

**A DEFINITION OVERVIEW OF THE TERM OF INDONESIA'S CUSTOMS
TERRITORY IN INDONESIA CUSTOMS LAW**

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ABSTRACT

Customs territory is important in the concept of customs because it has extensive implications. The definition of Customs territory must be clear because it has affected the management of import and export of customs policies, customs jurisdiction and related to customs facilities (FTZ). However, unfortunately, in the customs law, the term 'certain location' is not clearly explained. This study aims to identify the problem's unclear definition of Customs Territory to provide an overview analysis for Indonesia Customs to find the problem and improve a clear definition of certain locations in the customs law. A descriptive qualitative methodology was used in this study through interviews and literature review. The result shows that there is no clear explanation regarding a certain location in Customs Law. There has been a unfortunate loss in practice because of the wrongful arrest of smugglers outside the customs territory related to customs jurisdictions. On the other hand, some researchers argue about FTZ policy and customs territory. The immediate revision of the Customs Law related to the definition of customs territory is important to determine customs policy directions.

Keywords: *customs territory, customs laws, a certain location, clear definition*

INTRODUCTION

The Directorate General of Customs and Excise (DGCE) is a government official under the Ministry of Finance assigned to protect the Republic of Indonesia from the risks of smuggling of imported and exported goods. Customs is an authority or agency in a country responsible for collecting tariffs and controlling the flow of goods into and out of a country. Customs has been considered as the fiscal subject that charges customs duties and other taxes on import and export within the area of authority. Definition of customs territory contained in article 1 of the general provisions in the customs law No. 17 of 2006 jo Law No. 10 of 1995. The Customs Territory (CT) means the Republic of Indonesia's territory consisting the land, waters, and air space above them and certain locations in the exclusive economic zone and the continental shelf in which this Law applies in full. However, in customs law, the detail definition of customs territory in Customs Law is not adequate, especially on words in certain locations. Whereas the implication of this study, reminded the government to pay more attention to giving a clear definition of CT is the critical point in reducing problems of carrying out customs law orders and eliminate the existence of doubts in practice in the field related to customs matter.

Clear definition of CT affect the import and export activities. CT is defined as an imaginary catching point area for DGCE in determining payment for import and export activities in the virtual concept. Especially if the imported goods are useful goods and strict goods under export control. More importantly, the function of DGCE in supervising the traffic of prohibited and restricted goods passing through the territory of the Republic of Indonesia.

According to Jalal (2014) after being ratified by UNCLOS 1982 by the United Nations (in 2020 it was ratified by 168 countries in the world, Osthagen (2020), implementing a new maritime zone, to be precisely changing for the 12 n.m. zone territorial seas, to become 200 n.m. which was later called the Exclusive Economic Zone - EEZ), therefore the territory of the Republic of Indonesia over sea and air increased tens of times wider than before. There are natural wealth and sovereignty in it, which covers an area of approximately 6 million square km of air over land, waters, and islands in the Indonesian Maritime region (Karsidi, Sutisna, and Poniman, 2012).

Law enforcement at sea involves many government agencies that have interests and also have authority. According to Kwan Kee (2015), avoiding overlaps in Law, reducing multiple interpretations. Therefore there must be good cooperation and coordination to avoid confusion. Bunga (2015) in his study entitled Establishment of a Law on Additional Zones as a Step to Protect Indonesia's Marine Territories explains that there are at least 12 types of criminal acts

involving the authority of institutions in the Indonesian oceans including the authority of DGCE. In this study, Indonesia is given jurisdiction in law enforcement only and not yet entitled to make rules on jurisdiction (legislative jurisdiction), especially in additional zones.

Customs territory dealing with Free Trade Zone (FTZ). According to Kenji Omi (2019), the concept of extra-territorial FTZ in the World Customs Organization (WCO) Revised Kyoto Convention (RKC) is under the customs authority. Attachment D chapter 2 of the RKC clear mention that from the geographic perspective, the FTZ is not outside the CT. In other words, FTZ is included in the CT. Goods in the FTZ are considered to be outside the CT for the imposition of import duty only.

