

Juridical Analysis of Responsibility of Importers of Used Goods Prohibited from Importing to Buyers of Used Goods

Inez Putri Pramono¹, Daniel Hendrawan.²

¹ Maranatha Christian University, Indonesia; Daniel.hendrawan@rocketmail.com

² Maranatha Christian University, Indonesia; Daniel.hendrawan@rocketmail.com

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Abstract

The rise in buying and selling of imported second-hand clothing is caused by the government's lack of firmness in imposing sanctions on businesses importing second-hand goods. The purpose of this research is to determine the responsibility of importers which must be followed up by the government and not harm consumers in a normative legal manner. The government should follow up on import activities of used goods which are prohibited according to law by imposing sanctions on importers, including sanctions that apply in Law No. 8 of 1999 and Law No. 7 of 2014

Keywords

Used Import Goods; Consumer protection; Importer's Responsibility; Government policy

Corresponding Author

Daniel Hendrawan

Maranatha Christian University, Indonesia; Daniel.hendrawan@rocketmail.com

1. INTRODUCTION

In research conducted by the Central Statistics Agency regarding data collection methodology based on the volume and value of imported second-hand goods by the Directorate General of Customs and Excise (DJBC), there was an increase, especially in consumer goods such as second-hand clothing, amounting to 417 tons of clothing with a total value of 6,075 US\$ in 2019. This phenomenon occurred because people saw that used clothes had economic value and could become a business area.

Remember that used goods also have a bad influence on human health and can have a multiplier effect on local industry. So, in dealing with state losses, the trade minister acted to break the sales chain by destroying it as has been done in several areas such as Pekan Baru, East Java and Tangerang. The destruction of imported used clothing in Tangerang was recorded at 7000 bales or worth IDR 80.000.000.000 (eighty billion) with the aim of breaking the sales chain. (Indonesian Ministry of Trade, 2023) However, this action is not fully in accordance with the regulations governing the prohibition of smuggling of used goods prohibited from import by law.

The government is implementing efforts to destroy these goods by destroying (burning) but ignoring the responsibility of importers who have committed unlawful acts. Importers who import



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illegally imported goods must be legally responsible and this must not escape law enforcement to create legal certainty in Indonesia.

The activity of importing goods is an action that does not conflict with the law and even has positive impact on a country's economy. The definition of import itself is stated in Article 1 Number 13 of Law Number 17 of 2006 concerning Customs which states that what is meant by import is the activity of bringing goods into the customs area. This definition is the same as the definition according to Law Number 7 of 2014 concerning Trade which defines the meaning of import as the activity of bringing goods into the customs area.

In the dynamics of the development of social life, a consumer is not only interested in buying and using newly produced goods, but also interested in buying used goods. (Ketut Ardika; Muhammad Bagus Firmansyah, 2021) The government has regulated the import of used clothing in Law Number 7 of 2014 concerning Trade regarding used clothing import activities. Article 47 paragraph (1) of Law Number 7 of 2014 concerning Trade states that importers are obliged to import goods in new condition.

Article 47 paragraph (2) continues that "In certain cases the Minister may determine that imported goods are not new". This means that in the case of goods needed by business actors, these are non-new capital goods which cannot be obtained domestically, thus requiring the import of goods in used condition. In addition, it is permissible to import goods in a non-new condition if one day a natural disaster occurs in accordance with the provisions of the legislation. That is, it can be concluded that importing goods in a condition that is not new is permissible but not to be traded, because in certain cases as previously explained it is very possible to import goods in a condition that is not new or used.

There is also regulation issued by the government in the form of supervision, restriction, and distribution of imported used goods that enter the customs area. Article 2 of The Regulation of The Minister of Trade Number 40 of 2022 as an amendment to the Regulation of The Minister of Trade Number 18 of 2021 explains that regarding Export Prohibited Goods and Import Prohibited Goods, it states several qualifications of goods which are prohibited from entering customs territory to protect consumers from used goods which have dangerous contents.

However, the import of illegal used goods is still being carried out by the public under the pretext of ignorance of the law that regulates the import of used goods is prohibited. Public ignorance is inversely proportional to the Law Fiction theory which assumes that everyone knows the Law (*Presumption iure de iure*). This activity shows that importing used goods cannot be used as an excuse for unlawful acts that have been committed.

