

## Legal Aspects of the Machinery Import Duty Exemption Facility Policy: An Analysis of the Impact on Industry in Indonesia

Amanda Junaedi

Magister Ilmu Hukum, Universitas Pancasila

Article Info	ABSTRACT
<p><b>Keywords:</b> Import Duty Exemption Facility, Industry, Investment, Tax Incentives, Normative Juridical Research</p>	<p>The granting of import duty exemption facilities on imported machinery for industry is one form of facility in the field of taxation provided by the government for new investors who intend to invest or open new industries in Indonesia. Through this research the author wants to know what is the background of the Indonesian government in granting the facility, how is the system of granting this machine import duty exemption facility and how is the legal responsibility of receiving the machine import duty exemption facility for industry in Indonesia. The research method used is normative juridical, this research focuses on the study of applicable laws and regulations, legal theories, legal concepts, and legal principles relevant to the research topic. In other words, researchers will deeply analyze the legal rules governing import duty exemptions for industry, and try to understand the implications of these rules. This research is expected to contribute to further understanding of government policies in encouraging investment in the industrial sector. In addition, the results of this study can also be expected to be taken into consideration for business actors in utilizing the import duty exemption facility.</p>
<p>This is an open access article under the <a href="https://creativecommons.org/licenses/by-nc/4.0/">CC BY-NC</a> license</p> 	<p><b>Corresponding Author:</b> Amanda Junaedi Magister Ilmu Hukum, Universitas Pancasila, <a href="mailto:amanda.djuna@gmail.com">amanda.djuna@gmail.com</a></p>

### INTRODUCTION

Taxes are a source of funds for a country to develop infrastructure within a country. Taxes are obtained by means of compulsory levies paid by taxpayers to the government, the benefits of taxes cannot be felt directly because the taxes paid by taxpayers are used for public purposes and not for personal interests. Tax comes from the Latin "*taxo*", "*rate*", which means a compulsory contribution to the state owed by individuals or entities that is compulsory and based and regulated by law, by not receiving a direct reward and used for state purposes for the prosperity of the people. According to Charles E. McLure tax is a financial obligation or levy imposed on taxpayers (individuals or entities) by a state or institution whose function is used to finance public expenditures. while Philip E. Taylor argues that tax is a compulsory contribution from the person to the government to defray expenses incurred in the common interest of all, with little reference to special benefits conferred. Taxes are a fundamental element in the economic system of the country, therefore an effective and efficient tax system is an important thing in the economic development of a country.

In the economic development of a country, investment also plays an important role, various ways are carried out by the government in order to maintain the stability of a country's economy. Investment comes from the word "*invest*" which means to invest, invest or invest the money. The terms of investment or capital investment have basically the same meaning, but the only difference is the popularity of their use. The word investment is popularly used in the business world or business, while the word investment is popularly used in the language of legislation. Investment objectives are generally divided into two, namely primary objectives and secondary objectives. The primary objective is to obtain the maximum profit, while the secondary objective is related to the production of goods that consider various aspects before the investor decides to invest. In the investment decision-making process, there are various factors that influence investors, which are generally divided into internal factors and external factors. One of the internal factors is the provision of incentive facilities. In Indonesia, the issue of tax and investment is increasingly related along with the government's efforts to encourage a better investment climate. In this case, tax facilities provided by the government can be an attraction for investors.

For this reason, the provision of tax facilities is one of the policies that is often applied to create a conducive investment climate. These facilities can be in the form of tax exemptions or reductions, import tax exemptions, and other incentives that can facilitate and benefit investors in running their businesses. Indonesia itself through Law No. 25/2007 on Investment seeks to create regulations that provide legal certainty and benefits for investors.

The types of taxation facilities can vary, ranging from income tax exemptions, value-added tax, to import duty exemptions and tax incentives for certain sectors. Through this paper, the author intends to examine the tax facilities provided by the Government of Indonesia, namely the Import Duty Exemption Tax Facility on Imported Machinery for Industry, and assess how much impact it has on investment. Through this paper, the author seeks to provide an overview of how tax facilities can support the investment climate and in promoting economic growth.

### **Problem Statement**

1. What is the background of the Government in Granting Import Duty Exemption Facilities for Industrial Entrepreneurs
2. How the procedures for the system of granting machinery import duty exemption facilities for industry
3. How Legal responsibilities for recipients of import duty exemption facilities for machinery for industry

### **METHOD**

The research method used by the author in this journal uses the Normative Juridical method, data collection is carried out by the author by examining primary, secondary and tertiary legal materials. Primary legal materials include laws and regulations, secondary legal materials obtained by the author through books, journals, articles and opinions of experts, while tertiary legal materials are obtained by the author through the internet, online encyclopedia.

