

ASEAN-CHINA FREE TRADE AGREEMENT (ACFTA) TO DEVELOP THE LEGAL REGIME ON EXTERMINATION OF GOODS SMUGGLING IN ASEAN FROM INDONESIAN PERSPECTIVE (COMPARISON STUDY: EUROPEAN UNION)

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Abstract

Purpose: ASEAN-China Free Trade Area or ACFTA was established by ASEAN states and China to create free trade areas by removing barriers to trade in goods and services. While economic cooperation between the ACFTA state members increases, inter-states goods smuggling still happens and affects the economy sector. This article will study, whether ACFTA regulates goods smuggling especially between China and ASEAN and, how the way the ACFTA could learn from the European Union's systems to resolve goods smuggling and fraud to help ASEAN in reducing the rate of smuggling of imported goods from Indonesian approach.

Methodology: This study has employed a normative legal research method with a comparison approach to explain how ACFTA could develop the agreement role in ASEAN to reduce and exterminate goods smuggling activities by comparing the current system with the European Union form of law system and agreement.

Main Findings: This study found out that ACFTA missed the discussion about goods smuggling. Trader's intention to avoid taxes and import duties from importing countries has pushed the import goods smuggling to increase. A large number of Indonesian traders, especially in the outermost area did goods smuggling because of their dependence through the import goods from neighborhood countries. A developed regional framework like the European Union has a special institution that coming from joint European countries authorities working to resolve smuggling matters.

Implications/Applications: The study will provide the details related to ACFTA, whether they regulate the import and goods smuggling between China and ASEAN Countries. Learning from the European Union law system and agreement regarding this matter, hoped to be an example for ACFTA to develop the regulation regarding the same matter.

Novelty/Originality of this study: Study about the extermination of goods smuggling in ASEAN has not got enough attention from society, meanwhile, it gave an adverse effect on taxation and the economic sector in every state.

Keywords: ACFTA, Import Goods Smuggling, European Union, OLAF, Indonesia.

INTRODUCTION

The ASEAN-China Free Trade Area (ACFTA) signed on November 4th, 2002, and entry into force on January 1, 2010, became the third-largest free trade area agreement in the world after the European Economic Area (EEA) and the North American Free Trade Agreement (NAFTA). This agreement covers 1.9 billion people in Southeast Asia and China. This free trade area is expected to be able to help ASEAN countries in increasing the value of exports with commodities that are very much needed by China (Alleyne et al., 2020; Byukusenge et al., 2017; Gooch, 2009).

Thomas Kaegi, the head of macroeconomic research for the Asia-Pacific region at UBS Wealth Management has mentioned, besides Japan and European Union, China has overstepped the United States of America and reached the third rank as ASEAN's trading partner in past years. The aggregate trade balance has shifted slightly to China, although there are significant differences between the trade balances of Southeast Asian countries (Gooch, 2009; Lynn, 2015). The ACFTA does not always give benefit to all ASEAN countries. In Indonesia, it is quite difficult to survive and improve its economy since the ACFTA is underway.

For example, in the textile and stainless steel industry, the two Industrial groups are very distracted among the tariff revocation policy, this matter, prompts the government to ask for a delay in some provisions. However, this can result in a violation of the agreement and the principle of *Pacta Sunt Servanda* cannot achieve if not carried out by the right mechanism. Problems related to this policy have occurred several times in Indonesia, for example, the case of Vietnam and the Republic of China (Taiwan) which sued Indonesia at the Dispute Settlement Body at the World Trade Organization (WTO) in 2017 related to iron import tariffs (WTO, 2018).

The purpose of the ACFTA agreement is to develop multilateral free trading activities, the extent of free-trade activities, which prevail between ASEAN countries and China is an essential factor in this special collaboration. Free trade is a condition of goods and services exchanges between contracting countries that takes place without any constraints on export imports. Free Trade Agreement as well also aimed to reduce the behind-the-border barriers that dissuade the exchange flow of goods and services, so it could encourage the investment, also enhance the cooperation between

contracting state ([Romadona & Pujiati, 2018](#)). These barriers included government tax, export and import quotas, state regulations on protection, and any other policies which could impede trade activities between countries ([Tahir, 2017](#)).

While reducing these trade barriers with FTA aimed to avoid import goods smuggling, avoidance of tariffs in importing states which still valid and enforced became the main reason of goods smuggling activities, which result in the manipulation of incoming documents, both in terms of quantity and price of imported goods ([Wahyudi & Hartopo, 2019](#)). This policy changes the rate of tariffs on ACFTA cooperation and increases financial penalties that affect alleged smuggling.

