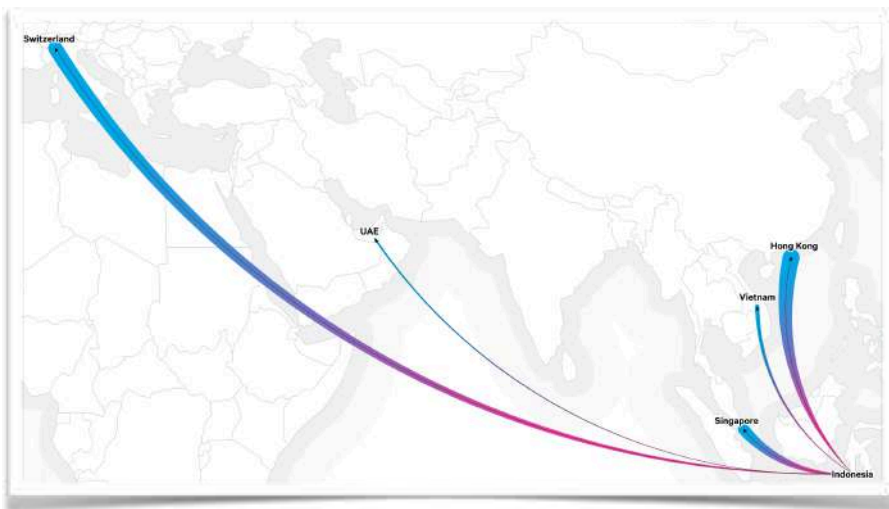


Regulatory Review

Indonesia:

Mercury Trade, Import, Export and Distribution



April 2021

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List of Abbreviation

B3	Bahan Berbahaya Beracun / Toxic Substances
GR	Government Regulation / Peraturan Pemerintah
ITE	Informasi dan Transaksi Elektronik / Information and Electronic Transaction
IPR	People Mining Permit
IUP	Izin Usaha Pertambangan / Mining Business Permit
IUJP	Izin Usaha Jaza Pertambangan / Mining Services Business License
IUPK	Izin Usaha Pertambangan Khusus / Special Mining Business Permit
SIPB	Surat Izin Pertambangan Batuan / Rock Mining Permit
SKB	Surat Keputusan Bersama/ Joint Decree
NIB	Nomor Indentifikasi Bisnis / Business Identification Number
NPE	Nota Pelayanan Ekspor /
PPMSE	Penyelenggaraan Perdagangan Melalui Sistem Elektronik / Trade Mechanism through Electronic System

Mercury Trade, Import, Export and Distribution in Indonesia

1. Background

The Indonesian Government has ratified the Minamata Convention through Law No. 11/2017. Following up on the ratification, the Government promulgated Presidential Regulation No. 21/2019 on National Action Plan for Mercury Reduction and Elimination. Attachment I of the Presidential Regulation contains an action plan to eliminate mercury in the priority areas of small-scale gold mining. Activities in these priority areas include: a) compiling and perfecting the regulations on trading system of import, export and domestic distribution on mercury commodity; b) to improve export and import supervision on mercury commodity.

In order to improve these regulations and policies, it is necessary to conduct a study that aims to:

- analyze policies and regulations related to the trading system of import, export and domestic distribution of mercury commodity;
- analyze the existence of loopholes between regulations and practices in
- import, export and domestic distribution of mercury commodity can be subject to the field to the import, export and domestic distribution of mercury commodity through case studies of court decisions;
- analyze whether administrative and criminal sanctions based on regulations related to trade, electronic transactions, environment, customs, and the management of hazardous and toxic materials (B3);
- provide recommendations to the Indonesian Government.

This study was conducted using a qualitative method, namely analyzing Indonesian regulatory and policy documents in the fields of trade, electronic transactions, environment, customs, and management of hazardous and toxic materials (B3) as well as case studies based on selected court decisions.

2. Review of Domestic Trading Based on Trading Law No. 7 of 2014

The law that regulates trading in general is Law No. 7 of 2014 on Trading. In essence, business actors who conduct trading business activities are required to have a license in Trading sector granted by the Minister¹. In this case, the Minister may grant or delegate the issuance of licenses to the Regional Government or certain technical agencies.² Business Actors who conduct trading business activities that do not have the license in Trading sector

¹ Law No. 7/2014 Article 24 (1)

² Ibid Article 24 (2)

issued by the Minister, shall be sentenced to a maximum of 4 (four) years of imprisonment or a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).³

Based on Article 36, every business actor is prohibited from trading goods and/or services that are designated as non-tradeable goods and/or non-tradeable services. Non-tradeable or restricted goods and/or non-tradeable or restricted services are stipulated by the Presidential Regulation.⁴ Violation of the provisions of Article 36 is subject to administrative sanctions in the form of revocation of licenses in trading sector.⁵

In terms of trading through the electronic system, the Trading Law states that trading through the electronic system must comply with the provisions stipulated in the Law on Information and Electronic Transactions.⁶

Data and/or information that must be provided by business actors include: identity and legality of business actors as producers or distributors and technical requirements of the offered goods.⁷ If the business actors does not provide complete and correct data and/or information, they will be subject to administrative sanctions in the form of revocation of the license.⁸

Further provisions on Trading through the Electronic Systems is regulated trough or based on Government Regulations.⁹ The regulation is Government Regulation No. 80 of 2019 on Trading Through the Electronic Systems (PMSE). This regulation covers the operation and utilization of electronic systems for trading.

2.1. Provisions of Export and Import Based on Trading Law No. 7 of 2014

Based on the Law, the export of goods is conducted by Business Actors who have been registered and designated as Exporters.¹⁰ Provisions regarding the determination as an Exporter are regulated by a Ministerial Regulation.¹¹ The Exporter is fully responsible for the exported goods.¹² Exporters who are not responsible for the exported goods are subject to administrative sanctions in the form of revocation of licenses, approvals, acknowledgements, and/or stipulations in Trading sector.¹³ The procedures for imposing administrative sanctions

³ Ibid Article 106

⁴ Ibid Article 35 (2)

⁵ Ibid Article 37 (2)

⁶ Ibid Article 65 (3)

⁷ Ibid Article 65 (4) a,b

⁸ Ibid Article 65 (6)

⁹ Ibid Article 66

¹⁰ Ibid Article 42 (1)

¹¹ Ibid Article 42 (2)

¹² Ibid Article 43 (1)

¹³ Ibid Article 43 (2)

are regulated in Ministerial Regulation.¹⁴ Exporters who commit acts of abuse of determination as Exporters are subject to administrative sanctions in the form of cancellation of determination as Exporters.¹⁵

Import of Goods can only be conducted by Importers who have identification as Importers based on the stipulation of the Minister.¹⁶ In certain cases, the Import of Goods can be conducted by an Importer who does not have an identifier as an Importer.¹⁷ Importers who are not responsible for the imported goods are subject to administrative sanctions in the form of revocation of licenses, approvals, acknowledgments, and/or stipulations in Trading sector.¹⁸

For Export and Import activities, the Minister requires Exporters and Importers to have licenses which can be in the form of approvals, registrations, stipulations, and/or acknowledgments.¹⁹ The Minister may delegate or delegate the granting of permits to the Regional Government or certain technical agencies.²⁰

2.2. Criminal Sanction Based on Trading Law

Exporters who export Goods that are determined as non-exportable Goods shall be sentenced to a maximum of 5 (five) years of imprisonment and/or a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).²¹

Producers or Importers who trade security, safety, health and the environment related Goods that are not registered with the Minister as referred to in Article 32 paragraph (1) letter a shall be sentenced to a maximum of 1 (one) year of imprisonment and/or a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).²²

Every Business Actor who trades Goods and/or Services that are designated as non-tradeable Goods and/or non-tradeable Services as referred to in Article 36 shall be sentenced to a maximum of 5 (five) years of imprisonment and/or a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).²³

¹⁴ Ibid Article 43 (3)

¹⁵ Ibid Article 44

¹⁶ Ibid Article 45 (1)

¹⁷ Ibid Article 45 (2)

¹⁸ Ibid Article 46 (2)

¹⁹ Ibid Article 49 (1)

²⁰ Ibid Article 49 (3)

²¹ Ibid Article 112 (1)

²² Ibid Article 109

²³ Ibid Article 110

Importers who import Goods that are determined as non-importable Goods as referred to in Article 51 paragraph (2) shall be sentenced to a maximum of 5 (five) years of imprisonment and/or a maximum fine of Rp. 5,000,000,000.00 (five billion rupiahs).²⁴

2.3. Analysis

In general, law enforcers do not use the Trading Law as a basis for ensnaring perpetrators based on suspected criminal acts. This is caused by:

- Until now there has been no stipulation based on a Presidential Regulation regarding mercury or cinnabar as non-tradeable or restricted goods as referred to in Article 35 (2) of Trading Law;
- At the time this document was written, the discussion on the Presidential Regulation Draft regarding the stipulation of non-tradeable or restricted goods was still in the discussion stage;²⁵
- Up until now there has been no stipulation of mercury as a non-exportable and non-importable goods.