On the other hand, according to Sutardi (2016), the provision of FTZ, which is located within the customs territory but is treated as outside the customs territory has implications in the legal field. The inclusion of certain places in the Exclusive Economic Zone and the continental shelf where this Law applies means that legislators open all the possibility of a certain area within the territory of the Republic of Indonesia which includes land, waters and air space, including certain places in the Exclusive Economic Zone and the continental shelf areas outside the customs territory. All goods from outside the customs territory are imported goods. However, there are exception areas such as the Sabang Free Zone, Batam, Bintan and Karimun. Even though these areas are inside Indonesia territory but they are free zones, which based on customs law, goods originating from the free zone are declared as imported goods.

Sutardi (2016) from his book Notes and Comments on Customs Law, the historical background of the articles that can cause controversy must be understood so that errors and irregularities can be avoided in their implementation.

Through this study, the authors aim to provide a perspective analysis for DGCE to find the root of the problem and clear definition of a CT in the customs law to make it clear and avoid misinterpretation and their broad implications, especially from legal aspects. Notably, if it is related to ocean law enforcement, Indonesia has large maritime territory, and each law enforcement agencies in Indonesia do not well understand international regulations.

LITERATURE REVIEW

According to the Revised Kyoto Convention (RKC), the definition of a Customs Territory (CT) is "the territory in which the customs law of a state fully applies". The definition of customs territory is related to taxation theory, namely when tax is imposed/payable, so the implication is broad because it implies national rights to levy taxation and law enforcement. In a series of publications and reports according to Kenji Omi (2019) FTZ including free trade

zone', special economic zone, export processing zone, free port', special customs zone, special customs control area, outer trade zone country, etc.

Each tax collection should be based on the Law as it is inset in Article 23A of the 1945 Constitution that Taxes and other coercive for the state governed by Law. Tax collection is the first stage which is very important from the cycle of tax (Firdiansyah, 2018). The Law should also guide the statute's preparation No. 15 of 2019 on the Amendment of No. 12 of 2011 concerning the Establishment of Regulation Legislation. Therein is described as a condition to make a statute of a good rule are :

- a. clarity of purpose;
- b. appropriate forming institutions or officials;
- c. suitability between types, hierarchy and content;
- d. can be implemented;
- e. efficiency and efficiency;
- f. clarity of formulation; and
- g. openness.

Explanation definition customs territory in customs law is not explained by follow up explanations in the phrase of 'certain locations' in the Exclusive Economic Zone and continental shelf. Moreover, it is not regulated in the implementation's constitution articles that might lead to multiple interpretations in practice. The definition of a customs territory must also be related to the import and export mechanism and facilities. Therefore, it must be clearly formulated to avoid legal confusion.

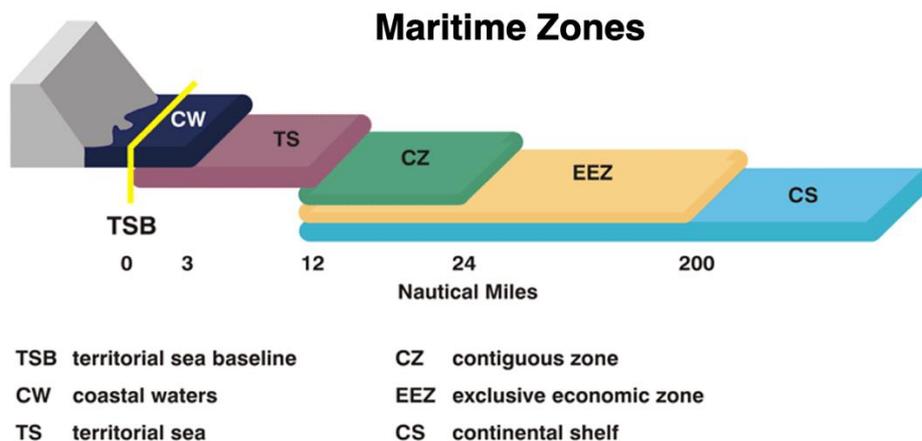
Certain locations in the EEZ and certain locations on the continental shelf are explained, where certain activities are carried out so that the Customs Area in the EEZ and the continental shelf is only limited to certain places where utilization activities are carried out in the EEZ and the continental shelf with government permission.

Who has the authority to designate a certain location? Certain locations associated with certain activities mean that using a location in the EEZ for an activity requires a permit from an authorized institution. For example, utilization for oil drilling requires a permit from the Ministry of Energy and Mineral Resources. The locations used to carry out oil drilling activities needs to be supervised by the State, so that the State can know the activities carried out in this drilling, for example, is the entry of goods into and from oil drilling. So that activities at this oil drilling location can be designated as a customs territory. By stipulating it as a Customs Territory, any goods that enter this oil drilling are treated as imported goods and are subject to

import duties. To fulfil customs obligations in this oil drilling, the Minister of Finance can designate this certain location as a customs territory.