In fact, in Indonesia, this smuggling is still increasing quickly. Since the agreement come into force in Indonesia, in March 2016, the Customs Office of *Tanjungpinang*, Riau Islands, foreclosure as many as 1,000 sacks of rice from Singapore, 500 sacks of sugar, and thousands of bottles of alcoholic beverages. A similar case also happened in the Customs Office of Dumai, which captured 50 tons of smuggled shallots from Malaysia with the aim of Kuala Langsa in April 2016, this pursuit action was carried out by Customs and the Navy. In 2018, the KRI HIU 634 who joined the Eastern Fleet Quick Response (EFQR) task force of First-Class NAVAL Base V (LANTAMAL 5) foiled the smuggling of 23 containers filled with second-hand items from China, the ship arrested at Antara Port, Waingapu, East Nusa Tenggara. Moving on to the percentage of data in 2017, data from Indonesia Customs managed to conduct 24.337 cases of illegal trading. The estimated value of goods reaches IDR 7.051 trillion with 65% of it, is an import goods problem ([Murdianingsih, 2018](#)).

To stop smuggling activities in some hinterland parts of Indonesia will not be easy, throughout the beginning of 2018 until August 31st, Customs has intercept 12.345 actions, with an estimated value of Rp10.564 trillion ([Murdianingsih, 2018](#)). Less interception, yet, a larger value of money. The violations that are often found in the field-basis data are violations in the field of imports, namely 7,972 cases which mostly goods smuggling. Other violations that are often found are the circulation of illegal items with 3,953 cases, violations of export provisions of 238 cases, and misuse of tax relief/relief facilities that disrupt domestic industries with 182 cases ([Murdianingsih, 2018](#)).

In cases of illegal smuggling and import, those matters regulated and settled with the national legal system (in Court) and with national law according to *locus delicti* where the smuggled goods are caught. In Indonesia, the case was resolved with the provisions in Act No. 7 of 2014 concerning Trade and its derivative rules ([Tondy, 2019](#)). In this act, mentioned in several articles maintaining the protection from goods smuggling from Indonesia and protection in trading between states. As mentioned in article 23, paragraph 1 mentioned that the Government regulates the trading activities between islands to integrate the domestic market, and one point in paragraph 2(g), mentioned that paragraph 1 has an aim to prevent the smuggling of the goods from Indonesia to abroad. In chapter 5 of the act, especially regulate export and import, goods import regulated in article 45 until article 48, and the limitation of export and import activities mentioned in article 50 until article 54. Looking through those regulations, no any rules mentioned to prevent import goods smuggling. On the other hand, the act mentioned the government's role to prevent goods smuggling from Indonesia.

These cases prove that in recent years, the smuggling of import goods still cannot stop with the current ACFTA agreement even the barriers have been minimalized. The first article of the ASEAN-China Comprehensive Economic Cooperation Framework Agreement, has mentioned certain objectives of this agreement which is to progressively liberalize and promote goods trade as well as service trade to create a transparent, liberal, and facilitative regime on investment. Most of those smuggled goods that entered Indonesian area was bought by Indonesian buyer with some tricks that dedicated to deceiving the Customs ([Asmara, 2018](#)), and mostly imported from Guangzhou, China ([Agustiyanti, 2018](#)), which means, the trader who did the smuggling is Indonesian. Suddenly, it became an international trade law problem due to the involvement of two or more state entities.

Those facts written, described that import goods smuggling problems in Indonesia have not finished yet. The Value has not reduced in the past three years behind, otherwise, got larger. All those barriers address policies not giving a negative graph of smuggling in Indonesia. As a comparison of systems, here we could take an example of how the European Union (EU) who had developed their regional trade agreement of until the economic union, resolve the problems of smuggling and fraud inside their regional. With an organization named European Anti-Fraud Office (OLAF), the EU makes sure that OLAF becomes the institution who in charge of monitoring and investigating every possibility affairs like fraud, corruption, and financial misconduct of the European institutions. This surveillance action aimed to protect the financial interests of the European Union. OLAF prosecutes the investigations by making cooperation with the relevant agencies of the European member states ([EuropaNU, 2019](#)).

This article is organized in the following way. This research was arranged with the type of juridical-normative research that is legal research conducted by examining library materials. This normative legal research uses the Legal Comparison Research approach The first discussion will discuss the details related to ACFTA, whether it regulates the import and goods smuggling between China and ASEAN Countries. The next discussion related to the way the ACFTA could learn from OLAF and its system to help ASEAN in reducing the rate of smuggling of imported goods that occurs in Indonesia.

RESEARCH MATERIALS AND METHOD

This research was arranged with the type of normative legal research, which conducted by examining secondary data such as literature materials as the basic material of this article (Soekanto & Mamudji, 2014). For the research approach, Legal Comparison between regional agreements became the main analysis (Sunggono, 2003). The secondary data divided into three legal materials. Firstly, for primary legal material, defined as authoritative legal materials which are comprised of legislation, official records, or minutes in the making of laws and regulations (Marzuki, 2011). This research will focus on the principles of law in international treaties set out in ACFTA and the implementing agreements and compared with European Union System who has a single authority that manages the smuggling and fraud activities between states in European Union. Secondary legal material would be the books, related news, published article from an online resource and offline resources about related topics (Mukti Fajar & Achmad, 2010).

This article then will be analyzed descriptively with a qualitative technique. Qualitative legal material analysis techniques are carried out by collecting legal materials, qualifying it. Then connecting theories or doctrines related to the formulation of the problem in this study, and last, concluding to determine the results of the research and recommendations (Moleong, 2007).

