

BETWEEN SUSTAINABILITY AND REGULATION: LEGAL PERSPECTIVES ON THE IMPORT AND SALE OF SECOND-HAND CLOTHING IN INDONESIA

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Abstract

This article explored the legal challenges surrounding the import and sale of second-hand clothing in Indonesia, focusing on the intersection between sustainability goals and regulatory frameworks. The research aimed to analyze the tension between the environmental benefits of reuse practices and the strict prohibition stipulated in Indonesian trade regulations, particularly Article 47 paragraph (1) of Regulation of the Minister of Trade No. 40 of 2022. Employing normative juridical methods supported by statute and conceptual approaches, the study investigated both domestic and international legal norms, including WTO principles and sustainable development goals (SDGs). The findings revealed a legal paradox: while importing second-hand clothing supported circular economy practices and reduced textile waste, it was simultaneously deemed illegal under the prevailing laws, creating regulatory inconsistency. The article argued for a more balanced legal reform that aligned trade policy with sustainability imperatives, promoting legal certainty and environmental responsibility. This research contributed to the broader discourse on green lawmaking in developing countries and underscored the importance of harmonizing domestic regulations with global sustainability commitments.

Keywords: Circular economy, Environmental law, Second-hand clothing, Sustainability, Trade regulation

INTRODUCTION

The phenomenon of importing and selling second-hand clothing in Indonesia is not new. However, now, this issue has resurfaced along with increasing global awareness of environmental sustainability and the circular economy. On the one hand, the trade in second-hand clothing is considered an effort to reduce textile waste and provide a more sustainable consumption alternative (Bick, R., Halse, A., & Ekenga, C. C, 2018). On the other hand, this practice is often considered to be in violation of the provisions of national law, especially related to consumer protection, public health, and the protection of the domestic textile industry (Djarmika, I. G. N., & Suryanegara, M, 2023). Thus, there is a tension between sustainability and regulatory aspects that demand a more in-depth legal study (Mc. Kinney, L, 2022).

In the context of Indonesia's positive law, the ban on the import of used clothing is explicitly contained in the Regulation of the Minister of Trade No. 40 of 2022 concerning Amendments to the Regulation of the Minister of Trade No. 18 of 2021 concerning Goods Prohibited for Export and Import. Used clothes are categorized as items that are

prohibited from being imported for health, hygiene, and protection reasons of domestic industry. However, the practice of importing used clothes continues through various unofficial channels (Hansen, K. T, 2004), thus raising complex legal issues.

Theoretically, this study departs from the responsive legal theory approach as developed by Philippe Nonet and Philip Selznick (Nonet, P., & Selznick, P, 1978). This theory emphasizes the importance of laws that are able to respond to evolving social needs without losing their normative integrity. In this context, law not only functions as a control tool, but also as an institution that is able to transform and adapt to social, economic, and environmental dynamics. Thus, the analysis of the legal framework regarding the import and sale of second-hand clothing in Indonesia cannot be separated from the discourse on sustainability and social responsibility (Sandhu, S., & Fernandez-Stark, K, 2020).

The main problem in this study is how Indonesia's positive legal framework regulates the import and sale of second-hand clothing, as well as how effective its law enforcement is in the context of sustainability (Goyal, M, 2020). In addition, this research also aims to explore the potential for legal policy reform that allows for a balance between the protection of national interests and contributions to the Sustainable Development Goals (SDGs) (. Therefore, the urgency of this research lies in the effort to formulate a legal framework that is not only repressive, but also adaptive and progressive (Hauge, A., Malefane, M., & Ørving, H, 2021).

This research is expected to make a scientific contribution to the literature on economic and environmental law in Indonesia. In addition, the results of this research can also be considered for policymakers, law enforcement, and industry players in formulating strategic steps that are in line with the principles of justice, efficiency, and sustainability. Through this study, the author wants to emphasize that legal issues cannot be separated from the social and ecological dynamics that surround them, so an integrative and contextual legal approach is needed.

Thus, this study seeks to answer the main challenge in the formulation of laws that are able to balance the need for national protection and contribution to sustainable development, especially in the context of the growing trade in imported used clothing in Indonesia.

RESEARCH METHOD

Methodologically, this study uses a normative juridical approach with data collection techniques through literature studies on laws and regulations, legal doctrines, and international reports related to the issue of used clothing trade (Brooks, A, (2015). This approach allows the author to systematically interpret the law of the applicable regulations, while identifying existing legal weaknesses and loopholes. In addition, this research is also exploratory by looking at how other countries regulate similar issues as comparative material that can enrich legal policy recommendations in Indonesia.