The definition of a CT also has implications for customs jurisdiction. Jurisdiction originated from the Latin word “Juris” which means possession by Law, and “diction” means speech/designation. Jurisdiction means rights, power or authority based on Law, so nation jurisdiction is defined as the right to declare and enforce. Csabafi (1999) stated that deals with legal issues, particularly the power and authority given to judicial or other state agencies are regulated in the Law. This jurisdiction also deals with state sovereignty. Concerning the definition of a customs territory in the Customs Law, it is also not clearly regulated regarding customs jurisdiction, so the concern is that it could raise customs officials confusion in carrying out their duties especially in the maritime territory. Regarding the customs territory, it is stated that there is an exclusive economic zone called the Indonesian customs territory. Descriptive depiction of the area and distance of the customs territory is described in Figure 1.

Figure 1. Maritime boundary definition by LOSC 1982



Source: <http://www.gmat.unsw.edu.au>

The Indonesian sea area is divided into 3 parts, namely the territorial sea as far as 12 miles, the Additional Zone as far as 24 miles and the Exclusive Economic Zone (EEZ) as far as 200 miles where 1 nautical mile is equivalent to 1.852 km. Does this usually raise why a country needs to claim contiguous zone and claim a 200 nautical mile EEZ? The answer is in the contiguous zone, and the state is entitled to have a limited authority to perform law enforcement customs, fiscal, sanitary and immigration. The enforcement power of this appears to be the difference between a contiguous zone and the EEZ so that the coastal State can see some additional benefits in claiming the adjacent zone. EEZ is a new arrangement defined by the Law of the sea convention 1982 (LOSC 1982). Exclusive Economic Zone, specifically

the sea area 12-200 nautical miles baseline. The area of EEZ is around 6 million km². Interestingly, Indonesia is the 7th rank largest ZEE in the world (Table 1).

Table 1. Countries with the largest EEZs

		EEZ (million km ²)	Land area (million km ²)	EEZ to land area ratio
1	United States	12.2	9.8	1.2
2	France	10.2	0.7	15.3
3	Australia	9.1	7.7	1.2
4	Russia	7.5	17.1	0.4
5	United Kingdom	6.8	0.3	21.5
6	New Zealand	6.7	0.3	25.1
7	Indonesia	6.0	1.9	3.1
8	Canada	5.7	10.0	0.6

Source: Flanders Marine Institute and CIA World Factbook (2019) Moraes RBPI

According to Massie (2017), jurisdictions relating to:

- a. Manufacture and use of artificial islands, installations and other structures (the establishment and use of the artificial island, installations and structures);
- b. Marine scientific research;
- c. Protection and preservation of the marine environment (the protection and preservation of the marine environment).

Maritime zones fall under full sovereignty inland waters, archipelagic waters (for archipelagic countries), and territorial seas.

Also, the coastal state has the following rights and obligations to enforce laws and regulations:

- a. Boarding, inspecting, detaining and submitting to court the ship and its crew.
- b. The vessels and their crews that are detained will be released immediately after payment of the security deposit.
- c. In carrying out foreign ships' detention, the coastal State shall immediately notify the representative flag states for actions taken and fines imposed.
- d. In the absence of an international agreement, the coastal state for violating fishing laws and regulations from the Exclusive Economic Zone cannot carry out imprisonment.

The rights of other countries are as follows:

- a. Freedom of service and flight
- b. Freedom to lay cables under the sea and pipes and use other countries which are justified internationally concerning the above matters, such as matters relating to the operation of ships, aircraft, submarine cables and pipes of other States with the agreement of the coastal State through certain agreements can jointly utilize capture of biological resources in the Exclusive Economic Zone. Regarding the obligations of

other states, they must pay attention to the rights and obligations of the coastal state and comply with the rules of the coastal state according to the provisions of the convention and other international law rules. The state's imperative announces Exclusive Economic Zone maps Countries are required to publish maps showing their economic zone's outer boundaries or where possible a list of geographic coordinates and keep a copy of each with the Secretary-General of the United Nations.