RESULT AND DISCUSSION

ASEAN-China Free Trade Agreement as a Regional International Trade Agreement and the Rules Upon

Free trade agreement manifests a free trade between the ASEAN States and China. Free trade is a policy that aimed to exterminate discrimination exports and import activities between states and companies. Consumers and sellers from different economic conditions could voluntarily do trading without the difficult mechanism of government tariffs policy, quotas, prohibitions, or subsidies on goods trading and services. Free trade is the opposite of trade protectionism or economic isolationism (Barone, 2019). The other meaning of free trade can be described as the extermination of artificial barriers which is usually created by the government in accordance to escalate trade activities between individuals and companies in different countries.

China's efforts to establish relations with neighboring countries are growing. Not only between countries but China's cooperative relations have also begun to expand to regional organizations such as ASEAN (Nugraha, 2019). ASEAN-China Free Trade Agreement is a 'deal' between ASEAN countries and China to reduce some barriers and in time, expected to deepen the economic linkages between the state parties and to increase the welfare of Indonesian and Chinese people (Agustina & Windiani, 2018). The actualization like lower costs also expected to increase the intra-regional trade and investment, escalate the efficiency of the economy, create a larger market as well as larger opportunities and the business scale of economy of the State parties, and enhance the attractiveness of the Parties to capital and talent (Framework agreement on comprehensive economic co-operation between the association of Southeast Asian nations and the people's republic of china, 2002).

The ACFTA on Trade in Goods signed in November 2004, this agreement has been improved and revised two times by 2006 and 2010. The modality for tariff reduction and elimination were categorized as either 'Normal Track' or 'Sensitive Track'. For the normal track, all tariff lines in this category have been eliminated by ASEAN-6, Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand) and China as of 1 January 2012. For Cambodia, Laos PDR, Myanmar, and Viet Nam, tariff elimination has completed by 1 January 2015, with some flexibility afforded to eliminate tariffs on products not exceeding 250 tariff lines by 1 January 2018 (ASEAN, 2014).

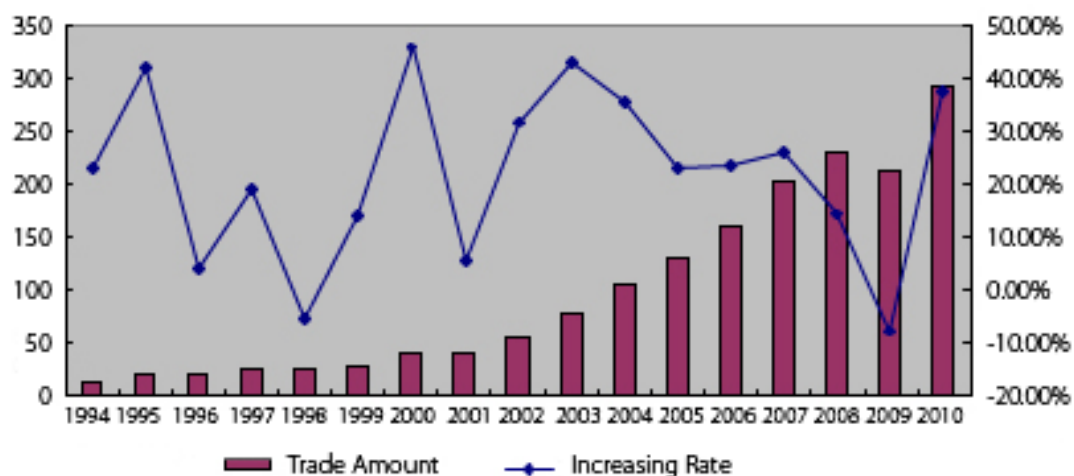


Figure 1: Trade Volume and annual growth rate of ACFTA 1994-2010 (USD Billions)

Source: China Statistical Yearbook, www.stats.gov.cn/tjsj/ndsj/

To be expected, ACFTA could compete with the two largest economic community and cooperation, which are Europe Union (EU), and North America Free Trade Area (NAFTA), confirms the important role within the regional framework (Devadason, 2010 in; Narine, 2008). Within the region, China is prepared to balance the traditional powers of influence over ASEAN. Just like the other regional free trade agreement, ACFTA does use the principle of free trade. With reduced trade barriers, established by the government in trade between individuals and/or between companies in all member countries of the free trade agreement (Purna et al., 2010).

Based on trade interactions between China and ASEAN member countries formed between ASEAN member countries, there are significant variations among ASEAN state members in terms of the interests set for the People's Republic of China as export and import sources. Unfortunately, it was no bilateral crowding from intra-ASEAN exports with each ASEAN country exporting to China. China's trade association with the region is increasing intra-ASEAN exports. Likewise, there is no indication that import revenues from China by ASEAN countries reduce export flows between ASEAN countries (Devadason, 2010). ASEAN and China have been doing the multilateral trading since long years ago, even before the ACFTA has written and entry into force. Looking through 1994, the graph of trading interactions between ASEAN and China has ups and downs, especially in 2009 when the global crisis of the economy hit all the international communities.