The prohibition on the sale of used clothing is also based on the rules in Article 8 paragraph 2 of Law Number 8 of 1999 concerning Consumer Protection which states that "Business actors are prohibited from trading damaged, defective or used and tainted goods without providing complete and

correct information on the goods in question. " Law Enforcement Against the smuggling of used goods, it is prohibited to import, it is not enough just to destroy the goods, but there are additional sanctions so as not to cause harm to consumers physically or materially and can make importers feel wary.

Consumer protection is an inseparable part of the activity of buying and selling goods, but if the buying and selling transactions are unhealthy, then there is no balance of legal protection between business actors and consumers. Conditions like this place the consumer's position in a vulnerable position and make him the object of business activity to take large profits by means of sales that are detrimental to consumers.

Consumers have their right as regulated in Article 4 of the Consumer Protection Act, namely, the right to comfort, safety, security in consuming goods/services. It is feared that these consumer rights could be cheated by sellers of imported used clothes whose origins and condition are unknown if they are not protected by the Consumer Protection Act.

Consumers have a greater risk than business actors due to the vulnerable bargaining position of consumers, so consumer rights are very risky to be violated. (Abdul Halim Barkatullah, 2010) Therefore, in this paper, the writer will analyse two legal issues namely:

1. What is the responsibility of importers who import used goods prohibited from importing and selling goods that do not comply with statutory standards?
2. How is the importer related to the protection of consumers who buy imported second-hand goods?

2. METHODS

This research was conducted using normative juridical research methods. Normative Juridical Research is a legal research method that is descriptive in nature and is a conceptual approach which is carried out by examining the concepts of illegally imported used goods and the responsibility of importers for used clothing. Apart from that, this research will use a Statute Approach or will be carried out through a study of statutory regulations relating to legal issues regarding the issues discussed.

3. FINDINGS AND DISCUSSION

3.1. *Study of Used Goods Imports*

At this time, import activities are one of the activities the government focuses on, because it might kill local companies in Indonesia, especially in the clothing sector. According to the Law of The Republic of Indonesia Number 17 of 2006 concerning customs, import is the activity of bringing goods into the customs area. In this case the regulation of the Minister of Trade Number 20 of 2021 which says that "Importers are individuals or institutions or business entities, both in the form of legal entities and non-legal entities, which carry out imports."

In another version outside of the narrative of Indonesian law, there is also another narrative that explains the meaning of Import Activities, namely trade by entering goods from abroad into Indonesian territory by fulfilling the applicable provisions. (Yanuar, 2016) This import activity is still no harmony between the government and society. There are still many people who think that goods that are prohibited from importing from abroad are useful for Indonesia's needs to make ends meet. So that the authors conduct a review of juridical analysis of buyer responsibility for imported used clothing that enters Indonesian territory.

Import transactions are trade by importing goods from abroad into the Indonesian customs area by complying with the provisions of applicable laws and regulations. (Tandjung; Marolop, 2011) Import activities are divided into several commodities, namely raw materials, consumer goods, children's games, as well as water and minerals. In the import process, each importer is allowed to enter goods into the customs area (domestic) regarding goods that domestic production cannot fulfill.

Every imported good that enters Indonesia must pass various inspection series which are divided into three routes, namely:

1) Red Line

Red Line is the process of servicing and supervising the release of imported goods by carrying out physical inspections and document research before the issuance of the Goods Export Approval (SPPB).

2) Green Line

Green Line is the process of servicing and supervising the release of imported goods by not carrying out physical inspections, but document research is carried out after the issuance of the Goods Export Approval (SPPB).

3) Yellow Line

Yellow Line is the process of servicing and supervising the release of imported goods by carrying out physical inspections but carrying out document research before issuance of the Goods Export Approval (SPPB).