Figure 1. The Directorate of Water and Air Police (Polairud), Maluku Police together with members of the Waesama Police and Babinsa Waesama in Simi Village, managed to capture KM Cahaya Baru, a wooden boat in the waters of Buru Island, Maluku with a cargo of 1.76 tons of mercury (mercury) at most. not worth IDR 1.76 billion or around USD 108,000. Source: [Poros Timur](#), 24 March 2020. Accessed by 7 July 2021.



Figure 2. The Buru Island Police Satreskrim managed to thwart the smuggling of 668 kg of mercury from the suspect, Amir Tomia alias AT, a member of the Police Mobile Brigade unit of the Maluku Police. In a press conference held by the Buru Island Police on Wednesday (03/02/2021), the police showed all evidence of mercury weighing 668 kg packaged in 17 cardboard boxes and 5 liter jerry cans worth approx. IDR 668 million or around USD47,800. Source: [Indonesiatimur.co](#), 04 February 2021. Accessed by 7 July 2021.

²⁴ Ibid Article 112 (2)

²⁵ <http://ditjenpp.kemenkumham.go.id/kegiatan-umum/3352-rperpres-lartas-penetapan-barang-yang-dilarang-dan-barang-yang-dibatasi-perdagangannya-di-dalam-negeri.html>

3. Review of Information and Electronic Transaction (“ITE”) No. 19 of 2016

Law No. 11 of 2008 on Information and Electronic Transactions and Law No. 19/2016 on amendments to Law No. 11 of 2008. In general, this law regulates the use of information technology in trading. Matters regulated in this Law include the definition of electronic information/documents, as well as electronic signatures in transactions.²⁶ This law regulates how electronic transactions are conducted through electronic systems provided by electronic agents. Further provisions regarding electronic agents are regulated by Government Regulation.

3.1. Criminal Sanctions in ITE Law No. 19 of 2016

Criminal sanctions in the ITE Law are more focused on violations related to:

- Distribution/transmission/access of information/electronic documents which: against decency, defamation, threats,²⁷ misleading/lie so as to cause consumer losses in electronic transactions,²⁸ generate hatred,²⁹ personally directed threats and intimidation;³⁰
- Activities to access computers and/or electronic systems illegally;³¹
- Wiretapping information/electronic documents and/or electronic illegally;³²
- Change, add, reduce, transmit, destroy, delete, transfer, hide an Electronic Information and/or Electronic Document illegally;³³
- Move or transfer Electronic Information and/or Electronic Documents to Electronic Systems illegally;³⁴
- Add, reduce, transmit, destroy, delete, transfer, hide an Electronic Information and/or Electronic Document illegally;³⁵
- Illegally interferes with the Electronic System and/or causes the electronic system to not work properly;³⁶

²⁶ Law No. 11/2008 Chapter III

²⁷ Law No. 11/2008 Article 45 (1) jo. Article 27 (1), (2), (3)

²⁸ Ibid Article 45 (2) jo. Article 28 (1)

²⁹ Ibid Article 45 (2) jo. Article 28 (2)

³⁰ Ibid Article 45 (3) jo. Article 28 (2)

³¹ Ibid Article 46 (1) jo. Article 30 (1)

³² Ibid Article 47 (2) jo. Article 31 (1)

³³ Ibid Article 48 (1) jo. Article 32 (1)

³⁴ Ibid Article 48 (2) jo. Article 32 (2)

³⁵ Ibid Article 48 (2) jo. Article 32 (3)

³⁶ Ibid Article 49 jo. Article 33



Figure 3. The Gorontalo Regional Police Intelligence and Security Opsnal Officer arrested two perpetrators related to the distribution of hazardous materials. The two perpetrators, FA (26), a miner, and AM (43) a farmer, were arrested for trying to sell 60 kg of mercury in the Gorontalo area for at least IDR 60 million or around USD 4,250. They claimed that the mercury was from Serang, Banten Province. Source/photo: [IDN Times SulSel](#), 27 January 2021. Accessed by 30 June 2021.



Figure 4. The Murung Raya Police Criminal Resort Unit (Mura) managed to arrest and secure 2 perpetrators and the crime of selling mercury at different times. From the hands of the perpetrator, RFE (36), a resident of Simpang Empat Sungai Baru village, Tanah Laut Regency, South Kalimantan Province, the police managed to confiscate approximately 25 kg of Hg mercury packed in 25 small bottles weighing 1 kg/bottle. The value of these confiscated items is around IDR 25 million or around USD 1,750. Source/photo: [KalTeng Today](#), May 25, 2021. Accessed by 30 June 2021

- Illegally produces, sells, procures for use, imports, distributes, provides, or owns: a) computer hardware or software to perform the acts referred to Articles 27 to 33, b) password via Computer, Access Code, to conduct the acts as referred to in Articles 27 to 33 d;³⁷
- Manipulate, create, change, delete, destroy Electronic Information and/or Electronic Documents;³⁸
- Illegally commits acts as referred to in Article 27 to Article 34 which result in harm to others.³⁹

³⁷ Ibid Article 50 jo. Article 34 (1)

³⁸ Ibid Article 51 (2) jo. Article 36

³⁹ Ibid Article 51 (2) jo. Article 36

3.2. Analysis

In various cases related to mercury trading, law enforcement generally does not use the Electronic Information and Transactions (ITE) Law as a basis for ensnaring perpetrators based on suspected criminal acts.

This is caused by:

- The ITE Law regulates electronic transactions (protection of electronic information/ data, electronic certification providers) and does not cover the legality of the traded goods (e.g. cannot be used to trap business actors who are selling mercury or cinnabar online);
- Article 13 (1) Government Regulation No. 80 of 2019 on Electronic Trading as the implementer of the ITE Law states that in every trade through the electronic system (PMSE), business actors are required to: a) provide trustworthy, transparent and honest information about the identity of legal subjects supported by valid data or documents, b) convey genuine, transparent, and honest information regarding the conditions and guarantees for the traded goods and/or services including the electronic system used according to the characteristics of its function and role in the transaction, c) comply with advertising ethics following the provisions of laws and regulations;
- Article 13 (2) Government Regulation (“GR”) No. 80 of 2019 states that trustworthy and honest information as referred to in paragraph 13 (1) letters a and b at least concerns: a) truth and accuracy of the information, b) conformity between advertising information and physical goods, c) appropriateness of consumption of the goods or services, d) legality of the goods or services, and e) quality, price and accessibility of the goods or services;
- The violation of Article 13 (1) GR No. 80 of 2019 is an administrative sanction. In the case of mercury trading, if the business actors do not convey information correctly and honestly, they will only be subject to administrative sanctions based on Article 80, i.e. in the form of a written warning, being included in the priority list of supervision, being included on the blacklist, temporarily blocking of the trade administration services through the electronic system (PPMSE) and revocation business licenses, etc. This administrative sanction does not provide a deterrent effect.



Figure 5. General trader like PT Surya Citra Mandiri sold various materials for laboratory and sampling purposes, or construction materials but also sell mercury. Photo credit: indonetwork.co.id, accessed by 8 July 2021.



Figure 6. Mercury trade also conducted in social media, for example on Instagram, like this account. Malik Alwi sold mercury in several social media accounts and websites. He supplies retailers and also in bulk. He was one of the suppliers that sold mercury to Mohamed (see Sudanese case footnote #92) via Lasmino and handed over the mercury in a truck until the border of West Java and Central Java. Photo credit: [Instagram](https://www.instagram.com/malik.alwi9) accessed by 10 July 2021.



Figure 7. Some mercury traders online are fraudsters. Many sellers claimed or declared that they are the owners of the mercury in the picture. Some of them also warned their consumers to be careful when buying mercury. However, none of them claimed that their mercury came from a legal cinnabar mine site or from a licensed mercury refinery. Photo credit: [Indonetwork](http://indonetwork.co.id), accessed by 7 July 2021.



Figure 8. To increase the competitiveness and gain more profits, one of the traders sell mercury claimed to be Germany's mercury. There is no proof that the mercury was imported from Germany or came from a local refinery. The seller put mercury under "Termometer" category and named it "air silver" or silver water. Photo credit: [Tokopedia](https://www.tokopedia.com), accessed by 7 July 2021.

4. Review of Procedures for Procurement, Distribution and Supervision of Hazardous Materials based on Minister of Trade Regulation

This section will review the procedures for procurement, distribution and supervision of hazardous materials based on the Minister of Trade Regulation No. 44/M-DAG/PER/2009 and its amendments to Minister of Trade Regulation No. 23/M-DAG/Per/9/2011, Minister of Trade Regulation No. 75/M-DAG/Per/10/2014, Minister of Trade Regulation No. 47/2019.

Article 2 (1) Minister Regulation No. 75/M/DAG/Per/10/2014 states that the types of Hazardous Materials (B2) that are restricted in import, distribution and supervision consist of chemicals that endanger health and damage the environment as stated in Attachment I of the Minister Regulation. Mercury is a type of B2 **which** is restricted to import, distribution and supervision based on the Attachment I to the Minister of Trade Regulation No. 75/M-DAG/Per/10/2014. Mercury CAS number is 7439-97-6, HS Code 2805400000, IT-B2/IP-B2 import trading system.