## RESEARCH FINDING AND DISCUSSION

### Background on the Granting of Import Duty Exemption Facility for Industrial Business

Developing countries such as Indonesia are currently actively implementing development in all fields, in developing countries there is a “*myth*” that to become a prosperous country, national economic development must be directed to the industrial sector. Muchammad Zaidun stated investment for a country is a must as one of the driving forces of the economy in order to encourage economic development in line with the demands of the development of its society. Investment in a country will be in a good position if the country is able to establish investment policies that are in accordance with the mandate of the constitution. Given the importance of investment for Indonesia's economic development, the Indonesian government created Undang-undang No. 25/2007 Tentang Penanaman Modal (UU 25/2007 or Investment Act) as a reference and to improve the weaknesses that existed in the previous law. Through UU 25/2007 The government hopes to encourage increased investment and national economic growth as referred to in Article 3 paragraph (2), namely:

1. Increase national economic growth;
2. Create employment opportunities;
3. Increase sustainable economic development;
4. Improving the competitiveness of national businesses;
5. Improving capacity and capabilities in national technology;
6. Encourage public economic development;
7. Processing potential economics into real economic strength by using data from within the country or from abroad; and
8. Improving public welfare.

The purpose of investment as mentioned in the Investment act becomes a reference for every government agency including the Ministry of Finance of the Republic of Indonesia and the Ministry of Investment and Downstream Industry of Republic of Indonesia, In accordance with Article 4 of the Investment Act, the purpose of the investment policy is to:

1. Encouraging the creation of a conducive national business climate for investor to strengthen the competitiveness of the national economy; and
2. Accelerate the increase in domestic investment.

It is undeniable that import activities have an important role in supporting investment, especially in the development of the industrial sector. Although export activities are considered the main indicator of the success of economic growth, it is often forgotten that imports also have a significant role in ensuring the smooth production process, modernizing technology, and building infrastructure that supports investment.

Imports are needed to meet the needs of goods that are not available or have not been produced domestically. In investment, many industries are found that require certain raw materials, components, and machinery that can only be obtained through imports. Import activities are based on the condition that there is no country that is completely independent, one country and another country need each other directly or indirectly so that the exchange of goods with the import-export method to meet the needs of each country. The definition of

import is the activity of entering goods into the customs area, the company that carries out import activities is called an importer.

The Indonesian government has carried out various deregulations in the trade sector in recent years, including issuing various regulations that provide convenience for investors in Indonesia for efficiency and increasing state output through increasing investment in Indonesia. In addition, imports also open up opportunities for investors to bring more advanced technology and provide innovation into the country. Imported technology can be a driver for industrial transformation, create higher added value, and increase the competitiveness of domestic products. That way, imports not only meet domestic needs but also support the development of local capacity that is more competitive in the global market.

Without import activities, efforts to attract investment in these strategic sectors will be difficult, due to limited access to technology and materials supporting the importation of capital goods such as heavy equipment and industrial machinery, which are important elements in infrastructure development. Good infrastructure is one of the main factors that attract investors, as it creates efficiency in distribution and logistics.

Overall, import activities are not only an economic necessity but also a strategic part of the investment ecosystem. If managed wisely, imports can be a strong impetus to strengthen economic fundamentals and support investment growth in various sectors.

#### **Procedures for granting import duty exemption facilities for industrial machinery**

In the Investment Act, the Indonesian Government is given the authority to provide various facilities that can attract investors and support the growth of the industrial sector. Article 18 Investment Act specifically states that incentives can be given to investors who meet certain requirements, namely for expanding their business or making new investments. The purpose of the facility is to encourage new investment as well as support the development of existing businesses. The form of facilities provided by the Government of Indonesia can be in the form of:

- a. Tax reduces net income up to a certain level within a certain period of time;
- b. Exemption or relief of import duties on imports of capital goods, machinery or equipment for production purposes for production goods that have not been produced domestically.;
- c. Exemption from import duty relief on raw materials or supporting materials for production purposes for a certain period of time and certain requirements ;
- d. Exemption from value added tax on imports of capital goods or machinery for production purposes for goods that have not been produced domestically for a certain period of time.;
- e. Accelerated depreciation or amortization; and
- f. Land and building tax relief in certain areas.

As for what the author will study in this paper, namely regarding the exemption of import duties on imports of capital goods, machinery or equipment for production purposes for production goods that have not been produced domestically. 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 (PMK No. 176/2009 or Minister of Finance Regulation No 176/2009) is a technical regulation governing the implementation of this facility. The regulation is designed to reduce the initial cost burden for investor, which is often a barrier to investment, especially in the manufacturing sector. PMK No. 176/2009 changes have been made several times with PMK No. 76/PMK.011/2012 Tentang Perubahan atas 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 (PMK 76/2012) and last modified with PMK No. 188/PMK.010/2015 Tentang Perubahan Kedua Atas 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 (PMK 188/2015).