4) Priority Line

Priority Line is the process of servicing and supervising of the release of imported goods that are not carried out by physical inspection and document research, after there is a stipulation from the Government on the imports of the priority line (Regulation of the Director General of Customs and Excise Number PER-07/BC/2017)

3.2. Used goods are prohibited from import.

Used goods are my goods that have been used and are not reused. Ther trend of imported used goods is starting to enter Indonesia because many branded goods are being sold at very low prices. However, after conduction sample tests on imported used goods, several impacts were found from used goods:

a. Impact on health

Potential health hazards, especially skin health, can result from germs, bacteria, viruses, fungi, or even fleas and mites.

b. Impact on air and water quality

Types of air pollution caused by waste, for example emitting unpleasant odors, dust, toxic gases (burning rubbish). Types of water pollution caused by waste include, for example, changes in color and odor in river water, the spread of chemicals and microorganisms carried by rainwater and the infiltration of hazardous materials so that they seep into polluting wells and water sources.

c. Impact on the social and economic environment

In the long term, imports of used clothing also have the potential to reduce employment opportunities in the textile and clothing industry in Indonesia.

Prohibiting used goods in import activities is within the government's authority based on several considerations. These considerations include the condition of the domestic market which could threaten its business due to the entry of imported goods. In prohibiting imported second-hand goods, the government issues a policy in the form of Prohibition and Restrictions (LARTAS) with the aim of issuing every imported good that enters Indonesia.

Imported second-hand goods that enter Indonesia must meet the terms and conditions made by LARTAS under the Ministry of Trade and given the authority to supervise import activities in Indonesia. LARTAS's supervision of imported second-hand goods is based on the provisions on prohibited import of second-hand goods regulated by Minister of Trade Regulation Number 40 of 2022. Prohibited imported second-hand goods that already have permission from LARTAS are allowed to enter the customs area.

The stipulation of Article 47 paragraph 1 of Law Number 7 of 2014 concerning Trade and Regulation of the Minister of Trade Number 51/M-DAG/PER/7/2015 concerning the Prohibition of Importing Used Clothing turns out to be not in harmony with aw Number 8 of 1999 concerning Consumer Protection which stipulates in Article 8 paragraph 2 that "Business actors are prohibited from trading damaged, defective or used, and contaminated goods without providing complete and correct information about the good in question." If you pay attention to the provisions of this Article and analyze them with an *argumentum a contrario*, then perpetrators are actually allowed to trade second-

hand goods (including imported second-hand clothes) on condition that they provide clear and truthful information to consumers regarding the condition and quality of the second-hand goods (used clothes)

The purpose of imported goods is to fulfill needs that cannot be produced domestically and the importing country can take granted for the goods. Import policy is part of trade policy that protects national interests from the influence of the entry of goods from other countries. Import trade regulations only carried out goods by companies and approved by the Minister of Trade.

3.3. 3. Understanding Consumer Protection Law

Consumers are users of goods for use and not for trade, so the existence of legal certainty regarding consumer protection is an effort by the government to build legal awareness of citizens through preventive means, namely by building legal awareness and legal education so that everyone knows, understand the importance of law in society. Apart from that, legal certainty can also be used as a repressive measure, namely by imposing sanctions and/or fines on anyone who commits acts against the law.

In every trade that occurs, consumers are considered vulnerable because there is no good faith from the seller. In Indonesian positive law, as an effort to protect consumers, the Consumer Protection Law was created to create stability in trade transactions. This contains legal principles and rules that are regulatory and have a binding nature to protect every consumer.

The Consumer Protection Law was created to become a strong legal foundation for the government and consumer protection institutions. Apart from that, legal certainty regarding consumer protection will be an accompaniment to consumer education and guidance which can be implemented in the form of control and supervision for business actors in producing goods and/or services.

The Consumer Protection Law is not intended to kill business actors, its main aim of the Consumer Protection Law is to form a standard for business actors in producing goods and/or services so that consumers feel satisfied. Therefore, the Consumer Protection Law will have direct implications for the sustainability of production, product promotion, business actors' compliance with statutory regulations, and protection for consumers.

3.4. Review of Used Goods Import Policy

In general, policies can be divided into four forms, namely:

- Regulatory, namely regulating people's behavior,
- Redistributive, namely redistributing existing wealth, or taking wealth from the rich and then giving it to the poor,
- Distributive, namely distributing or providing equal access to certain resources, and

- Constituent, namely intended to protect the country.

In importing used goods, the government provides policies for importers so that their import activities can be monitored and managed by the government, one of which is importing import duties on imported goods. The import duty rate is used to provide tax on every good that enters the customs area (domestic).