Article 7 (1) Minister Regulation No. 47/2019 states that type of B2 as referred to in Article 2 (including mercury) can only be distributed by P-B2,⁴⁰ a company that has a Business Identification Number (“**NIB**”) that is valid as API-U,⁴¹ DT-B2,⁴² and PT-B2.⁴³ In distributing B2 (including mercury) as referred to in Article 7(1), P-B2, a company that has an NIB that is valid as API-U, DT-B2 and PT-B2 must comply with the following provisions⁴⁴:

Companies that have an NIB that is valid as API-U can only distribute B2 to DT-B2 according to its appointment;

- P-B2 can only distribute B2 to DT-B2 according to its appointment;
- DT-B2 can distribute B2 to PT-B2 according to its appointment;
- PT-B2 can only distribute B2 to PA-B2.

Companies that have NIBs that are valid as API-U and DT-B2 can distribute B2 through their branch offices.⁴⁵

⁴⁰ Producer of Hazardous Materials (P-B2) is a company that produces B2 domestically and has an Industrial Business License from the institution that established it.

⁴¹ Companies that have an NIB that is valid as API-P are industrial companies that adopt B2 as a raw material in their own production process.

⁴² Registered Distributor of Hazardous Materials (DT-B2) is a company appointed by P-B2 and/or a company appointed by a company that has an NIB that is valid as API-U, to carry out the distribution of B2.

⁴³ Registered Retailer of Hazardous Materials (PT-B2) is a Company appointed by DT-B2 to distribute B2 to End Users of Hazardous Materials.

⁴⁴ Minister Regulation No. 47/2019 Article 7 (2)

⁴⁵ Ibid Article 7 (3)

Article 3(1) MR No. 47/2019 states that companies that will import B2 as referred to in Article 2(1) are required to obtain acknowledgment as IP-B2 from the Minister.

Article 17 (1) prohibits companies that already have an NIB that is valid as API-P and have obtained PI-B2 to: a) trade and/or transfer imported B2 to other parties; b) importing goods/materials as stated in PI-B2 which validity period has expired; c) using imported B2 that is not in accordance with its designation as stated in PI-B2; d) importing B2 type of mercury with Tariff Post/HS 2805.40.00.00 for companies holding NIB that act as API-P engaged in gold mining.

Article 17 paragraph (2) prohibits companies that already have a valid NIB as API-U and have obtained PI-B2 to: a) concurrently serve as DT-B2; b) importing goods/materials which types are not appropriate and/or the amount exceeds that listed in PI-B2; c) import goods/materials as stated in PI-B2 which validity period has expired; d) using imported B2 that is not in accordance with its designation as stated in PI-B2; e) distribute B2 type of mercury with Tariff Post/HS 2805.40.00.00 to PA-B2⁴⁶ which is engaged in gold mining industry.

Article 17 (3) states that DT-B2 and PT-B2 are prohibited from distributing mercury type B2 with Tariff Post/HS 2805.40.00.00, to PA-B2 which is engaged in the gold mining industry.

Article 18 states that any person or business entity that does not have a stipulations as IT-B2 or SIUP-B2 is prohibited from:

- a) distribute/circulate or sell B2; and/or
- b) repackaged B2 and its original packaging.

4.1. Administrative Sanctions

Minister of Trade Regulation No. 47/2019 does not contain criminal provisions. Criminal provisions refer to the Law on Trade. The sanctions stipulated in the MR only include administrative sanctions as follows:

- 1) If IP-B2 violates the provisions of Article 3(4), Article 7(2) letter a, Article 17(1), an administrative sanction will be imposed on the revocation of acknowledgment as IP-B2.⁴⁷
- 2) If IT-B2 violates the provisions of Article 7 (2) letter b, Article 17 (2) letter a, Article 17 (2) is subject to administrative sanctions for revocation of stipulation as IT-B2.⁴⁸

⁴⁶ End Users of Hazardous Materials, hereinafter abbreviated as PA-B2, are industrial companies that use B2 as raw/auxiliary materials to obtain added value, and/or business entities or institutions that use B2 as auxiliary materials and/or research according to their designation, have obtained a permit from the authorized agency authorized, and not engaged in food processing sector.

⁴⁷ Ibid Article 23 (1)

⁴⁸ Ibid Article 23 (2)

- 3) If DT-B2 violates the provisions of Article 7 (2) letter c, Article 17 (3) is subject to a sanction of revocation of SIUP-B2.⁴⁹
- 4) If PT-B2 violates the provisions of Article 7 (2) letter d, Article 17 (3) is subject to administrative sanctions for revocation of SIUP-B2.⁵⁰
- 5) If the P-B2 violates the provisions (related to reporting) regulated in Article 14 (5), Article 16 (1) and (3), the authorized official will be subject to a sanction of revocation of technical license.⁵¹
- 6) If PA-B2 violates the provisions (related to reporting) as regulated in Article 14 (5), Article 16 (1) and (3), the authorized official will be subject to a sanction of revocation of technical license.⁵²
- 7) In the event that P-B2 and PA-B2 are subject to administrative sanctions as referred to in paragraph (5) and paragraph (6), the Minister or appointed official submits recommendations for revocation of technical licensing to the relevant agency/authorized official.⁵³



Figure 9. The Directorate of Water and Air Police (Polairud) of the Maluku Regional Police managed to thwart any attempt to send 1.76 tons of mercury from South Buru Regency (Bursel) to Buton, Southeast Sulawesi. While being questioned by the police in the middle of the sea, the captain and crew of the KLM Cahaya Baru ship chose to flee. The vessel was then chased and shot by the KP Ship Commander XVI-1008, Polairud Harbor Post on Buru Island. As a result of this shooting, the ship leaked and was forced to dock. Source/photo: Teras Maluku, 29 March 2020. Accessed by 10 July 2021
<https://terasmaluku.com/aparat-polairud-maluku-tembak-kapal-pengangkut-176-ton-mercury/>

⁴⁹ Ibid Article 23 (3)

⁵⁰ Ibid Article 23 (4)

⁵¹ Ibid Article 23 (5)

⁵² Ibid Article 23 (6)

⁵³ Ibid Article 23 (7)

October 28, 2020

Narwati Djahiru Dijerat Kasus Merkuri

Beritakota - Ambon Manise -



Figure 10. Narwati Djahiru (38) was charged with a mercury case for owning a ship transporting mercury in March 2020 for violating Article 161 of Law no. 4 of 2009 concerning Minerals and Coal and Article 55 Paragraph 1 of the Criminal Code. In October 2020, through a virtual court process, the Ambon District Court ruled that Narwati and two of her aides were sentenced to one year in prison. Source: [Berita Kota Ambon](#), 28 October 2020. Accessed by 7 July 2021.

4.2. Analysis

- Basically the import and distribution of mercury is prohibited for IP-B2, IT-B2, DT-B2 and PT-B2 license holders (e.g. which are engaged in gold mining). The author is of the opinion that import and distribution can still take place as long as the license holder is not engaged in gold mining.
- Based on Article 17 (1) letter d, companies that already have an NIB that is valid as API-P and have obtained PI-B2 are prohibited from importing B2 type of mercury with Tariff Post/HS 2805.40.00.00, for companies holding an NIB that is valid as API-P engaged in the gold mining industry. Violation of this provision is subject to administrative sanctions based on Article 23 (1) namely in the form of revocation of PI-B2 for API-P owners.
- Based on Article 17 (2) letter e, a company that already has an NIB that is valid as API-U and has obtained PI-B2 based on Article 17 (2) letter e is prohibited from distributing B2 type of mercury with Tariff Post/HS 2805.40.00.00 to PA- B2 which is engaged in the gold mining industry. Violation of this provision is subject to administrative sanctions based on Article 23 (4) in the form of revocation of PI-B2 for API-U owners.⁵⁴

⁵⁴ Ibid Article 23 (2)

- Based on Article 17 (3) DT-B2 and PT-B2 are prohibited from distributing mercury type B2 with Tariff Post/HS 2805.40.00.00, to PA-B2 which is engaged in the gold mining industry. **Violation of this provision has no sanctions.**⁵⁵
- There are no criminal sanctions for business actors who import mercury and/or distribute mercury in the mining industry.
- Considering that the regulated sanctions are only administrative sanctions, this matter does not create a deterrent effect for business actors to trade mercury for the mining industry or for other industries with or without a license.

5. Minister of Trade Regulation No. 48/M-Dag/Per/7/2015 concerning General Provisions in the Import Sector

Article 5 states that the regulation of the restricted imported goods is conducted through an import licensing mechanism:

- a) acknowledgement as a Producer Importer;
- b) stipulation as a Registered Importer;
- c) import approval;
- d) surveyor reports; and/or
- e) other import licensing mechanisms.

Article 7 (1) states that importers are required to have an import licenses on restricted imported goods as intended in Article 5 before the goods enters the customs area.

Article 7 (2), Importers who do not have Import licenses as intended in paragraph (1) when imported goods enter the customs area are subject to API suspension and other sanctions in accordance with applicable laws and regulations.

Article 7 (3), The imported goods do not have a licenses as referred to in paragraph (1) must be re-exported by the Importer.