Since been signed in 2002, ACFTA has created ten agreements supporting the free trade actions between state members of the agreement including the first framework agreement. Which consists of (ASEAN External Economic Relations Division, 2019):

Table 1: List of ACFTA Agreements

| No. | Agreements | Issued Date |
|-----|--|--|
| 1 | <i>Framework Agreement on Comprehensive Economic Co-Operation between ASEAN and the People's Republic of China</i> | Phnom Penh, November 4 th 2002 |
| 2 | <i>Protocol to Amend the Framework Agreement on Comprehensive Economic Co-Operation between the Association of South East Asian Nations and the People's Republic of China</i> | Bali, October 6 th 2003 |
| 3 | <i>Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the People's Republic of China</i> | Vientiane, November 29 th 2004 |
| 4 | <i>Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-Operation between the Association of Southeast Asian Nations and the People's Republic of China</i> | Vientiane, November 29 th 2004 |
| 5 | <i>Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China</i> | Cebu, Filipina, January 14 th 2007 |
| 6 | <i>Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the People's Republic of China</i> | Bangkok August 15 th 2009 |
| 7 | <i>Memorandum of Understanding between the Governments of Member States of the Association of Southeast Asian Nations and the Government of the People's Republic of China Strengthening Cooperation in the Field Standards, Technical Regulations and Conformity Assessment</i> | Thailand, October 25 th 2009 |
| 8 | <i>Memorandum of Understanding between the Governments of Member States of the Association of Southeast Asian Nations and the Government of the People's Republic of China on Cooperation in the Field of Intellectual Property</i> | Thailand, December 21 st 2009 |
| 9 | <i>Second Protocol to Amend Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China</i> | Kuala Lumpur, October 29 th 2010 (First Amend in 2006) |

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|----|---|---|
| 10 | <i>Protocol to Incorporate Technical Barriers to Trade and Sanitary and Phytosanitary Measures into the Agreement on Trade in Goods of The Framework Agreement on Comprehensive Economic Co-operation Between the Association of Southeast Asian Nations and The People's Republic of China</i> | Phnom Penh, November 19 th , 2012 |
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Source: ([ASEAN External Economic Relations Division, 2019](#))

While discussing goods exports and imports, several agreements were signed in 2004, 2006, and 2010. In 2006 and 2010, the agreement from 2004 has amended regarding the join of more state parties that come into force with the agreement. This agreement focusing on the Rules of Origin of the products, the Early Harvest Program, and Sensitive Track ([Wahyudi & Hartopo, 2019](#)). Both parties (ASEAN and China) agreed to develop an intensive framework in such sectors: Agriculture, technology and information, human resource development, investment, Mekong River constructing, banking, finance, transportation, industry, telecommunication, mining, energy, fishery, forestry, etc. ([Indonesia Directory of International Trade Framework, 2010](#)).

Even though the principles to prevent and exterminate goods smuggling are not written under ACFTA, on the other hand, ASEAN and China create a Plan of Action every 5 years to ensure the mutually beneficial cooperation, but indirectly. Different frameworks from ACFTA, this plan is an implementing agreement of ASEAN-China Strategic Partnership for Peace and Prosperity which was established on October 8th, 2003 in Bali, Indonesia. This agreement also has a plan in the economic sector between China and ASEAN. One of the principles to maintain the security of trading relations in ACFTA is to monitoring problems arisen from the implementation of ACFTA agreements and settle those problems peacefully and constructively through consultations. Whether this plan is not a part of ACFTA, but in its substance, this plan was created to support the ACFTA.

In another economic sector, which is customs, several plans also committed by this implementing agreement, such are ([Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity \(2016-2020\), 2016](#)):

1. *Deepen exchange and cooperation in customs including through the ASEAN-China Customs DG Consultation Meeting and Customs Coordinating Committee Meeting.*
2. *Continue to implement cooperation projects and activities under the areas of cooperation identified in the Memorandum of Understanding between the Governments of the Member States of ASEAN and the People's Republic of China on Customs Cooperation.*
3. *Promote trade facilitation cooperation between ASEAN and China through the development of customs techniques and application of ICT in customs cooperation.*
4. *Support efforts to achieve the entry into force of and promote the implementation of the WTO Trade Facilitation Agreement to push for cooperation in trade facilitation for faster clearance of goods.*
5. *Promote Implementation of the World Customs Organization (WCO) SAFE Framework of Standards by considering, among other things, sharing of best practices and experience and mutual recognition of Authorized Economic Operator (AEO) programs, as appropriate."*

Besides, maritime cooperation in the economic sector has two plans to develop the ACFTA, consists of ([Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity \(2016-2020\), 2016](#)):

1. *Continue to promote dialogue and exchanges in maritime cooperation through relevant platforms based on the principles of inclusiveness and mutual benefit. This includes further exploring initiatives such as China's proposed Maritime Silk Road of the 21st Century.*
2. *Make use of resources available for ASEAN-China cooperation and conduct cooperative projects in the maritime economy, maritime connectivity, maritime science and technology promotion and application, maritime environmental protection, maritime security, maritime culture, and people-to-people exchange."*

From all those agreements, frameworks, and plans, mostly focus on the tariffs policy and dispute settlement. Even though Goods smuggling is one of the problems in ASEAN Countries and China, no agreement that discusses how to prevent, and exterminates the smuggling of the goods between state members. This absence of smuggling policy creates a bigger challenge for customs in every state member. This increase in the number of Free Trade Agreement and Regional Trade Agreement has added to customs' administrative and capacity building costs ([Li, 2014](#)).