Import duties are state levies on imported goods and are a type of indirect tax. Although import duties are administratively managed by the Directorate General of Customs and Excise (DGCE), they are still considered a form of tax because they have the nature of a levy that is compelling and regulated by law. Imported goods are then subject to tariffs based on the classification of goods. The determination of import duty rates on imported goods is grouped based on the goods classification system regulated in Undang-Undang No 17 Tahun 2006 tentang Perubahan Undang-undang No 10 Tahun 1995 tentang Kepabeanan. Pajak dalam rangka impor terdiri dari Pajak Pertambahan Nilai (PPN), Pajak Penjualan Barang Mewah (PPnBM) dan Pajak Penghasilan (PPH).

Based on the provisions of PMK 176/2009, companies that run businesses in the industrial sector, whether producing goods or services, are given the opportunity to obtain exemption from import duties on the import of machinery, goods and materials needed, as long as the machinery, goods or materials meet the following criteria. :

1. Not yet produced domestically
2. It has been produced domestically but does not yet meet the required provisions or specifications; or
3. Already produced in the country but the unit or quantity is not sufficient for the industry's needs.

The period of granting Import Duty Exemption for the import of machinery in the context of industrial development is given for 2 (two) years as of the entry into force of the Decree. This period may be extended in accordance with the duration of the industrial development or construction period as stated in the investment approval letter. Once the industrial development is completed and ready for production, the company can receive an import duty exemption for the import of goods and production materials for a maximum of two years. This facility is granted based on installed capacity, with the importing period starting from the effective date of the import duty exemption decision. Applications for import duty exemption facilities for machinery imports shall be submitted latest 3 (three) years from a certain date, depending on the situation of investor as follows:

- a. First, for new investors or new businesses, the time limit is calculated from the issuance of the Business Identification Number (NIB).

b. Second, for investors who apply for facilities related to the addition of business activities, the time limit is calculated since the intended business activities are included in the NIB.

This provision aims to provide clarity for business actors in utilizing import duty exemption facilities to support the development or addition of their business. With a clear time limit, business actors are expected to immediately plan and submit applications in accordance with their investment needs. Companies taking advantage of this facility must ensure that they apply within the specified timeframe. Failure to apply on time may result in the loss of the facility, so careful planning is key to making the most of this government incentive.

To obtain an import duty exemption facility for machinery imports, business actors are required to submit an application in advance to the Ministry of Investment and Downstream Industry (BKPM) electronically through the Online Single Submission (OSS) system. OSS is an Electronic Integrated Business Licensing System managed and organized by the OSS Institution for the implementation of Risk-Based Business Licensing. The Online Single Submission (OSS) system is under the supervision and administration of the Ministry of Investment and Downstream Industry which has the authority to manage and organize government affairs in the field of Investment Coordination.

The requirements that must be completed by an industrial business to apply for a Machinery Import Duty Exemption Facility are as follows:

1. Fill in the applicant's identity such as name, email and phone number of the director or proxy (if authorized).
2. Have a Business Identification Number.
3. Fill in technical data including business location data, detailed investment value, Indonesian standard business field classification number, production capacity and type of production.
4. Filling in the data for the machine to be imported includes the number of goods, type of goods, unit of goods, HS CODE, country of origin of goods, planned port of unloading of goods, brand and classification of goods, and price of goods.
5. Description of the production process which includes the types of raw materials, complete with a flow chart.
6. Drawing of factory machinery layout plan.
7. Production machine capacity calculation data.
8. *Invoice, Packing List, Bill of Lading, Airways Bill, Agreement* and or machine brochure.
9. The proof is the investment report for the last period.
10. Fill out a commitment form with small entrepreneurs consisting of the type of activity to be cooperated, the value of the work, and the estimated time of implementation.

The procedures or steps in applying for the Import Duty Exemption facility are as follows:

1. The applicant fulfills all administrative requirements that have been determined, then officers from the OSS Institution will verify the completeness of the administrative documents submitted. If based on the results of the examination the documents are declared complete by the officer, then the next step is to carry out technical clarification.