The United Nations Convention on the Law of the Sea (Convention The United Nations on the Law of the Sea 1982) above was ratified by Law No.17 of 1985. According to Sodik, before this Convention was ratified, Indonesia had issued Law No. 5 of 1983 concerning the Indonesian Exclusive Economic Zone (hereinafter referred to as the Indonesian EEZ Law). Thus the Indonesian Exclusive Economic Zone is stipulated by Law No.5 of 1983 concerning the Indonesian Exclusive Economic Zone. Regarding the EEZ territorial boundaries regulated in Law No.17 of 1985 regarding UNCLOS's ratification, which is 200 nautical miles wide measured from the Archipelago Base Line, where the list of coordinates is in the attachment to Government Regulation No.38 of 2002.

RESEARCH METHODS

This study uses a qualitative descriptive analysis. The analysis of this study are conducted from in-depth interviews from the customs officer competent in their fields and have a close relationship with the research topic. The participants are as follows:

- P1 the Technical Director of Customs Head Office of the DGCE (Echelon II)
- P2 the Head of the Enforcement and Operations of the Special Area Customs Office of the Tanjung Balai Karimun (Echelon III)
- P3 the Head of the Investigation Sector the Special Area Customs Office of the Tanjung Balai Karimun (Echelon III) and ;
- P4 the Supervisor of the Supervision of the Head Office of the DGCE (Echelon II).

The steps in data analysis in this study generally referred to Huberman and Saldana (2014). Three steps must be taken in qualitative data analysis; they are:

1. Data condensation. The first step in analyzing data is to condense data. Data condensation is the process of selecting → simplifying → abstracting → transforming from the interview transcript data. Condensation data is carried out by coding (coding). Coding is an analytical process in which qualitative data has been collected, reduced, rearranged, and integrated to make theory (Sekaran, 2017). In this case, code is a label given to text units that are then grouped and converted into categories. This process can be done repeatedly

(add, change, and subtract) how data was obtained clear. This study's first coding process was made using 3 approaches: descriptive coding, in vivo coding, and process coding. The second coding cycle is pattern coding which is a way of grouping those summaries into smaller categories, themes, or constructs (Huberman, 2014). The second coding cycle is to cluster the data to form a series that answers the research question. Technically, the author referred to Ritchie and Lewis (2003) at this second coding cycle stage.

2. The next step is to organize and rearrange the information that has been obtained in a narrative form which can be completed with tables and pictures. The data presentation is carried out to ensure that the participants' data is explained completely and systematically.
3. The final step in analyzing data is concluding. Drawing conclusions is the most important thing in this data analysis, and authors answered research questions by determining what is represented by the identified topic by considering explanations for the patterns and relationships studied, making contrasts, and comparisons (Sekaran, 2017). Conclusions are obtained after linking and comparing the information obtained between the participants and the literature study.

ANALYSIS AND DISCUSSION

From the interviews related to the formulation of the customs territory, whether there is an official and clear formula related to the definition of certain places in the Exclusive Economic Zone and the continental shelf where the customs law applies. All participants answered that there was no official explanation regarding this matter. The next question is whether the EEZ is a customs territory? The interview results shown in Table 2.

Table 2. The interview results regarding certain places in the ZEE

P1	Certain places in the Exclusive Economic Zone and the continental shelf where the customs law applies are customs territory.
P2	According to UNCLOS, it provides more space for DGCE to patrol additional zones, and in the case of narcotics, DGCE still has the authority to take action and hot pursuit in the EEZ.
P3	Outside the Unitary State of the Republic of Indonesia (NKRI), including in the customs territory are certain places in the EEZ and the continental shelf. In the EEZ, the Republic of Indonesia has sovereign rights to explore and exploit natural resources.
P4	Indonesian EEZ is an area outside and adjacent to the Indonesian territorial sea as referred to in the Law regulating Indonesian waters with an outer limit of 200 (two hundred) nautical miles from the baseline from which the width of the territorial sea is measured (Article 1 number 8, Law Number 43 of 2008 concerning State Territory).

The interview results indicated that the participants agreed that certain places in the Exclusive Economic Zone and the continental shelf where the customs law applies are customs territory. Customs has the authority in the EEZ to carry out prosecution and hot pursuit of narcotics cases. When they were asked about customs jurisdiction and case studies of fishing in international seas then brought into Indonesia, the participants' answers were listed in Table.