Indonesia in Attempt to Implement the ACFTA as an International Trading Provision

The commitment of Indonesia to the ASEAN-China FTA Agreement was then ratified by Indonesia through a Presidential Decree (KEPPRES) No.48 of 2004 on June 15th, 2004 by Indonesia. Hereby, Indonesia was considered to have stated or agreed to bound by this agreement. In this agreement, the Indonesian Government will implement and

give a full liberalization of ACFTA or, can be said, entry into force in 2010 against six members of ASEAN Founding countries and China. The next following countries are Cambodia, Laos, Vietnam, and Myanmar who entry into force to this agreement in 2015.

The status of the ACFTA Agreement in the Indonesian legal system is valid because of several reasons. Firstly, this agreement has gone through three stages of transformation. Which are negotiation, signing, and ratification? The second reason, even though in the Presidential Decree the ratification only made the ACFTA Agreement as an attachment, this international agreement is inseparable and considered as an international trade agreement framework of Indonesia. ACFTA in Indonesia could still be considered valid because Indonesia was in fact following a transformation and incorporation at once (Kurniastuti, 2013).

Regarding the goods exports and imports matters, Indonesian policies through the Ministry of Finance, the Ministry of Trade, and the Ministry of Industrial create more policies to implement those ACFTA agreements and frameworks under the Regulation of Ministry. Focusing on the export-import protection and goods tariffs, controlled by the ministry of finance who issued several regulations, such are:

1. Decree of the Minister of Finance of the Republic of Indonesia (KEMENKEU)No. 355 / KMK.01 / 2004 dated July 21st, 2004 concerning Stipulation of Import Duty Rates on the Import of Goods in the framework of the Early Harvest Package ASEAN-China Free Trade Area (ACFTA).
2. Regulation of the Indonesia KEMENKEU No. 57 / PMK.010 / 2005 dated July 7th, 2005 concerning the Stipulation of Import Duty Rates in the context of the Normal Track of ACFTA.
3. Regulation of the Indonesia KEMENKEU No. 21 / PMK.010 / 2006 dated March 15th, 2006 concerning Stipulation of Import Duty Rates in the context of the Normal Track of ACFTA.
4. Regulation of the Indonesia KEMENKEU No. 04 / PMK.011 / 2007 dated January 25th, 2007 concerning Extension of Determination of Import Duty Rates in the context of the Normal Track of ACFTA.
5. Regulation of the Indonesia KEMENKEU No. 53 / PMK.011 / 2007 dated May 22nd, 2007 concerning the Stipulation of Import Duty Rates in the context of the ACFTA.
6. Regulation of the Indonesia KEMENKEU No. 235 / PMK.011 / 2008 dated December 23rd, 2008 concerning the Stipulation of Import Duty Rates in the context of the ACFTA.

In Indonesian Directorate General of Customs (*DJBT*), as one of an agency in the Ministry of Finance, also create some programs to secure the exports and imports of goods. Preventing and exterminate goods smuggling is a part of the program. Namely *Penertiban Impor, Cukai dan Ekspor Berisiko Tinggi (PICE-BT)* (Jafar, 2017) on July 12th, 2017. *DJBT* under the Indonesian Law No. 17 the Year 2006 has to protect and supervising imported and exported goods, and collection of import duties and export duties. In case, including the smuggling of the goods. *PICE-BT* has become a collaboration program between *DJBT*, Police, and the Navy. The following are some of the achievements in the joint operations of Customs, Navy, and Police since *PICE-BT* was declared, such are (Mulia, 2019):

1. December 2017, Customs with the Navy, National Narcotics Agency and Police, secure the smuggling of 1,037 tons of methamphetamine in Batam waters.
2. March 2018, Customs and Excise with BARESKRIM POLRI take action to smuggle 664,440 illegal cigarettes in Tembilahan, Riau.
3. March 2018, Customs and Excise with BARESKRIM POLRI confiscate 1,622 tons of methamphetamine in Banten.
4. March 2018, Customs in collaboration with the Navy and the Police arrested six crew members in Aceh and North Sumatra who carried illegal goods in the form of 8 tons and 1,361 bales of ball press, 557 sacks of shallots, and mixed goods.
5. October 2018, Customs is synergizing with PUSPOM TNI and Army smuggling illegal alcohol as many as 84 cartons in Tembilahan, Riau, and Jambi.
6. October 2018, Customs in synergy with PUSPOM TNI and KODAM V Brawijaya take action against one illegal cigarette factory and 5.4 million illegal cigarettes in Surabaya and Malang in East Java.
7. October-November 2018, Customs in synergy with Diponegoro Military Command IV secured 4.3 million illegal cigarettes and 19,168 fake *DJBT* tapes in Jepara, Central Java.
8. October-November 2018, Customs with the PUSPOM and KOSTRAD took action on 11,924 bottles of illegal alcoholic drinks in Medan, North Sumatra.
9. November 2018, Customs and Excise with PUSPOM TNI and KOSTRAD seized 104 bottles of illegal alcohol and 6,000 packages of illegally imported goods in Tanjung Pinang, Riau Islands.