2. This technical clarification is conducted through a technical meeting involving a number of parties, including expert officers from the Investment Coordinating Board (BKPM) and representatives or officials from the company as the applicant. In the technical meeting, the technical data and information submitted by the applicant will be discussed and evaluated in depth. If the meeting concludes that the technical data submitted has met the applicable criteria and requirements, the next step is to arrange a schedule for a site visit.
3. The site visit is conducted by BKPM officers to verify and confirm the conformity between the submitted technical data and the factual conditions on the ground. This process also includes an assessment of the project's compliance with the plans and objectives that have been submitted in the application document. If from the results of the field visit it is found that the project meets the requirements and is in accordance with the applicable provisions, the application will be processed further. The final stage of this process is the issuance of a Decree on the Granting of Import Duty Exemption Facility for Machinery Import.
4. The Decree is signed by the Minister as a form of official approval of the facilities requested by the applicant.

As such, the entire process, from administrative verification, to technical clarification, to site visits, is designed to ensure that the facilities provided actually match the project needs and support the investment objectives more effectively.

#### **Legal responsibilities for recipients of import duty exemption facilities for machinery for industry**

The receipt of import duty exemption facilities on machinery for industrial entrepreneurs results in a number of legal responsibilities and obligations that must be fulfilled. Companies that receive this facility must comply with all applicable provisions, starting from the use of the machine in accordance with the proposed purpose to transparent reporting regarding the realization of its use. Based on the results of research conducted by the author, there are at least 3 (three) legal obligations and responsibilities that must be fulfilled by business actors who receive facilities, namely:

The first is that the type and quantity of machines, goods and materials imported must be in accordance with those stipulated in the import duty exemption decision. The decree includes specific details regarding the machinery, goods, and materials that are permitted to receive the exemption facility. Thus, each facility recipient must ensure that imports are carried out in accordance with the approval that has been granted, both in terms of quantity and type of goods. If discrepancies are found between the imported goods and those listed in the exemption decree, such as differences in the types of machinery, goods, and materials between the total importation and those listed in the import duty exemption decree, the company is required to pay import duty on the difference or discrepancy.

Secondly, Companies that receive import duty exemption facilities are required to report import realization to the Head of the Investment Coordinating Board (BKPM). The report must be submitted no later than 7 (seven) working days after the import activity is carried out. This obligation aims to ensure that the use of import duty exemption facilities is in accordance with

the stipulated provisions. If the company fails to meet the obligation to submit import realization reports in accordance with the specified deadline, the company may be subject to administrative sanctions. This sanction is applied as a form of rule enforcement to maintain transparency and accountability in the use of import duty exemption facilities. Therefore, companies receiving the facility must pay attention to this reporting obligation as part of compliance with applicable provisions. Timely and regulatory reporting can prevent companies from sanctions.

Third, industrial machinery imported using the import duty exemption facility can be transferred after meeting certain requirements. One of the main requirements is that the machine must be used for at least two years from the date of import customs declaration. The transfer of these machines cannot be done freely, but must go through official procedures involving the relevant authorities.

The provisions regarding the obligations that must be fulfilled by recipients of import duty exemption facilities have been formally stipulated in Minister of Finance Regulation (PMK) No. 176/PMK.011/2009. This regulation contains binding rules for recipients of facilities to ensure that the use of the facilities is in accordance with the purposes that have been submitted. The legal responsibility of receiving this facility depends greatly on the level of compliance of the recipient. If all obligations are met, this facility provides great benefits, such as reducing import costs and increasing production efficiency. However, if there is a violation, the company can face various sanctions, ranging from administrative sanctions to criminal sanctions.

## CONCLUSIONS

Investment is the lifeblood for driving economic development in a country, the Indonesian government through UU No. 25 tahun 2007 providing facilities aimed at attracting investment and supporting the growth of the economic sector, one of which is the Exemption of Import Duty on Import of Machinery for Industrial Purposes, the provision of Import Duty Exemption facilities for Import of Machinery for Industrial Purposes is expected to reduce the initial cost burden for business actors which is often an obstacle to investment. The systematics for providing import duty exemption facilities have been determined in a structured manner through PerkaBKPM No. 5 tahun 2021 namely: First, Entrepreneurs must submit an application accompanied by the required documents; second, for the application that has been submitted, the next stage is administrative verification and technical clarification by the authorities; third, a field visit is carried out to ensure that the facilities submitted are in accordance with the needs of the business actor's project; fourth, a Decree signed by Minister of Investment and Downstream Industry (BKPM). Companies are required to comply with the applicable provisions, including the use of the machines in accordance with the proposed purpose and reporting related to the realization of their use. There are three obligations that must be fulfilled: first, the type and number of imported machines must be in accordance with those stipulated in the decree of import duty exemption; second, the company complies with the existing provisions; and third, imported machines can be transferred ownership after fulfilling certain requirements, such as being used for at least two

years. Violation of these obligations can result in administrative sanctions and even criminal sanctions for the company.

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