5.1. Analysis

Essentially, the sanctions imposed if there are a violation of Articles 5 and 7 are administrative sanctions (suspension of Importer Identification Number) and other sanctions in the applicable laws and regulations (if any). Criminal provisions in the Environmental Law cannot be used in the event of an import of mercury since the mercury does not meet the provisions in the Protection and Management of the Environment Law (PPLH) as B3 which is prohibited. Criminal provisions in Trading Law also cannot be used since mercury has not been designated as B2 which is prohibited for import and prohibited for trading.

⁵⁵ In the previous regulation, namely Minister Regulation No. 75/M/DAG/Per/10/2014 against administrative sanctions for violations of this provision.

GR No. 74/2001 regulates B3 in Indonesia. Based on this GR, Mercury chloride (CAS no. 7487-97 and Mercury Oxide CAS No. 21908-53-2) are B3 that can be used. Meanwhile, Mercury (hg) is B3 which has limitation in use. Limitation use of B3 means that its use, import and/or production are restricted.⁵⁶

Based on the GR, everyone who exports limited use of B3 must submit a notification to the destination country, the transit authority and the responsible agency.⁵⁷ Mercury chloride (CAS no. 7487-97 and Mercury Oxide CAS No. 21908-53-2) are B3 that can be used therefore there is no need for notification. However, mercury (Hg) is a hazardous substances or B3 which is limited in use, so it requires notification. Exports can only be conducted if there is approval from the authority of the export country, the authority of the transit country and the responsible agency.⁵⁸

The approval is the basis for the Government of Indonesia to issue or refuse export licenses from the competent agency in the field of trade⁵⁹ in Indonesia.

The Transitional Provisions in this GR state that if at the time of promulgation of this Government Regulation there is still B3 which is prohibited from being used in Indonesia, then the B3 can be exported to a country in need in accordance with the applicable export mechanism.⁶⁰

5.2. Review of the Minister of Forestry and Environment Regulation No. P.36/MENLHK/Setjen/Kum.1/6/2017 on Registration and Notification of Hazardous and Toxic Materials.

Minister of Forestry and Environment Regulation No. P.36/MENLHK/Setjen/Kum. 1/6/2017 is the implementing regulation of GR No. 74/2001. The review of this regulation will be limited to the provisions of B3 Registration and B3 Export Notification Procedures.

This MR requires B3 registration and B3 Notification. B3 registration is the registration and numbering of B3 in the Republic of Indonesia.⁶¹ Export Notification is an advance notification from the authority of the exporting country to the authorities of the receiving country and transit country if B3 cross-border movement will be conducted which is limited to use.⁶² B3 Registration and Notification is organized by the Minister of Forestry and Environment who then assigns the Director General.

⁵⁶ GR No. 74 of 2001 Article 1 (9)

⁵⁷ Ibid Article 7 (1)

⁵⁸ Ibid Article 7 (2)

⁵⁹ Ibid Article 7 (3)

⁶⁰ Ibid Article 41 (a)

⁶¹ MR Forestry and Environment No. P.36/MENLHK/Setjen/Kum.1/6/2017 Article 1 (8)

⁶² Ibid Article 1 (3)

Everyone who produces B3 is obligated to apply for B3 Registration to the Director General. Applications are made online through the online portal <http://ptsptsp.menlhk.go.id>.

The required documents are:

- Trading Business License (SIUP);
- Company Registration Certificate (TDP);
- Tax Identification Card (NPWP);
- Valid Delegation of Authority of the Company's account
- Filled B3 Registration Form;
- B3 warehouse storage photo;
- Material Safety Data Sheets (MDS);
- Certificate of Analysis (CoA).

The General Director assigns the Director to verify the B3 registration application. Verification is conducted administratively and technically. Administrative verification is conducted by looking at the completeness of the documents. Technical verification is conducted on the application of the B3 symbol and label, the location and construction of the B3 storage facility building.

If approved, the General Director issues an electronic B3 Registration Certificate. Electronic B3 Registration Certificate is used as the basis for issuing B3 from the Customs area.⁶³

Electronic B3 Registration Certificate containing the following information:

- Company name;
- Company address;
- Harmonized System (HS) Code;
- B3 registration number;
- Internationally recognized chemical name;
- Trade name; and
- Country of origin (for import purposes).

Export notification is submitted by the applicant to the authority of the B3 exporting country through the Director General.⁶⁴ This notification is carried out in the event that the authority of the receiving country requires notification of B3 exports.⁶⁵

⁶³ Ibid Article 11

⁶⁴ Ibid Article 19 (1)

⁶⁵ Ibid Article 19 (2)

Application for export notification should be accompanied by:

- Identity of B3;
- Identity and address of the B3 exporter company;
- B3 Exporter Trading Business License;
- B3 Exporter Tax Identification Card;
- B3 Exporter Identity;
- Destination country of recipient;
- Destination country of transit;
- Intended use;
- Quantity of B3 to be exported;
- Material Safety Data Sheets (MSDS);
- B3 Export Notification Form.

If the application is accepted, the General Director will issue a B3 Export Notification letter. The notification is submitted to the authority of the importing country. If there is no response within a period of 3 months, then the Notification will be automatically cancelled based on this Regulation.

If the authority of the importing country approves the notification, the General Director shall deliver the notification of approval to the notification applicant. A B3 export approval letter (explicit consent) from a B3 export destination country is used as the basis for the issuance of a B3 export permit from the authorized minister in the trade sector.⁶⁶

5.3. Sanctions

Law No. 32 of 2009 on the Protection and Management of the Environment, which is the foundation of GR No. 74 of 2001, does not contain sanctions related to the export of B3 with limited use and/or prohibited B3. GR No. 74 of 2001 provides administrative sanctions for violations of Article 7(1) regarding the delivery of notifications to the destination country, transit authorities, and responsible agencies.⁶⁷ However, the embodiment of the administrative sanctions in question is not stated.

⁶⁶ Ibid Article 22 (6)

⁶⁷ Ibid Article 38 (1)

5.4. Analysis

- **Based on GR No. 74 of 2001 mercury is not a prohibited B3, but its utilization is limited.** The domestic utilization and distribution of mercury is possible as long as there is a license. This license is related to the Regulations issued by the Ministry of Trade as discussed in Part III of this document.
- Explanation of restricted use of B3 based on GR No. 74 of 2001 is “restricted on its use, import or production”. What about exports? If translated into a legal formality basis, it means that mercury is not restricted for export. This is relevant to the transitional provision which states that “If at the time of promulgation of this Government Regulation there is still B3 that is prohibited from being used in Indonesia, then the B3 can be exported to a country in need in accordance with the applicable export mechanism.⁶⁸
- There is a leeway in the implementation of B3 export notifications. In this case GR No. 74 of 2001 requires notification, but Minister of Environment Forestry Regulation (PermenLHK) states it is mandatory as long as the authorities of the receiving country requires it. This means that notification does not have to be made as long as the relevant state authority does not requires the notification.
- Violation of the notification obligation is only administrative in nature, it is not explained what the embodiment of the administrative sanction is.
- GR No. 74 of 2001 and PermenLHK which regulate the production of B3/producer of B3 and registration cannot be applied to parties who mines and refines cinnabar to become mercury. Because the activities of mining and refining cinnabar are the activities of the Mineral and Coal Mining Law.
- **GR No. 74 of 2001 and Minister of Trade Regulation No. 47 of 2019 are regulating mercury as a finished/final product. Therefore, the most important thing for the government to do is categorizing mercury as a prohibited hazardous substances (B3).**

⁶⁸ GR No. 74/2001 Article 41 (a)

6. Review of Customs Law No. 17 of 2006 on Amendments to Law No. 10 of 1995 on Customs.

Customs activities (export and import) of a commodity are regulated in Law No. 17 of 2006 on Amendments to Law No. 10 of 1995 on Customs.

6.1. Customs Activities in the Export Sector

Export is the activity of removing goods from the customs area.⁶⁹ The schemes for Customs activities in the export sector are shown in Figure 11.