Indonesian Customs has found out some methods on how the traders are smuggling import goods. The *modus operandi* of goods smuggling in passenger luggage was first ranked with 103 cases. Following, smuggling through 97 postal items/expedition services, and 40 cases of concealment in the human body (Murdianingsih, 2018). Moreover, in marine

surveillance, with the support of 189 patrol boats, of which 2 of them are 60-meter fast patrol boats, Customs has successfully carried out 143 actions until August 31st, 2018, after 299 sea prosecution in 2017 ([Murdianingsih, 2018](#)).

ACFTA Regulate About Goods Smuggling between China and ASEAN

ACFTA, since established in 2002 and came into force in 2010, has created three significant agreement about import rules and products. Another agreement focused on tariffs, services, and economic cooperation. As can be said, ACFTA itself has no contribution to support the extermination of import goods smuggling or contribute to customs security development. Internal regulation and action are the only hope to prevent and exterminate the smuggling of the goods to enter the Indonesian jurisdiction area.

In other agreements outside of the ACFTA, ASEAN and China have built a plan to support their collaboration. Named ASEAN-China Strategic Partnership for Peace and Prosperity issued by October 8th, 2003 in Bali, Indonesia. Security and customs cooperation were discussed in this regional agreement. Yet, there is no direct policy or action plan to reduce and exterminate import goods smuggling in both state members.

In the economic sector plan between ASEAN and China, the author focused on two-section, which are customs cooperation and maritime cooperation. Customs cooperation is focusing on the technology and knowledge sharing about the development of the customs in every state member. Moreover, in maritime cooperation, they are focusing on China to develop its Silk Road in the 21st century. Regarding the import goods smuggling, there has been no special agreement between ASEAN-China about addressing this matter because, until these days, the smuggling issue has handed over directly to the law of each jurisdiction based on *lex loci delicti*.

One indicator of the possibility of goods smuggling is mis-invoicing analysis. Mis-invoicing is an indicator that there is a smuggling activity in trade between states ([Buehn & Eichler, 2011](#)). Mis-invoicing analysis between Indonesia and China and ASEAN member countries over the past ten years shows that there are indications of the smuggling of China's goods to Indonesia, as well as from ASEAN countries to Indonesia. Contraband goods managed by the *DJBT* tend to increase from year to year ([Ekananda, 2018](#)).

Import products that are usually smuggled into Indonesia such as Electronics, second-hand fabrics, and some food materials. However, the electronics and food materials are two kinds of various products included in the list of regulated imported products nationally and internationally (Through ACFTA). This matter still needs focus supervision, not only from the importing country but also from the exporting country, a control since the pre-market evaluation until post-market surveillance is needed a standardization from the international community or regional community.

The ACFTA which has reduced the customs value of imported goods is still considered insufficient because the import goods smuggling rate was still high until 2018. Indonesian government itself has set various regulations on reducing import duties so that there have been changes in import patterns. The importation of certain products like food, fabrics, and apparel, footwear, and electronics, may only be imported by Registered Importers of Certain Products and can only enter through certain seaports or all international airports. On the other hand, illegal ports at some points in Indonesia are still often 'out of control' from the supervision of the Indonesian government (Including customs, police, or navy). For examples, from 2019 several cases of illegal import and smuggling which came from China has entered Indonesia, as shown below:

1. April 26, 2019-The Directorate General of Customs and Excise (DJBC) of the Ministry of Finance succeeded in thwarting the smuggling of tens of thousands of electronic goods on Saturday (April, 20) and Friday (April, 26). Tens of thousands of electronic items consisted of 27.732 cellphones, 135 tablets, 1.342 laptops, and 90 electronic devices with a total of 22.299 electronic items. Electronic goods are also goods made from China and India. Director General (Dirjen) of Customs and Excise Heru Pambudi said the smuggled electronic goods were transiting in Singapore. Smugglers, said Heru, use High-Speed Craft / HSC and make it difficult for them to make pursuit ([Harianja, 2019](#)).
2. August 29, 2019- The Jakarta Metropolitan Police arrested four people suspected of smuggling various Cellphones from China to Jakarta. According to the police, they did not pay taxes on the thousands of Cellphones they sold back in Indonesia ([Wildansyah, 2019](#)).
3. Smugglers of Imported Goods from China Have Been Acting for 8 Years, Loss to Indonesia due to this action has reached about 6.4 Trillion Rupiah. Efforts to smuggle millions of illegally imported goods from China have been foiled by the Directorate of Industry and Trade of the Jakarta Regional Police. These goods include cosmetics, medicines, foodstuffs, vehicle parts, and electronic goods ([Manafe, 2019](#)).