Table 3. Interview Results About Customs Jurisdiction and Case Studies Of Fishing In International Seas

P1	<p>In the 1982 Convention on the Law of the Sea (UNCLOS III), the sea is divided into territorial seas, inland waters, additional zones, archipelagic waters, EEZ, open seas and seabed areas. In the 1958 Geneva convention, the high seas are a sea open to all nations, and no state can legally submit to any part of their sovereignty.</p> <p>Referring to the above definition, the high seas can be interpreted as being outside the customs territory so that:</p> <ol style="list-style-type: none"> a. If there are fishing activities in the international high seas by Indonesian fishers and then brought into Indonesia, import (Article 1 point 13 of the Customs Law that imports are activities to enter goods into the customs territory). b. However, if the opposite is true, if there are fishing activities in the international seas by Indonesian fishers and then brought into a foreign country, then this cannot be interpreted as an export activity (Article 1 paragraph 14 of the Customs Law states that export is the activity of removing goods from the customs territory) DGCE only has jurisdictional authority within the customs territory.
P2	<p>According to Chapter XI of UNCLOS 1982 seabed area, it is not owned by any party or any country. Meanwhile, the high seas itself is a sea outside the national jurisdiction of countries called high seas. Utilization of the free sea is carried out based on the principle of " <i>common heritage of humanity</i> ", which means that the benefits of the free sea, both aspects of navigation and aspects of the natural resources it contains, must be enjoyed by all humanity and may not be monopolized by one or just a few strong countries. This area of land and high seas is an area that is intended for peace for all countries. Because in this region, countries have the freedom to sail, lay cables and pipes under the sea, fly over it, catch fish, scientific research and so on, as long as it does not cause conflicts between member states of UNCLOS 1982. Article 86 also states that this provision does not affect some of the freedoms enjoyed by States in the exclusive economic zone under article 58. Therefore, this does not appear to be sufficient reason to assert that the exclusive economic zone forms part of the high seas. As stated earlier, it might be better if the exclusive economic zone is considered <i>sui generis</i> regime, in which only certain aspects of freedom on the high seas are applied. The term "high seas" is defined as waters outside the 200 nautical mile limit of the exclusive economic zone. The high seas are open to all countries, both countries with and without shore freedom on the high seas, among others:</p> <ol style="list-style-type: none"> (a) freedom of navigation (b) freedom to fly over it (c) freedom to lay cables and pipes under the sea (d) freedom to build artificial islands and other installations (e) freedom of fishing (f) freedom to conduct scientific research

	Based on this, accordingly, the high seas are not customs jurisdiction.
P3	Not all EEZ areas are customs territory, only certain locations that DGCE has the authority to carry out supervision and enforcement. According to UNCLOS, etc., absolute authority is up to the territorial sea (12 miles). Whereas in the additional zone (24 miles) the authority is supervision, in the context of prevention (import), and prosecution (if the violation occurs on land or territorial/export sea).
P4	DGCE's supervisory authority in the Exclusive Economic Zone and the continental shelf is based on the 1982 United Nations Convention on the Law of the Sea (UNCLOS) which consists of 320 articles and its additional rules contained in 9 attachments, and several supporting resolutions have tried to formulate international arrangements for various marine activities. The supervision authority of DGCE in the Exclusive Economic Zone and the continental shelf based on the Customs Law is only in certain locations (not fully) because the Navy only owns this full authority.

The interview results regarding customs jurisdiction indicated that the participants agreed that not all EEZ areas are customs territory, according to UNCLOS 1982, but only certain locations. According to Arsana (2014), EEZ includes the water column and the seabed and underground land where the coastal state has rights to manage and utilize natural resources, freedom of navigation, rights to aircraft, laying cables and pipes, building and using land, artificial, installation and building, conduct marine scientific research and protect/preserve the marine environment. However, it was explained that other countries have the right to freedom of navigation and flight in the EEZ as long as it is under the provisions stipulated in the LOSC.