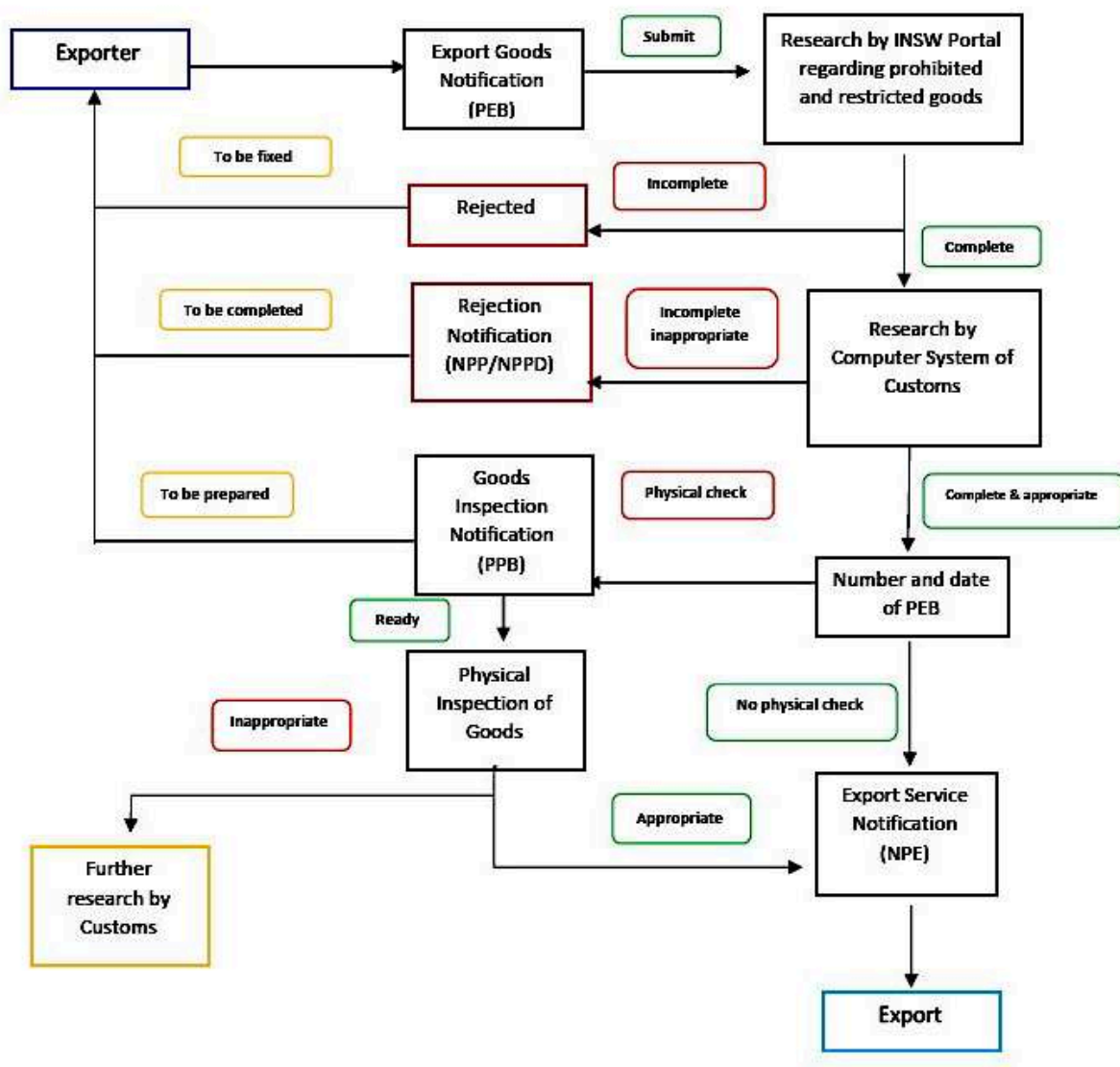


Figure11. Customs activities in the field of commodity exports.

Source: <http://www.beacukai.go.id/arsip/pab/ekspor.html>

⁶⁹ Law No. 17/2006 on Amendments to the Law No. 10/1995 on Customs, Article 1 (14)

6.1.1. Export Customs Procedure

The customs procedure for the export of a commodity is as follows:

- 1) Exporters are required to notify the goods to be exported to the Customs Office where they are loading using PEB (code BC 3.0).
- 2) Export Goods Notification (PEB) is made by exporters based on complementary customs documents in the form of:
 - (a) invoice;
 - (b) packing list;
 - (c) other required documents.
- 3) Exporters are required to comply with the provisions of the export prohibition and/or restriction stipulated by the technical agency.
- 4) The calculation of the amount of Export Duty is carried out by the Exporter himself by means of a self-assessment.
- 5) Export Goods Notification (PEB) to be delivered to the Customs Office at the soonest 7 (seven) days before the expected date of export and at the latest prior to export goods entered into the loading area of Customs Area.
- 6) As for an export of bulk goods, exporters or Customs Service Management Business Actor (PPJK) can submit a PEB before the departure of the carrier.
- 7) The application of PEB can be carried out by the exporter himself or is authorized to the Customs Service Management Business Actor (PPJK).
- 8) At the Customs Office that has implemented the PDE (Electronic Data Exchange) system, exporters/PPJK are required to submit PEB using the Customs' PDE system.

Note:

- Export Goods Notification (PEB) is a customs notification used to notify the export of goods made in accordance with BC.3.0.⁷⁰
- Export Service Memorandum (NPE) is a note issued by the Document Inspection Officer or Service Computer System for the submitted PEB, to protect the entry of goods to be exported to the Customs Area and/or their loading to the carrier.⁷¹

⁷⁰ Decree of the Director General of Customs No.: KEP-152/BC/2003 on Instructions for the Implementation of Customs Procedures in the Export Sector for Exported Goods that Obtain an Import Facility at Export Destination, Article 1 number 23

⁷¹ <http://bctemas.beacukai.go.id/faq/ekspor/>

6.1.2. Physical Inspection of Export Goods

Whereas upon the Export Goods, a physical inspection can be carried out selectively based on risk management, namely upon:

- 1) Export Goods to be re-imported;
- 2) Export Goods which at the time of import are intended to be re-exported;
- 3) Export Goods that obtained exemption and/or return facility;
- 4) Export Goods that subject to Export Duties;
- 5) Export Goods based on information from the Directorate General of Taxes shows a strong indication that a violation will occur or there has been a violation of the provisions of the legislation in the field of taxation; or
- 6) Export Goods based on the analysis of the information obtained from the Supervision Unit shows that there is a strong indication that a violation will occur or that there has been a violation of the provisions of the law. Physical examination can be done at:
 - (a) Customs Area;
 - (b) Exporter's Warehouse; or
 - (c) Other places that the Exporter use to store export goods.

6.1.3. Exceptions to the Obligation to Notify PEB⁷²

Obligation to notify PEB can be exempted for:

- 1) Passenger's personal belongings;
- 2) Carrier crew's personal belongings;
- 3) Border crossing goods; or
- 4) Goods sent by post weighing not more than 100 (one hundred) kilograms.

6.2. Administrative Sanctions under Customs Law

Administrative sanctions regulated in the Customs Law related to export activities include:

- 1) A carrier whose means of transportation will leave outside the customs area and/or into the customs area transporting export goods and/or goods originating from the customs area transported to another place within the customs area through outside the customs area is obliged to submit a customs notification of the goods being transported before the departure of the carrier.⁷³ A carrier whose means of transportation headed out of the customs

⁷² Law No. 17/2006. Article 11A(2)

⁷³ Ibid Article 9A (1)

area shall include the items in its manifest.⁷⁴ A carrier who does not fulfill this provision is subject to an administrative sanction in the form of a fine of Rp10,000,000.00 and a maximum of Rp100,000,000.00.

- 2) Exporters who do not report export cancellations are subject to administrative sanctions in the form of a fine of Rp5,000,000.00.⁷⁵
- 3) Exporters, business actors of temporary storage zone, business actors of bonded storage zone, business actors of customs service management, or business actors of carrier who do not maintain its records are subject to administrative sanctions in the form of a fine of Rp50,000,000.00.⁷⁶ A fine of Rp25,000,000.00 if the bookkeeping is carried out however not in accordance with the provisions.⁷⁷
- 4) Customs officials have the authority to request exporters, transporters, business actors of temporary storage zone, business actors of bonded storage zone, or their representatives to submit goods for inspection, to open the means of transportation or parts thereof and to open each package or packaging to be inspected. If this request is not fulfilled, the customs authorities will carry out the said inspection on the risks and costs concerned and impose a fine of Rp25,000,000.00.⁷⁸
- 5) Anyone who misrepresents the type and/or quantity of goods is subject to an administrative sanction in the form of a fine of at least 100% (one hundred percent) of the unpaid state levies in the export sector and a maximum of 1,000% (one thousand percent) of the state levies of the outstanding export sector.⁷⁹
- 6) Anyone who cause customs officials to be unable to exercise their customs audit authority are subject to a fine of Rp75,000,000.00.⁸⁰
- 7) Anyone who do not carry out the order to cease an unloading are subject to a fine of Rp25,000,000.00.⁸¹

⁷⁴ Ibid Article 9A(2)

⁷⁵ Ibid Article 11 A (6)

⁷⁶ Ibid Article 52 (1)

⁷⁷ Ibid Article 52 (2)

⁷⁸ Ibid Article 82 (2), (3)

⁷⁹ Ibid Article 82 (6)

⁸⁰ Ibid Article 86 (2)

⁸¹ Ibid Article 90 (4)

6.3. Criminal sanctions

Criminal sanctions regulated in the Customs Law related to export activities include:

- 1) Exporting without submitting a customs declaration is subject to imprisonment for a minimum of one year and a maximum of 10 (ten) years and a minimum fine of Rp50,000,000.00 (fifty million rupiah) and a maximum of Rp5,000, 000,000.00 (five billion rupiah).⁸²
- 2) Transporting exported goods without being protected by valid documents in accordance with customs declaration as referred to in Article 9A paragraph (1) is subject to smuggling in the export sector with a minimum imprisonment of 1one year and a maximum imprisonment of 10 (ten) years. and a minimum fine of Rp50,000,000.00 (fifty million rupiah) and a maximum of Rp5,000,000,000.00 (five billion rupiah).⁸³
- 3) Intentionally misrepresenting the type and/or quantity of exported goods in the customs declaration as referred to in Article 11A paragraph (1) which results in non-fulfillment of state levies in the export sector is subject to imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a minimum fine of Rp50,000,000.00 (fifty million rupiah) and a maximum of Rp100,000,000,000.00 (one hundred billion rupiah).⁸⁴
- 4) Submitting a fake or falsified customs declaration and/or customs documents is subject to imprisonment for a minimum of 2 (two) years and a maximum of 8 (eight) years and/or a minimum fine of Rp100,000.00 and a maximum of Rp5,000,000,000.00 (five billion rupiah).⁸⁵
- 5) Any person who intentionally and without rights opens, removes, or damages a lock, seal or security sign that has been installed by a customs official, is subject to imprisonment for a minimum of 1 (one) year and a maximum imprisonment of 3 (three) years and/or a minimum fine of Rp500,000,000.00 (five hundred million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah).⁸⁶

⁸² Ibid Article 102 A

⁸³ Ibid Article 102 A(e)

⁸⁴ Ibid Article 102 B

⁸⁵ Ibid Article 103

⁸⁶ Ibid Article 105

6.4. Case Study of Court Decision Regarding Mercury Export

The Case Awad Alla Khalfalla Mohamed Ahmed Farah Bin Khalf Alla Mohamed (Awad aka Mohamed), Sudanese national⁸⁷ is as follows:

- PT. Satria Lintas Intermoda (PT SLI) is engaged in the business of Sea Freight Forwarding Services (EMKL)⁸⁸ with its address at Jl. Wonodri Joho No. 511 Semarang.⁸⁹
- PT. SLI has a SIUJPT (Transportation Management Service Business Permit) as issued by the Ministry of Transportation of the Republic of Indonesia, NPWP, TDP and NIK, Customs Decree regarding EMKL operating at the Port of Tanjung Emas.⁹⁰
- In Mohamed's case, PT SLI handled the export of goods (mercury) documents to Dubai via Tanjung Emas, Semarang.⁹¹
- The mercury consisting of **40 boxes @ 6 bottles @ 34.5 kg and 1 box containing 3 bottles @ 34.5 kg from Lasmino** supplier⁹² which was placed in the warehouse of PT Teduh Makmur, Jl Kalibaru Barat No.15 Semarang. PT Teduh Makmur is a warehousing and EKML service company. The mercury was placed in the warehouse of PT Teduh Makmur while waiting for the export documents process by PT SLI.⁹³
- The procedure for storing goods in Teduh Makmur's warehouse is that the owner of the goods or the exporter or Transportation Management Services to negotiate the price, after the price agreed by both parties, the owner of the goods/exporter/transportation management service issue a shipping instruction to PT SLI. Afterwards the goods are sent to Teduh Makmur's warehouse to wait for the stuffing time (time to load the goods into the container)⁹⁴ in accordance with the agreement with the owner of the goods or the exporter (in this case represented by PT SLI).⁹⁵

⁸⁷ Decision No. 984/Pid.Sus/2017/PN.Smg

⁸⁸ Ibid page 7

⁸⁹ Ibid p. 11A

⁹⁰ Ibid

⁹¹ Ibid page 7

⁹² Ibid page 28, note: delivery by Lasmino from Bogor to Semarang. Lasmino has obtained the decision of the Regent of Purworejo number: 665.3/01/2015 dated 13th February 2015 regarding the Environmental Permit for Metal Refining Activities of CV. Kreasi Logam Utama.

⁹³ Ibid page 7

⁹⁴ Stuffing/Loading is the process of loading exported goods into containers or transport trucks (applies to export activities).

⁹⁵ Ibid page 11

- Whereas during the process of storing goods in Teduh Makmur's warehouse, there is another company, **PT Sunggong Logistik**, which manages the documents for goods containing a certain amount of mercury. However, Teduh Makmur's warehouse does not know the owner of the mercury.⁹⁶
- PT SLI explained the procedure for exporting goods abroad (exports) along with the following conditions:⁹⁷
 - (1) Owner of the goods must have obtained and submit to the Counseling and Information Services Section (PLI) the following documents: SIUP, TDP, NPWP and NIK, if not, PT SLI usually assists/refers the owner to use the services of exporters who have obtained these licenses.
 - (2) PT SLI examines the type of goods and its HS (Harmonized System) code at the INSW (Indonesia National Single Window) whether it includes the types of goods that can be exported and additional documents to accompany it.
 - (3) PT SLI provides invoices (data and value of goods) and packing lists (list of quantities, weight, packaging of goods), the identity of exporters and recipients of goods.
 - (4) Providing PEB (Export Goods Notification).
 - (5) Performing an online entry/apply/submit the above requirements to the Customs.
 - (6) Afterwards, the data is analyzed by the Customs official, if it is complete then an Export Service Memorandum (NPE) will be issued, if it is not complete the application will be rejected and PT SLI will immediately requesting for a clarification from the Customs to ask for the missing requirement. A response from the Customs in the form of an NPE can be interpreted as an export approval.
 - (7) When an Export Service Memorandum (NPE) has been issued, PT SLI shall insert the goods into a container, close and seal them.
 - (8) The container should have entered into Semarang Container Terminal (TPKS) through an x-ray inspection to wait for it to be loaded onto the ship.
 - (9) After boarding the ship, the shipper issues a Bill of Lading (BoL) to PT SIL which will then be handed over to the exporter (owner of the goods).

⁹⁶ Ibid page 10, note: in the decision there is no further information on the role of PT Sunggong Logistik and parties from PT Sunggong Logistik were not summoned as witnesses for questioning.

⁹⁷ Ibid page 11

(10) In addition to the BoL, PT SLI also arranges a Certificate of Origin (COO)⁹⁸ to the Industry and Trade Agency of Central Java Province, whereas the results are also submitted to the exporter (owner of the goods).

(11) Finish.

- PT SLI is responsible for the mercury export documents belonged to two owners, namely Mohamed who uses the legal entity PT One Pacifik, with its address at Tomang Jakarta and Suyadi.⁹⁹
- Mohamed and Suyadi did not have SIUP, TDP, NPWP and NIK documents.¹⁰⁰
- PT SLI then directed Mohamed and Suyadi to use the services of a licensed exporter, namely [CV Bangkit Perkasa, Jl. Majapahit No. 571, Semarang](#).¹⁰¹
- HS Code 2805.40.00 is a commodity code for liquid mercury (elemental mercury), listed as a commodity that allowed to be exported (no restrictions or prohibitions) based on examination of the type of goods and the HS Code on INSW. However, since May 2017 the Semarang Customs has verbally issued additional rules to export with a condition that documents are accompanied with a Purchase Order (request of goods from its buyer) and a certificate from a Regency/City Environmental Agency stating that the goods may be exported.¹⁰²
- The mercury belonging to Mohamed, the Sudanese nationals, is accompanied with a Purchase Order (request of goods from its buyer) namely Purchase Order from [GENAN General Trading](#), Dubai, U.A.E on 17 July 2017. **On the other hand it was informed that the Purchase Order of Suyadi's property was exists but it has not been submitted to PT SLI.**¹⁰³
- Mohamed's mercury equipped with a certificate from the Regency/City Environmental Agency which stated that the goods can be exported. The Certificate No. 660.1/920 dated 31 August 2017 was issued by the Environmental Agency of Purworejo Regency to CV. BANGKIT PERKASA;¹⁰⁴
- Suyadi's mercury has obtained a certificate from the Regency/City Environmental Agency which stated that the goods can be exported. The Certificate No. 660.1/936

⁹⁸ COO is a certificate of origin of goods which is usually issued by the Industrial and Trading Agency to exporters. The function is as a proof of the authenticity of goods from the country of origin listed on the Bill of Lading. COO functions as a supervisory document and or accompanying document of the origin of export goods to be able to enter a certain country territory. <http://www.rinarusdiana.com/2015/06/keguna-certificate-of-origin-coo.html>

⁹⁹ Ibid p. 12. Please note that Suyadi's mercury is estimated at 35 pallets @ 6 flasks or 210 flasks.