With the results of the research, it is evident that the ACFTA has not been able to suppress the import goods smuggling in vulnerable areas in Indonesia even though Indonesia has joined and reduced the percentage of import duties to China and ASEAN countries. The cause of this statement is the way government act to this problem is only a 'one-way approach'. The absence of cohesiveness between exporting and importing countries become a problem in the ACFTA framework. This makes the author argue that the ACFTA still needs to be improvised and upgrade the agreement.



European Union as Developed Economic Union: Smuggling Management

European Union (EU) consists of 28 countries as the parties of this regional organization. EU established formally and entered into force on November 1st 1993 in Maastricht. With the political and economic base, the European Union has a lot of frameworks to develop European in any aspect. The EU itself is unavoidable from the problems of goods smuggling. Six years after the European Union was officially formed, in 1999, the EU formed an institution called the “*Office européen de lutte antifraude*”-(OLAF) or in English known as the European Anti-Fraud Office. OLAF was established to replace its former organization named UCLAF (*Unité de coordination de lutte anti-fraud*).

Established on April 28th 1999 by the Commission of European Union Decision with a number (1999/352/EC, ECSC, Euratom) Under document number SEC (1999) 802. OLAF has about 420 staff and crews which consists of police officers, customs officers, and legal experts from the member states of the EU (OLAF Annual Report:2014). The European anti-fraud office (OLAF) is a European Union directorate-general that against and eradicate fraud, corruption, and other similar acts against the law in the European Union. OLAF has the responsibility to monitor the European Union institutions and investigating any possible affairs like instances of fraud, corruption, and financial misconduct inside any EU institutions. OLAF had to protect the financial interests of the EU. Besides, OLAF has to manage the investigations by cooperating with the relevant authorities of the member-states ([Europa NU, 2019](#)).

Imitation products commerce results in enormous illegitimate profits and great losses of tax income for the EU itself including the tax income of the member States. The smuggled imitation products put the European economy at risk; this activity damages legitimate business and stifles innovation, hence, European employee in several sectors potentially lose their job. Environment, health, and safety of production, Also at risk of damage when the imitation and counterfeit items are produced on. OLAF is a competent institution to execute the investigations related to the smuggling of counterfeit or imitation items, at the same time, OLAF is protecting the EU and its Member States from customs and tax revenue losses. OLAF specifically concentrates on smuggling activities that have the potential to be dangerous items ([Burea & Enculescu, 2019](#)).

The budget of Europe is an attractive object for many criminal actors. As an example, the governance of European countries still facing much corruption in the public sector for the fabric of society. Another example, the attacks on the VAT(Value Added Tax) and excise duty systems ([Llet, 2005](#)). Smuggled cigarettes and agricultural products in fraud trading are all carried out by using the same vehicles and certainly using the same financial circuits as the individuals who trade in human (trafficking), in drugs, and weapons. Organized criminals respect neither national boundaries nor the nice distinctions between the European ‘pillars of competence’([Llet, 2005](#)).

During the operational phase (April-May 2018), OLAF noted 181 suspicious shipments of pesticides that suspected came from mainland China. This shipment is either suspected as being in transit in the EU territory or declared as an export product from the EU to other importing states (Russia, Ukraine, Moldova, Turkey). OLAF was notified with this suspicious shipment by the national participators and third-country customs officers directly or via EUROPOL([European Anti-Fraud Office, 2018](#)). With the support of the Ukrainian authorities and the OLAF Liaison Officer in Kiev, OLAF asked Hungarian and Slovak Customs to intercept a suspicious consignment of 20.400 kg pesticides (Thiamethoxam 350 g/l) on its way from China to Hungary via Ukraine. The shipment containing unmarked packaging (no indication of producer, country of origin, trade name) was successfully seized at Szolnok by Hungarian customs officers (NTCA) and the experts from the National Food Chain Safety Office (NFCISO). The real customs value of the shipment exceeded 240.000 USD. The retail value of the genuine pesticide would exceed 1 Million USD. Also, OLAF contributed to stopping another suspicious shipment of 5.4 tons of pesticide (thiacloprid) initially transported under a customs transit regime from Turkey to Germany and later on from Germany to the Czech Republic.