The government's policy regarding import activities aims to regulate the flow of imports so that it does not harm individuals or the country. The government has established various kinds of import policies, namely:

- 1) Import Quotas

Import quotas are policies that aim to limit the number of products from abroad within a certain period of time. This policy is a protection for domestic goods which are often less competitive in terms of price with imported products.

- 2) Control of Foreign Exchange

Foreign Exchange is a financial asset that must be owned for transactions in international trade.

Foreign exchange control refers to limiting foreign exchange supplies for importing countries, so that importers need to limit the quantity of goods to be sent.

- 3) Import Duties

Import Duties are policies in the import sector by setting certain tax rates for goods from abroad.

Import duties apply to goods with an import value of more than USD 3 (equivalent to RP. 45,000) per shipment. Under that, the tax that is imposed is only VAT of 11%. For goods with an import value of more than USD 3 to USD 1500 per shipment, the import duty that must be paid is 7.5% and VAT 11%.

- 4) Subsidies

Subsidies applied to domestic producers of goods. Sometimes, consumers prefer to consume foreign products because the prices are cheaper than domestically produced goods. To overcome this the government will usually apply subsidies to producers, for example by reducing the costs used for the production process.

- 5) Devaluation

Devaluation is a policy in the import sector which aims to deliberately lower the value of the national currency against foreign currencies. By implementing devaluation, the price of imported goods becomes increasingly expensive, and consumers ultimately choose to consume domestic products.

6) Import Prohibited Goods

Prohibited goods is an example of policy in the import sector by prohibiting sending goods from abroad for certain purposes. Goods that are prohibited from importing generally have the following criteria:

- a. Dangerous or fatal goods,
- b. Damaged or defective goods. (Alman Imtihanah, 2022)

3.5. Protection of Consumers as Buyers of Used Imported Goods.

Indonesia is a country that adheres to the Civil Law Legal system which has the characteristics of written law. As a form of effort to protect the rights that consumers should have, the government issued Law Number 8 of 1999 concerning Consumer Protection as a repressive measure to uphold justice for consumers whose rights have been reduced or harmed by sellers.

In import activities, usually importers will import goods that have economics value to be used as business activities in Indonesia and marketed in the domestic market. The activity of selling imported goods to the domestic market makes the importer a business actor who must comply with the Consumer Protection Law.

Article 8 of Law Number 8 of 1999 concerning Consumer Protection explains that "business actors are prohibited from trading damaged, defective or used, and contaminated goods without providing complete and correct information about the goods in question." But, most importers sell used goods without providing information and also testing the quality of the used goods being sold.

Importers violate consumer rights which include the right to comfort, security and safety in consuming goods and/or services. This is related to the goods being sold which do not have a health quality guarantee because in essence used goods are goods that have been used by other people.

According to Ahmadi Miru and Sutarman Yedo in their books state "The right to security and safety of consumers in the use of goods or services obtained, so that consumer can avoid physical and psychological harm when consuming a product". (Ahmadi Miru; Sutarman Yodo, 2010) This means that if it is related to consumer rights which are regulated in Article 4 paragraph 1 of Law Number 8 of 1999 concerning Consumer Protection, the activity of importing used clothing consumed by consumers is contrary to services. Consumer rights have been violated by business actors when viewed from the perspective of selling imported second-hand clothing, because the goods sold can endanger the health of consumers.

Due to the lack of harmony between *Das Sein* and *Das Sollen*, several cases began to emerge. In March 2023, the Ministry of Trade destroyed 10 tons of used goods with a value up to 10 billion in Pekanbaru, 824 bales of used goods worth 11 billion in Sidoarjo, and 7580 bales of used goods worth 80

billion in Batam. These used goods were destroyed because after conducting sample tests it turned out that these used goods contained mold and yeast, making them unfit for sale in the domestic market.

In 2023, many consumers do not know about the condition and quality of used goods sold by importers. Judging from the Consumer Protection Act, consumers who are harmed should be entitled to legal accountability from business actors. There are differences between the Trade Law and The Consumer Protection Law. If you look at it from the point of view of the trade law, imported used clothes themselves are categorized as illegal goods because their existence is unclear in terms of quality and cleanliness. However, according to the Consumer Protection Act, imported used clothing can still be traded if the business actor provides clear information regarding the condition of the goods, namely by providing the condition of the imported goods to be sold.