Particularly for P1 related to legislators, they were asked about the due of import duty, why is it not included in the articles in the body of the customs law? They explained that the Customs territory is not regulated in detail in the Customs Law due to consideration that:

- a. The customs territory is an imaginary boundary line;
- b. Judging from Indonesia's vast geography, it is impossible to assign DGCE officers along the customs territory's boundaries to ensure that imports and exports comply with the provisions stipulated in the Customs Law. Thus, for service, supervision, smooth traffic of goods and security of state finances, customs laws determines the existence of a customs territory where are fully under the supervision of DGCE and establishment of the customs office.
- c. When the imports and payable goods enter the customs territory (attention to letter a), then juridically and operationally when the goods will be imported from customs territory use the mechanism of submitting customs notification from Importer to the Customs Office for settlement of customs obligations by the importer (customs duty and tax also the fulfilment of prohibited and restricted goods).

P2 and P3 were asked the same question regarding the location of the case (*locus delicti*) like are their detention that has been processed but the case did not occur in the Indonesian customs territory, P2 was informed that it happened in September 2018 in Karang Galang area. DGCE patrol boat had carried out enforcement in Malaysian territorial so that the detention was null and void. Meanwhile, P3 said that through a pre-trial court, the plaintiff won because the arrest conducted by DGCE was considered out of jurisdiction (vessel M J case, was arrested in the border between Indonesia and Malaysia). The plaintiff showed an evidence photo of GPS location that the action was carried out outside the Indonesian customs territory, and the suspect was equipped with the manifest for the destination to another country (Thailand). Based on the interview result, it can be seen that there is a possibility of conflict regarding the issue of customs jurisdiction which must be well understood by the marine patrol officers so that there is no confusion in law enforcement of import and export regulations.

Another aspect related to customs territory is the Free Trade Zone (FTZ) and Free Port. According to Law Number 36 of 2000 concerning the establishment of Government Regulation instead of Law Number 1 of 2000 concerning FTZ and Free Ports, it states that the FTZ and Free Port is an area that is within the jurisdiction of the Unitary State of the Republic of Indonesia (NKRI) which is separate from customs territory so that it is free from the imposition of import duty, value-added tax, sales tax on luxury goods and excise. However, in article 11 paragraph 5 of Government Regulation instead of Law Number 1 of 2000 concerning FTZ and Free Ports, it is stated that the entry and release of goods to and from the FTZ and Free Port to the customs territory is subjected to customs management in the import and export. This indicates that the entry of goods from the FTZ and Free Port into the customs territory is an import activity for people who are in the customs territory or if export activities are released from within the customs territory so that the FTZ and Free Port are an area that is within the unified territory of the Republic of Indonesia but outside customs territory. On the contrary, according to Yusril Ihza Mahendra, in his introductory comments in Sutardi's book, he explained that Government Regulation Number 10 of 2012 concerning Customs Treatment of taxation and excise as well as procedures for the entry and release of goods to and from and located in areas that have been designated as FTZ and Free Ports are is a customs territory. This creates a conflict between the Customs Law (article 115 letter a) and the Law on FTZ and Free Ports (article 11 paragraph 5), which is considered a vulnerable point for judicial review to the Supreme Court. On the other side Kenji Omi (2019) mention that the definition set by the RKC only states that 'goods' located in FTZ are deemed to be outside of Customs territory solely to apply import duties and taxes and means that FTZ itself is included in Customs

Territory, where Customs laws Customs must be enforced. The Customs controls must therefore be fully enforceable and enforceable.

This lack of clarity might affect the competitiveness of the Batam Bintan and Karimun FTZ and Free Port in institutional factors, policy and governance factors (Wahyuni *et al.*, 2010). Furthermore, Zaenudin (2017) in his research on Regional Autonomy Practices in Batam: Dynamics and Problems in the Implementation of Free Trade Zone (FTZ) Policies, stated that there is an inconsistency in regulations between the central government (DGCE) and business in interpreting the definition of FTZ in a specific regulation is similar to other customs territory and supervision of the FTZ area definition. Kwan Kee (2015) recommend that the current policy priority in FTZ BBK should be to improve the existing investment climate and the business environment.

CONCLUSION

Customs territory is important in the concept of customs because it has extensive implications. The definition of Customs territory must be clear because it has affected the management of import and export of customs policies, customs jurisdiction and related to customs facilities (FTZ). However, unfortunately, in the customs law, the term 'certain location' is not clearly explained. Additional explanation "certain locations" on customs territory in articles of customs law is needed to clarify understanding. This study also recommends to DGCE to redefine a clear definition exclusively on Customs Territory combines the notion of territorial waters from UNCLOS 1982. Therefore, a revision of the Customs Law related to the definition of customs territory is important to determine customs policy directions and consider the new customs law.

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