¹⁰⁰ Ibid. page 12

¹⁰¹ Ibid page 13, please note that through an internet search on the address of CV Bangkit Perkasa is Jalan Wonodri Joho 511, Peterongan, Semarang http://id.indonesiapp.com/category/Agen_Import_dan_Ekspor/city:Semarang

¹⁰² Ibid page 13

¹⁰³ Ibid page 13

¹⁰⁴ Ibid page 13

dated 5 September 2017 was issued by the Environmental Agency of Purworejo Regency to CV. BANGKIT PERKASA;¹⁰⁵

- Mohamed's mercury was equipped with an Invoice & Packing List No. 01/BP-HRS/IX/2017 dated 7 September 2017 with CV Bangkit Perkasa's letterhead, among others, containing data on the shipment destination: GENAN GENERAL TRADING BURJ KHALIFA OFFICE NO. 1072 PO. BOX 92783 DUBAI UAE. Type and quantity of goods of **41 pallets of mercury @ 6 flasks or 243 flasks**;¹⁰⁶
- Suyadi's mercury has obtained an Invoice & Packing List No. 02/BP-HRS/IX/2017 dated 7 September 2017, with letterhead of CV Bangkit Perkasa, among others, containing data and destination of shipment: [THANH NGA COMMERCE AND CONSTRUCTION](#), Joint-Stock Company, No 165B Hung Vuong Street Kalong Ward, Mong Cai City, Quang Ninh Province, Vietnam. Types and quantity of goods in an amount of **35 pallets of mercury @ 6 flasks or 210 flasks**.¹⁰⁷
- PT SLI apply/entry/submit the requirements namely SIUP, TDP, NPWP and NIK of CV. BANGKIT PERKASA to the online platforms provided by the Customs office.¹⁰⁸
- The data was analyzed by the Customs and declared as complete/approved for export with the issuance of NPE (Export Service Memorandum):
 - (1) For Mohamed's mercury, an Export Service Notification No. 097492/WBC.09/KPP.MP.01/2017 dated 7 September 2017 was issued by the Office of Supervision and Service of Tanjung Emas, Regional Office of the Director General of Customs for Central Java and DIY.¹⁰⁹
 - (2) For Suyadi's mercury, an Export Service Notification No. 097485/WBC.09/KPP.MP.01/2017 dated 7 September 2017 was issued by the Office of Supervision and Service of Tanjung Emas, Regional Office of the Director General of Customs for Central Java and DIY.¹¹⁰
- PT SLI carried out the process of loading mercury from PT Teduh Makmur's warehouse into a container, during which the police from the Central Java Regional Police arrested them.¹¹¹

¹⁰⁵ Ibid page 13

¹⁰⁶ Ibid page 14

¹⁰⁷ Ibid page 14

¹⁰⁸ Ibid page 14

¹⁰⁹ Ibid page 14

¹¹⁰ Ibid page 14

¹¹¹ Ibid page 14

- PT SLI then revoked/cancelled the export document process from the Customs.¹¹²
- Whereas in general there has been a cooperation agreement between PT SLI and CV Bangkit Perkasa on 7 January 2017 in the utilization of name/legal entity of CV Bangkit Perkasa to manage exports activities of PT SLI;¹¹³
- The above mercury which becomes the responsibility of EMKL PT Satria Lintas Intermoda were sent and arrived in Semarang and consists of:¹¹⁴
 - (1) Mercury packed in **40 boxes consisted of @ 6 bottles @ 34.5 kg, the sender was Mr. Suyadi's address, Sukabumi, West Java**, was sent to Semarang. The exact date is unknown, but PT SLI was notified by Mr. SUYADI where the mercury about in early September 2017. The goods have been stored in Teduh Makmur's warehouse at Marabunta Building Jl. Kalibaru Barat No. 15 Tanjung Mas Semarang while waiting for the export documents being processed.
 - (2) Mercury packed in **41 boxes consisted of 40 boxes containing @ 6 bottles @ 34.5 kg and 1 box containing 3 bottles @ 34.5 kg, the owner is Mohamed**, the address is Tomang Jakarta, sent to Semarang in stages starting from February 2017 to May 2017 and immediately stored in Teduh Makmur's warehouse at Marabunta Building Jl. Kalibaru Barat No. 15 Tanjung Mas Semarang while waiting for the export documents being processed.
- PT M+R FORWARDING INDONESIA¹¹⁵ Semarang Branch is a transportation and logistics company that acts as an agent to manage containers for the export of mercury belonging to Mohamed.¹¹⁶
- The procedure for renting containers in the context of exporting goods to foreign countries (export) based on [PT M+R FORWARDING INDONESIA](https://www.mrspedag.com/location/indonesia/) is as follows:¹¹⁷
 - (1) Container rental includes:
 - a) The lessee shall notify the exporting country of destination. PT M+R FORWARDING INDONESIA will then provide the demurrage price from the country of origin to the country of destination.
 - b) PT M+R FORWARDING INDONESIA examines and inquire on type of goods to be exported.

¹¹² Ibid page 14

¹¹³ Ibid page 15

¹¹⁴ Ibid page 15

¹¹⁵ Profile of PT M+R Forwarding Indonesia <https://www.mrspedag.com/location/indonesia/>

¹¹⁶ Decision No. 984/Pid.Sus/2017/PN.Smg page 16

¹¹⁷ Ibid page 16

- c) PT M+R FORWARDING INDONESIA checks the INSW/Customs website whether the goods are included in the limited prohibited list or not.
- d) If there is no prohibition, PT M+R FORWARDING INDONESIA prepares the container after receiving a shipping instruction from the owner of the goods/lessor.
- e) Finish.

(2) The application of customs permit requirements is carried out by EMKL (in this case PT SLI).

- Whereas Mohamed used the container services of PT M+R FORWARDING INDONESIA two times, the first time to transport furniture from Jepara, Central Java to Sudan and the second time to transport **41 pallets of mercury with a total of 243 flasks, weight per flask @ 34.5 kg and the total weight of mercury is 8,372 kg which is planned to be shipped to United Arab Emirates.**¹¹⁸
- The estimated cost to be paid to administer the customs services is Rp.53,500,000.00. However, there has been no payment made by Mohamed or PT SLI (which was performed for Mohamed's interest).¹¹⁹



Figure 12. The Directorate of Special Criminal Investigation (Ditreskrimsus) of the Central Java Police has thwarted the export of more than 20 tons of mercury that was suspected to be illegal. This raid is a follow-up to Central Java customs information. Hundreds of these dangerous goods are stored in a warehouse in Tanjung Mas Village, North Semarang District, Semarang City. During the inspection, it was discovered that there were a total of 660 bottles of mercury weighing 30 kilograms per bottle. According to the plan, mercury will be exported to a number of countries, namely the United Arab Emirates, Vietnam, India and Singapore. <https://www.tribunnews.com/regional/2017/09/08/ditreskrimsus-polda-jateng-gagalkan-ekspor-209-ton-merkuri> 8 September 2017. Accessed by 6 July 2021

¹¹⁸ Ibid page 17

¹¹⁹ Ibid page 17

6.5. Analysis

6.5.1. Regarding Export Restrictions and Prohibitions

Based on Article 53 of Law No. 17 of 2006 on Amendments to Law No. 10 of 1995 on Customs, it is stated that provisions on prohibitions and/or restrictions issued by technical agencies must be submitted to the Minister of Finance for the attention of the Director General of Customs. With respect to the said provisions, the Director General of Customs conducts research and the Director General of Customs on behalf of the Minister of Finance establishes a list of goods that are prohibited or restricted from being imported or exported based on the Minister of Finance Regulation No. 224/PMK.04/2015 on Supervision against the Import or Export of Prohibited and/or Restricted Goods, for further supervision by the Director General of Customs (DJBC).

In relation to the provisions of prohibition and/or restriction imposed by DJBC supervision, can be accessed through the INSW Portal as the sole reference provision of prohibited and/or restricted Import or Export in www.insw.go.id website. At the time this document was compiled, the author had not found:

- any information regarding the determination of mercury (HS code for mercury), a list of goods that are prohibited or restricted to be imported or exported;
- any official letter regarding prohibitions and/or restrictions issued by the competent authority in this case the Ministry of Forestry and Environment to the Minister of Finance for the attention of the Director General of Customs;
- Presidential regulations regarding prohibited or restricted goods which trade is restricted in the country as mandated by the Trading Law as discussed in Part I;¹²⁰
- Integration between registration and notification based on GR No.74/2001 with the INSW system and/or Customs Law Procedures.

Government Regulation No.74/2001 (PP 74/2001) regulates B3 registration and B3 Notification requirements. Notification is required for limited use of B3. In this case, it is necessary to have a Notification for the export of mercury. However, it is reasonable to assume that there is no integration between the notification registration process based on GR No. 74/2001 with customs procedures based on the Customs Law in the case of B3 exports.

GR No. 74/2001 also provides opportunities for mercury exports based on article 41(a): "if at the time of promulgation of this Government Regulation there is still a B3 that is prohibited from being used in Indonesia, the B3 can be exported to countries that need it following the applicable export provisions".

¹²⁰ As of the writing of this document, the Government Regulation is still in draft form, <http://jdih.kkp.go.id/peraturan/2-1-rperpres.pdf>

For this matter, it is reasonable to suspect that mercury from Indonesia is exported to transit or to the destination countries where hazardous chemicals notification procedures are weak and/or do not require notification procedures.

The Article 19(2) of the Minister of Forestry and Environment Regulation No. P.36/MENLHK/Setjen/Kum.1/6/2017 is carried out if the authorities of the receiving country require notification of B3 exports.

Currently, reliable mechanisms for multi-stakeholders (MOFE, Customs, Exporters and export service providers) depend highly on the INSW classifications whether a commodity is prohibited and/or listed as restricted. If the HS code of mercury has not been listed in the INSW system as a non-exportable item, then the opportunity to export mercury without notification is still considerable.