RESULT AND DISCUSSION

1. National Legal Framework Regarding the Import and Sale of Used Clothing

a. Prohibition of Import of Used Clothes in National Law

In the context of Indonesian national law, policies on the import of used clothes are strictly regulated through various legal instruments. Based on the Regulation of the Minister of Trade (Permendag) No. 40 of 2022 concerning Goods Prohibited from Export and Goods Prohibited from Import, the import of used clothing is explicitly prohibited. This provision is based on several arguments: health reasons, the protection of the domestic textile industry, as well as the factor of trade order.

This provision is also strengthened by Law No. 7 of 2014 concerning Trade, which states that the Government can prohibit the import of goods that can interfere with public order, human safety, and the environment. In addition, in practice, the Directorate General of Customs and Excise often takes action against the entry of illegal used clothing containers through major ports such as Tanjung Priok and Belawan.

However, there is no legal provision that specifically regulates administrative or criminal sanctions against sellers of used clothes in the domestic market, especially on a small scale such as traditional markets or online marketplaces. This shows the inconsistency between import bans and domestic distribution regulations, which is a legal loophole and a challenge for law enforcement.

b. Legal Interpretation and Regulatory Loopholes

Literature studies conducted on court decisions and policy documents show that law enforcement against the sale of used clothes is still selective. For example, in some cases, used clothes that are already in the country are not necessarily considered illegal if they can be proven to be locally produced or donated by the community. This opens up space for the practice of "relabeling" and reselling imported used clothes with pseudo-legal status.

Other regulations such as the Consumer Protection Law No. 8 of 1999, the Health Law No. 36 of 2009, and the Job Creation Law do not explicitly target the phenomenon of imported used clothing, although they can be used as a basis for legal arguments for consumer health protection and public safety.

2. Sustainability Aspects in the Second-Hand Clothing Trade

a. Trade in Used Clothes as a Form of Circular Economy

From a sustainability perspective, the trade in used clothes is one of the pillars of the circular economy approach that is currently being driven globally. In this approach, used garments can experience a second-life cycle, thereby reducing the amount of textile waste, reducing carbon emissions from the new textile production process, and reducing the consumption of water resources.

According to a report from the Ellen MacArthur Foundation (2017), the fashion industry accounts for about 10% of global carbon emissions and is a major contributor to water pollution. Therefore, the trade in used clothes can actually become an environmental policy instrument if it is carefully regulated.

However, in the Indonesian context, the government instead places the second-hand clothing trade as a threat to the local textile industry, without considering its ecological benefits. This shows that there is a conflict between the sustainability approach and the economic protectionism approach.

b. Public Perception and Consumption Patterns

The results of observations of consumers in traditional markets and online marketplaces show that the demand for used clothes tends to increase, especially among millennials and lower-middle-income groups. The main reasons are affordable prices, better quality than cheap local products, and aesthetic value.

This phenomenon shows that the existence of used clothes has become part of the alternative consumption culture, not solely due to economic compulsion. However, the public also lacks education about health risks or potential biological contamination from imported used clothing products, especially if they do not go through an adequate sterilization process.

3. The Challenge of Regulation: Between Enforcement and Social Reality

a. Limitations of Law Enforcement

A study of the Ministry of Trade's annual report and interviews with officials of the Directorate of Consumer Protection and Trade Order show that the enforcement of import bans is still very limited, both due to limited human resources, logistics costs of port surveillance, and limited container tracking technology.

On the other hand, the absence of integrated regulations on the domestic used clothing trade causes legal uncertainty, especially for small business actors who sell used clothes offline and online. In some cases, the control measures actually cause social resistance, because they are considered discriminatory and detrimental to small businesses.

b. Norm Ambiguity and Policy Fragmentation

There is fragmentation between trade policies, the environment, and small-medium industries, which leads to confusion in the implementation of regulations. For example, the Ministry of Trade prohibits imports, but the Ministry of Cooperatives and MSMEs does not have clear guidelines on used products in the micro sector. Similarly, the Ministry of Environment and Forestry (MoEF) does not yet have a specific policy regarding the potential for recycling or re-manufacturing of used clothes as part of textile waste management.

This fragmentation is exacerbated by the absence of harmonization of regional regulations, where some local governments actually allow flea markets to develop because they are considered to help the local economy.

