Provincial Transportation Service Office. The requirements to obtain business license via OSS-RBA are considered too technical and difficult to be fully achieved by transportation companies, as proven that just a few of the transportation companies have succeeded to obtain this business license. The Regulation of BKPM Number 4 of 2021, as one of the implementing regulations of Omnibus Law states that in order to obtain free import duty facility the company have to submit, among others, business license from OSS RBA. Since now there is no vacuum of license for KBLI 49431, then it is unlikely that BKPM would perform discretion to grant free import duty facility without any business license as happened before.

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