The accountability referred to as stated in Article 19 of Law Number 8 of 19999 that 'business actors are responsible for providing compensation for damage, pollution and/or consumer losses as a result of consuming goods and/or services produced or traded.' And there are several mechanisms in the claim for compensation that must be carried out by consumers.

According to Article 46 of the Consumer Protection Act paragraph 1 explains that lawsuits for violations by business actors can be carried out by:

- a. A consumer who is harmed or the heir concerned,
- b. A group of consumers who have the same interests,
- c. Non-governmental consumer protection institutions that meet the requirements, namely in the form of legal entities or foundations, which in their articles of association clearly state that the purpose of establishing the organization is for the benefit of consumer protection and has carried out activities in accordance with its articles of association,
- d. The government and/or related agencies if the goods and/or services consumed or utilized result in large material losses and/or many victims.

Basically, consumers who have been harmed by goods that do not have quality standards have the right to ask for compensation from the perpetrator, business, claims for compensation can be filled through general court institutions or outside the general court. In Indonesia there is also a Consumer Dispute Settlement Agency (BPSK) which has the authority to solve consumer protection disputes.

Provisions regarding the amount of compensation are regulated in Article 60 of the Consumer Protection Law that the Consumer Dispute Protection Agency has the authority to impose administrative sanctions, administrative sanctions can be imposed at a maximum of IDR 200.000.000 (two hundred million rupiah). However, in the case of importing used goods that have been proven to contain mold in sample tests carried out by the Ministry of Trade, this also contains criminal elements.

Article 204 of the Criminal Code explains that "anyone who sells, offers, delivers or distributed goods that he knows endangering people's lives or health, even though the nature of the danger is not disclosed, is punishable by a maximum imprisonment of fifteen year."

According to the author's analysis, in the sale of imported second-hand goods the clause "endangering people's lives or health" is fulfilled in the case of importing second-hand goods. In fact, imported used goods do not have quality assurance that is safe for the body and health, especially skin health. In fact, in clause 8 of the Consumer Protection Law, business actors are obliged to provide correct and clear information about the goods being sold.

Therefore, in the case of imports of second-hand goods, it is necessary to monitor and test marketing suitability standards for goods to be traded in the domestic market. Legal certainty regarding the protection of consumers who buy used goods in Indonesia is available, plus the existence of BPSK institution as an alternative for resolving disputes outside of court.

According to the author's observations, there are several things that create gaps in the implementation of consumer protection, such as;

- 1) Actors' businesses are only profit oriented,
- 2) Ignorance of consumers about the rights they should obtain,
- 3) Lack of firmness from the government to impose sanctions on business actors who violate, and
- 4) Lack of participation by import goods inspectors in testing the suitability of goods entering the customs area.
- 5) Based on the results above, the lack of strict law resulted in a chain effect on society. Starting from importers who violate the provisions on used goods being prohibited from importing and also used goods that do not comply with the standards marketed in the domestic market. Consumers suffer a lot because many business actors do not comply with the law in selling their products. The Consumer Protection law is the foundation for the community to continue to obtain rights and responsibilities from business actors.

3.6. Responsibility of Importers Importing Used Goods Prohibited from Importing and Selling Goods That Do Not Comply with Legislative Standards

Indonesia as one of the countries with the largest population in the world means that the need for consumption of goods is increasing. Used goods that have relatively much lower prices have a special place for Indonesian consumers. Importers see this as an opportunity to run a business and also fill the second-hand goods market in Indonesia.

Young Indonesian have a high interest in imported second-hand goods such as clothing because the imported second-hand goods being sold are branded second-hand goods at affordable prices.

However, this is a mistake among importers and consumers of used goods. In Article 7 of Law Number of 2014, it is stated that "Every importer must import goods in new condition."

Based on this law, this does not mean that the activity of importing used goods is illegal or violates the law. Imports carried out are found to be detrimental or endangering national interests and domestic production. This refers to the principle of *Lex Posterior Derogat Legi Priori* (a legal principle where new regulations can override or eliminate old regulations). So the government plays its role in controlling foreign trade through business licensing/approval, standards, prohibitions, and restrictions based on the Trade Law and Overriding the Consumer Protection Law.