4. Critical Analysis and Legal Policy Recommendations

Normatively, the policy of prohibiting the import of used clothes is based on a legitimate reason—namely protecting the industry and public health. However, the implementation is inconsistent and less responsive to market realities. On the one hand, the state prohibits imports, but does not set up a fair distribution system for local used clothing, nor does it encourage the establishment of a national textile recycling ecosystem.

Furthermore, existing regulations tend to be repressive towards small traders, without touching large actors in the illegal import supply chain. This creates a distortion of legal justice and reinforces a negative stigma against used products, even though in the global context, the trend of "thrift fashion" is actually part of a sustainable lifestyle.

Analysis

The phenomenon of the trade in imported used clothes in Indonesia has developed into a complex issue, involving legal, economic, social, and environmental dimensions. From a legal perspective, this issue not only concerns normative prohibition in several regulations, but also intersects with the principles of sustainability and the right to consumer choice. Therefore, this section will discuss in depth how current regulations respond to the challenges of the practice of importing used clothing, as well as how they can be analyzed in a legal context oriented towards social justice and environmental sustainability.

1. Regulatory Aspects: Protection of Domestic Industry vs. Sustainable Practices

The ban on the import of used clothes in Indonesia is explicitly contained in several legal provisions, especially in the Regulation of the Minister of Trade No. 40 of 2022 which revises the previous regulation and affirms the prohibition of certain imported used goods. The main reason for this policy is to protect the domestic textile industry from the onslaught of cheap products from abroad as well as maintain product hygiene and safety standards. However, these policies are often repressive without being balanced with an adaptive approach to changing public consumption patterns and global sustainability trends.

As stated by Ulrich Beck in the theory of risk society, the modern country now faces new risks that come not only from economic shortfall, but also from excess—namely waste from production and excessive consumption, (Ulrich Beck, 1992). Used clothes as a result of the overproduction of the fast fashion industry are a manifestation of these environmental and social risks. Therefore, a legal approach that focuses too much on

the protection of domestic industries without taking into account the ecological and sustainability dimensions can be counter-productive.

In addition, the ban also has the potential to clash with citizens' constitutional rights to get a decent job and livelihood. Many micro business actors in the used clothing sector depend on this practice for their livelihood. A total ban on the import and distribution of used clothing can create social and economic inequality, as well as trigger black market practices that are difficult to control.

2. Circular Economy Perspective: Used Clothes as an Environmental Solution

In the framework of the circular economy, the reuse of used goods, including clothing, is an effort to extend the life of products, reduce waste, and reduce the need for new production that has a major impact on the environment, (Walter R. Stahel, 2016). The fashion industry is one of the largest contributors of waste in the world, with a significant carbon footprint. According to data from the Ellen MacArthur Foundation, the textile industry is responsible for 1.2 billion tons of carbon emissions per year, exceeding the total combined emissions from international aviation and shipping, (Ellen MacArthur Foundation, 2017).

Therefore, the ban on the import of used clothes is contrary to the spirit of the circular economy and the principles of sustainable development that have become part of Indonesia's global commitments, including within the framework of the Sustainable Development Goals (SDGs). In particular, goal number 12 on responsible consumption and production emphasizes the importance of reducing waste through recycling and reuse of goods.

In this context, the law should function not only as an instrument of control and restraint, but also as a facilitator of social transformation towards more sustainable economic practices. The concept of progressive law from Satjipto Rahardjo can be used as a reference, which emphasizes that the law must serve humans and adjust to the dynamics of society, (Satjipto Rahardjo, 2000). A ban without a legal alternative space for the circulation of used clothes will only create a stalemate, not a solution.

3. Social and Cultural Dimensions: Consumer Identity and Economic Accessibility

Second-hand clothes are not just cheap items, but also part of the expression of a certain cultural identity and lifestyle. Among urban youth, thrifting has become a trend that combines elements of creativity, sustainability, and resistance to mass consumption culture. This phenomenon shows that regulations need to consider the cultural dimension and not only seen from the legalistic formal aspect.

In addition, from a distributive justice perspective, used clothing provides a more affordable alternative for low-income communities. In many cases, imported used clothes are of better quality than cheap domestic products, thus providing more value to consumers. Closing access to these goods without providing equivalent substitutions

in quality and price can be considered a form of neglect of the principles of social justice as enshrined in the Preamble to the 1945 Constitution.

According to Amartya Sen, justice must be seen not from the formal fulfillment of rights, but from the actual ability of the individual to choose a life that he considers meaningful, (Amartya Sen, 1999). In this case, regulations that limit consumer choices without considering actual economic and social conditions actually erode substantive justice.