Another accomplishment of OLAF is to intercept the smuggling of cigarettes. A huge cross-Europe network of smuggled cigarettes has been discovered and investigated by OLAF regarding suspicious activities of it. Jointly cooperated with the competent Italian and German authorities, OLAF takes part and cooperate in the criminal investigations. As part of this teamwork, OLAF organized a coordination meeting to discuss the joint action in autumn 2013 along with authorities of judicial and law enforcement of Italia and German. In addition, OLAF also creates a synergy with Belgium, Lithuania, Hungary, Poland, Romania, and Slovakia, as well as Moldova and Ukraine to resolve it ([OLAF, 2018](#)). This network of smuggling actors produced those cigarettes in the EU. After the production, they simulated a fictitious export, carried out real exports to non-EU countries, and afterward, smuggled the cigarettes back into the EU. They aimed to avoid customs duties and taxes. Next, in November 2014, the Italian authority, *Agenzia delle Dogane* (Italian Customs and Anti Monopoly Institution) and *Guardia di Finanza* (Enforcement Agency of Italian Ministry of Finance) and the German Authorities under *Zollkriminalamt Köln* (Germany Customs) and *Zollfahndungsamt* (Investigation Office) Berlin disassemble the smuggling network through good cooperation. Public prosecutors in Turin and Frankfurt/Oder also jointly support the action by coordinating a search by the officials of law enforcers of an ostensibly legitimate cigarette industry who produced those cigarettes and input those items in the illegal market. Investigations are kept going on. More than 10 suspects had been arrested. The estimated damage to the Italian budget alone is more than 90 million Euro ([OLAF, 2018](#)).



From those cases, OLAF brings significant effort to decrease the smuggling rate in Europe, where smuggling networks are operating across nations and can only be destroyed by coordinated EU with wide efforts (OLAF, 2018). With the solidarity of the European community, the smuggling activities effectively-being investigated and punished properly. Regulations made by the EU Commission and executed by OLAF created a supported environment to reduce corruption, fraud, and smuggling.

Lessons Learned from European Union Smuggling Management for ASEAN and Indonesia

Based on this research, the authors believe that the enforcement of national law and current supervision by the Indonesian government and its legal institutions were not firm enough to handle the import goods smuggling that could cause billions of rupiah in losses in Indonesia. As we could have learned from the EU strategy with OLAF, the cooperation from the exporting country itself would be needed. If the exporting country does not tighten the control and customs checks itself when the goods are sending, import goods between ASEAN and China smuggling extermination will only be increasing its rates years later.

To develop the security relations in ASEAN FTA with China or even more with other states, a soft law as 'Plan of Action' cannot solve it. It will need a firm agreement or decision by all of the ASEAN leaders and the FTA partners. The authors believe that a new arrangement is needed in the ACFTA which not only to regulating the value of import duties, but also regulates the tightening of supervision of goods in and out of exporting countries to importing countries. Especially supervision in the outermost regional ports, it has to tighten. Sea lanes are always an option as a smuggling route. This is evidenced by various customs catches captured in ports in various regions in Indonesia like Batam (Riau Islands), East Nusa Tenggara, Medan (North Sumatera), Dumai (Riau), etc.

A new strategy, for example, ASEAN-China Customs, Police, and Navy cooperation to support the economic cooperation between ASEAN and China in several points, such as the south china sea, Melaka strait, Singapore strait, Sunda strait, Banda Sea, and other international ocean borders. Member states of ACFTA customs need to tighten the examination of the item in Expedition Company, cargo ships, passenger ships, even the fisher boats. This strategic not only suppresses Smuggling figures in Indonesia, for surely to exterminate the import goods smuggling in all ASEAN and China, most of which are still developing countries, and many have the role of importing countries. This strategy can keep a good reputation for economic cooperation as an international community.

CONCLUSION

ASEAN - China Free Trade Area or ACFTA was established by ASEAN states and China to create free trade areas by removing barriers to trade in goods and services. The purpose of this FTA is mostly to reduce the barriers in trading activities such as tariffs and non-tariff. ACFTA also increasing access of every state members to the services market, regulations, and investment provisions, while increasing aspects of economic cooperation to encourage economic relations between the ACFTA state members to improve the welfare of the people of ASEAN and China. However, ACFTA still missed the point of import goods smuggling in its substance. ACFTA itself did not have the policy to prevent or exterminate the import goods smuggling. Import goods smuggling still become a nightmare to Indonesian and ASEAN countries economic stability and ACFTA is not giving many contributions to this matter.

With the comparison with the European Union (EU) strategy of smuggling management, their solidarity between states needs to become an example to ASEAN and China as one of ASEAN's FTA Partner with high smuggling risks. In Indonesia itself, ACFTA has reduced the value of customs duties on imports of goods but smuggling still often occurs through sea lanes and illegal ports in Indonesia. So that the enforcement of national law and tightening supervision from within the country alone is not enough to handle the smuggling of goods that can cause billions of rupiah in losses. There needs to be a new arrangement and firm agreement in the ACFTA that regulate the tightening of supervision of goods in and out of exporting countries to importing countries to deal with Smuggling Goods.

LIMITATION AND STUDY FORWARD

Some of the limitations in this study occur because of the method of this study, which still depends on the secondary data (Library research and literature study). The lack of primary data cannot be avoided due to the activities of goods smuggling mostly undetected by the authorities and cannot be prevented. In the future, writers hope this study will have more attention and ideas to develop a good system to prevent goods smuggling.

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AUTHORS CONTRIBUTION

The authors' teamwork has finished developing this issue to become a proper article. Silviani proposed the idea of this study and drafted the raw manuscript of the article. Amalia who also the supervisor lecturer gave a lot of support by directing, reviewing every progress, giving critics and advice to accomplish the article as made.

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