In Mohamed's case, the Tanjung Emas Port Customs Office verbally provided additional rules that goods belonging to Mohamed are allowed to be exported if equipped with other supporting documents in the form of a Purchase Order (request of goods from its buyer) and a certificate from a Regency/City Environmental Agency stating that the goods are clear for export.¹²¹

Whereas there is a question on what basis the Purworejo Regency Environmental Agency issued Certificate No. 660.1/936 dated 5 September 2017. In general, the mercury stored in the PT Teduh Makmur's warehouse is located in Semarang City and is under the jurisdiction of the Semarang City Environmental Agency or Central Java Environmental Agency which is domiciled in Semarang, not Purwerojo Regency.¹²²

Up until now, the authors has not found any legal basis regarding the authorized party that must provide a recommendation letter that the goods may be exported. Notifications regulated under the GR No. 74/2001 and Minister of Forestry and Environment No. P.36/MENLHK/Setjen/Kum.1/6/2017 do not mention or do not provide the basis for a recommendation letter.

In this regard, it is suspected that there was an error in the administrative process as follows:

- Tanjung Emas Port Customs should have provided the official information (not verbal information) to PT SLI as an EMKL service and provide information which has a legal basis (information is submitted in a legal formality basis referring to written regulations). Additionally, it is also reasonable to suspect that the Semarang Customs knew about the export of mercury and did not stop it, on the other hand, it "allowed the export and as long as the additional provisions which were requested verbally has been fulfilled by the exporter";

¹²¹ Ibid page 13

¹²² The trick to use license or permit issued for a company by a particular Local Government agency to be used in another administrative areas are a common false documentation and practice in hazardous substances and hazardous waste management in Indonesia.

- PT SLI as an EMKL service provider should have had a good understanding about the official procedures based on laws and regulations;
- The Purworejo Regency Environmental Agency does not have the authority to issue a letter that mercury can be exported.

6.5.2. Regarding Legal Entities Involved in the Export Process

At least, there are six legal entities which are involved in the process to obtain the export of Mercury in Mohamed's case, namely:

- (1) PT One Pacific with its address at Tomang Jakarta was a legal entity used by Mohamed. PT One Pacific does not have permits/documents such as SIUP, TDP, NPWP and NIK required to carry out export activities. One Pacific is virtual office in Jakarta that offers their services to assist businessmen to run their virtual office and/or administrations.¹²³
- (2) CV Bangkit Perkasa with its address at Jl. Majapahit No. 571 Semarang¹²⁴ CV Bangkit Perkasa is an exporter service that has permits/documents in the form of SIUP, TDP, NPWP and NIK required for export. In later practice, CV Bangkit Perkasa acted as a legal entity for Mohamed's interest in exporting mercury. **In addition, CV Bangkit Perkasa also acted as a legal entity for Mr. Suyadi for Mohamed's interest in exporting mercury, but Suyadi's case was not further elaborated in the Mohamed' case decision.**
- (3) PT Satria Lintas Intermoda (PT SLI) with its address at Jl. Wonodri Joho No. 511 Semarang, is engaged in the sea freight forwarding services (EMKL). In Mohamed's case, PT SLI is responsible for managing documents for export through the Tanjung Emas port in Semarang. It was identified that PT SLI agreed with CV Bangkit Persada, so that CV Bangkit Persada represented Mohamed's interests to export Mercury.
- (4) PT Teduh Makmur with its address at Marabunta Building Jl. Kalibaru Barat No. 15 Tanjung Mas, is a warehousing and EKML service company. Mercury is placed in the warehouse of PT Teduh Makmur while waiting for the processing of export documents by PT SLI.¹²⁵
- (5) PT M+R Forwarding Semarang Branch¹²⁶ is a transport and logistics company that acts as an agent to manage Mohamed's mercury export container.

¹²³ See <https://www.executivecentre.com/office-space/jakarta-one-pacific-place/>

¹²⁴ Another address of CV Bangkit Perkasa is Jl. Wonodri Joho No. 511 Semarang, http://id.indonesiayp.com/category/Agen_Impor_dan_Ekspor/city:Semarang

¹²⁵ Decision No. 984/Pid.Sus/2017/PN.Smg page 7

¹²⁶ See <https://www.mrspedag.com/en/location/indonesia/>

(6) PT Sunggong Logistics in Semarang¹²⁷ did the processing of documents related to mercury and it is not known who the mercury belongs to. The authors suspected that the mercury belongs to Suyadi. The role of PT Sunggong Logistics was not elaborated in the Mohamed case. PT Sunggong Logistics's name appears in another mercury export case, namely the Teti case, Decision No.107/Pid.Sus/2018/PN Smg and Choy Decision No.983/Pid.Sus/2017/PN.Smg.

There are several types of companies related to export and import activities in Indonesia, namely:¹²⁸

- PPJK (Pengusaha Pengurusan Jasa Kepabeanan) or Customs Service Management Business Actor);
- EMKL (Ekspedisi Muatan Kapal Laut) or Sea Freight Forwarding Services, for the record currently EMKL is identical with PPJK because EMKL definitely has obtained a PPJK permit;
- EMKU (Ekspedisi Muatan Kapal Udara) or Aircraft Cargo Expedition;
- Trucking is a company that has a fleet of transporters such as trucks/box cars;
- Freight Forwarder is a company engaged in the agency activity that takes care of the delivery and receipt of goods/cargo export and import. Freight Forwarder is regarded as the Shipping Agent/ Carrier but the services offered by the Forwarder is more diverse than the Shipping Agent/Carrier. Forwarder generally work closely with the Shipping Agent in various countries. Forwarder also published its own Bill of Lading.¹²⁹
- Warehousing companies, providing storage services in warehouses (in the port area) while goods are waiting for the completion of export documents.

Whereas basically service companies related to export activities play a significant role in Mercury export activities but are not elaborated further in the Mohamed case.

6.5.3. Regarding Sanctions

In this case, the exporter, Mohamed, whose interests are represented by the export service provider company, shall notify the type and/or quantity of mercury goods as regulated in the

¹²⁷ See <https://sunggonglogistics.id/content/contact-info>

¹²⁸ <http://www.rinarusdiana.com/2015/06/sekilas-about-ppjk-emkl-emku.html>

¹²⁹ <http://www.rinarusdiana.com/2015/06/more-definite-about-company-freight.html>, Bill of Lading is a letter/ document issued by Shipping Line/ Freight Forwarder for each shipment of exported goods. The Bill of Lading is issued on the ship's departure date. Bill of Lading will be given to the consignee to pick up the goods at the destination (import pickup). The function of the Bill of Lading apart from being proof of picking up goods at the destination, is also attached to the process of making a Certificate of Origin (COO).

Customs Law. The authors observed no administrative and criminal offense under the Customs Law conducted by Mohamed and the service providers.

Suppose CV Bangkit Perkasa represents Mohamed and acts as a legal entity to perform mercury export; we still need to study further whether this is allowed under the provisions of the implementing regulations of the Customs Law.

Authority will impose Administrative sanctions if there is no notification procedure based on GR No. 74/2001 Article 7(1). This violation can be detected if it turns out that the receiving country requires notification and problems occurred in the receiving country.

However, this administrative sanction does not have a deterrent effect. Furthermore, if the recipient country does not require notification, the Minister of Forestry and Environment Regulation No. P.36/MENLHK/Setjen/Kum.1/6/2017 stated that no notification is needed.

In Mohamed's case, the sanctions imposed were not because of the export of mercury or the export of B3 but because the **mercury was not originated from a legal source/does not have a mining permit.**

7. Recommendations

In order to improve regulations regarding the import, export and domestic trade system of Mercury commodity, this study recommends:

- (1) Determination of mercury as a hazardous and toxic material (B3) and/or a prohibited hazardous material (B2).
- (2) Determination of mercury as a material prohibited from trading in accordance with policies related to prohibition and/or restriction.
- (3) The inclusion of the mercury HS code in the Indonesian Single Window (INSW) system as a material prohibited for export and import.
- (4) INSW system integration and the B3 notification procedure under GR No. 74/2001.
- (5) Revision of related regulations to provide administrative sanctions for trading and distribution of Mercury which has a deterrent effect.
- (6) Revision of related laws to provide criminal sanctions for trading and distribution of mercury.
- (7) There is a need for follow up studies and analysis regarding:
 - a) an overall technical exports which include procedures for warehouse leasing, container leasing, Bill of Lading, Certificate of Origin and others;
 - b) the role of EMKL and sea freight forwarding service companies;

- c) comprehensive review of regulations and technical related to customs;
- d) administrative completeness in the export and import process;
- e) integrating Article 3 of the Minamata Convention on Mercury Supply Sources and Trade especially paragraph 6(a) and (b):¹³⁰

6. Each Party shall not allow the export of mercury except:

(a) To a Party that has provided the exporting Party with its written consent, and only for the purpose of:

(i) A use allowed to the importing Party under this Convention; or

(ii) Environmentally sound interim storage as set out in Article 10; or

(b) To a non-Party that has provided the exporting Party with its written consent, including certification demonstrating that:

(i) The non-Party has measures in place to ensure the protection of human health and the environment and to ensure its compliance with the provisions of Articles 10 and 11; and

(ii) Such mercury will be used only for a use allowed to a Party under this Convention or for environmentally sound interim storage as set out in Article 10.

- (8) Disseminations and education regarding policy prohibiting the trade and distribution of Mercury to the institution in the region and export and import services.

¹³⁰ <http://www.mercuryconvention.org/Portals/11/documents/Booklets/COP3-version/Minamata-Convention-booklet-Sep2019-EN.pdf>