4. Legal Practice in Other Countries: A Comparative Lesson

Other countries show a variety of approaches to regulating the second-hand clothing trade. In Kenya, for example, the trade in second-hand clothing (mitumba) is a huge industry that involves millions of workers and contributes significantly to the local economy. Despite criticism that this is detrimental to the domestic textile industry, the Kenyan government prefers an adaptive regulatory approach to total banning, (Friedrich-Ebert-Stiftung, 2020)

Meanwhile, in the European Union, the approach to used textiles is increasingly geared towards strengthening the collection and redistribution system through social institutions and official reuse companies. This model can serve as a reference for Indonesia to build a legal, safe, and sustainable second-hand clothing distribution system, while maintaining the interests of the domestic industry through innovation incentives and partnerships.

5. Legal Implications and Policy Recommendations

Findings in the field show that many used clothing business actors do not know or even ignore existing regulations. This indicates that there is a gap between legal norms and people's legal awareness. In the perspective of responsive legal theory, good law must interact dynamically with social needs and be able to provide articulation space for the aspirations of society, (Philippe Nonet and Philip Selznick, 2001).

The government could consider resetting the system of importing used clothes through limited permits, hygiene certification, and quarantine systems. Thus, regulation is not prohibitive, but permissive with control. This approach can bridge the gap between market needs, sustainability principles, and the protection of local industries.

Selain itu, perlu penguatan edukasi hukum kepada masyarakat serta pengembangan sistem traceability untuk memastikan asal usul dan keamanan produk. Dalam jangka panjang, Indonesia juga perlu membangun industri pengolahan dan upcycling tekstil domestik yang dapat mengolah pakaian bekas menjadi produk baru bernilai tambah tinggi.

Policy Recommendations

Reformulation of the Import Ban Policy

The government needs to review Trade Regulation No. 40/2022 with a risk-based approach. A total ban could be replaced by a limited licensing scheme that regulates sterilization standards, customs inspections, and sanitary provisions for used clothes.

Integration of Environmental and Trade Law

The need for the establishment of a special Government Regulation that integrates textile waste management, used clothing trade, and sustainability aspects. These regulations should recognise the role of the circular economy and encourage investment in clothing recycling technology.

Harmonization of Central-Regional Regulations

Synchronization between the central government and local governments is needed regarding the management of the second-hand goods market. Local governments need to have legal guidance in organizing flea markets and used clothing trade without violating central provisions.

MSME Empowerment and Consumer Education

The government must provide empowerment programs for MSME actors in used clothes, including sanitation training, clothing re-design, and digital-based marketing. On the other hand, public education about the health and sustainability of clothing consumption needs to be encouraged as part of lifestyle changes.

Establishment of the Circular Clothing Supervisory Board

The government can establish a cross-ministerial work unit that specializes in handling the trade in second-hand goods, with a mandate to set standards, issue certifications, and act as a liaison between business actors, the community, and the state.

CONCLUSION

This research finds that the import and sale of second-hand clothing (thrift) in Indonesia sits at the intersection of sustainability goals and regulatory limitations. On one hand, the practice supports environmental sustainability by promoting reuse, reducing textile waste, and contributing to the circular economy. On the other hand, it faces legal prohibitions under Indonesian trade laws, particularly Ministry of Trade Regulation No. 40/2022 and Law No. 7 of 2014 concerning Trade, which aim to protect domestic industries, public health, and national interests.

The legal ambiguity and enforcement inconsistencies indicate a gap between regulatory frameworks and evolving sustainable consumer practices. Despite prohibition, second-hand clothing continues to circulate widely, suggesting the need for a more nuanced

regulatory approach that balances sustainability aspirations with legal certainty and trade policy.

The findings highlight the urgency for lawmakers to reevaluate existing legal instruments in light of sustainability imperatives and the socio-economic realities of the market. A revision or reinterpretation of trade laws—potentially through regulatory relaxation, quality control mechanisms, or licensing schemes—could harmonize environmental concerns with legal enforcement. This would not only support sustainable development goals (SDGs), particularly SDG 12 on responsible consumption and production, but also legitimize practices that are already embedded in society.

Thus, this study contributes to both the theoretical discourse in environmental law and trade regulation, and offers practical implications for policy reform. It underlines the importance of integrating sustainability into the legal design of trade policies to ensure that the law does not stifle but facilitates environmentally responsible economic behavior.

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