Regarding the case that occurs in March 2023, the government destroyed 10 tons of used goods by value reached 10 billion in Pekanbaru, 824 bales of used goods worth 11 billion in Sidoarjo, and 7580 bales of used goods worth 80 billion in Batam. (M Taufik, 2023) In the author's analysis which refers to the Minister of Trade Regulation Number 40 of 2022, it is stated that used clothing is included in the category of goods prohibited from import with postal post code/HS 6309.00.00.

Knowing that there are statutory regulations regarding the prohibition of imported used clothing, the author will explain what things that must be accounted for by importers regarding illegally imported goods that enter the customs area. The efforts made by the government do not take legal action against importers who import second-hand goods, imports are prohibited.

In carrying out second-hand goods import activities; Article 46 of Law Number 7 of the Year 2014 explicitly states that "Importers are fully responsible for the imported goods." The provisions of this article form the basis that the government must continue to enforce the law against importers who violate the provisions on the import of used goods. Still in the same Law, Article 46 paragraph 2 of Law Number 7 of 2014 also explains that "Importers who are not responsible for imported goods as intended in paragraph 1 are subject to administrative sanctions in the form of revocation of permits, approvals, recognition, and/or determination in the Trade sector."

The regulations regarding sanctions that must be applied to importers are expressly stated in the Law. However, in law enforcement, there is a legal vacuum in the accountability of importers. Not enforcing the law properly will create new loopholes for importers who want to continue to insist on importing second-hand goods prohibited from import into the customs area.

The aim of having regulations regarding second-hand goods prohibited from import is to maintain economic stability, public interests, safety, and public health. Importers must be given a deterrent effect so as not to repeat the same mistakes. Importers only care about profit, without caring about the side effects caused by second-hand goods, such as mold and mildew found in imported second-hand clothing.

If law enforcement is not strictly enforced, the impact will be even greater. The government should impose strict sanctions on imported goods and on people who import prohibited used goods. Article 111 of Law Number 7 of 2014 states that "Every importer who imports goods that are not new as intended in Article 47 paragraph (1) shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of IDR 5. 000,000,000.00 (five billion rupiah)."

Apart from criminal sanctions, there are also administrative sanctions for every business actor importing used goods who does not have a business permit in accordance with Article 46 number 7 of the Job Creation which adds a new article to Article 77 A of Law Number 7 of 2014 in the form of:

- a. Written warning
- b. Withdrawal of goods from distribution
- c. Temporary suspension of business activities
- d. Warehouse closure
- e. Fine; and/or
- f. Revocation of business permits.

According to the author's observations, the statutory provisions governing the responsibility of importers are clearly stated. However, in several cases that occurred in Batan and Riau, the government ignored these provisions. Importers who import prohibited goods must be held accountable before the court. And in this case it falls into a formal offense where no complaint is required from any party for the legal process to be carried out.

Thus, there is a misalignment between *Das Sein* and *Das Sollen* where the importer is the party who benefits. Without strict law enforcement from the government against importers, this will reflect legal uncertainty in Indonesia. In the author's view, if law enforcement focuses on the object only then similar incidents will repeat themselves and the worse the impact will be even more widespread because the law is considered trivial by importers who violate the law.

4. CONCLUSION

Importing goods in a condition that is not new is permitted by the state but not for sale and purchase. This is written in Article 47 paragraph (2) of Law Number 7 of 2014 which states that exceptions are made in certain cases for goods imported in a condition that is not new or used. The prohibition on selling used clothing is also based on the rules in Article 8 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection which states that "Business actors are prohibited from trading damaged, defective or used and contaminated goods without providing complete and correct information about the goods. What is meant is." Consumers have the right to be able to enjoy a product with guaranteed quality and cleanliness. Judging from the Consumer Protection Law, consumers who

are harmed should have the right to receive legal responsibility from business actors.

In the author's analysis referring to the Minister of Trade Regulation number 40 of 2022, it is stated that used clothing is included in the category of goods prohibited from import with the postal code tariff/HS 6309.00.00. However, the reality is that there are still many business actors who carry out buying and selling activities of imported second-hand goods, so the government must impose strict sanctions on importers. Therefore, the government should be able to provide clear sanctions on importers of used clothing in the form of criminal sanctions, civil sanctions, and also administrative sanctions.

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