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Normative Conflict Between the ACFTA Agreement and National Customs Regulations in the Application of Form E Certificates of Origin: A Study of Tax Court Decisions Regarding the Denial of Preferential Tariffs

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Abstract

This article examined the legal standing of ACFTA within Indonesia's customs law system, identified the forms of normative conflict between ACFTA and domestic regulations, and analyzed the legal reasoning applied by the Indonesian Tax Court in resolving such disputes. This study employed normative (doctrinal) legal research using statutory, conceptual, and case approaches, analyzing nine Tax Court decisions through the theoretical frameworks of Gustav Radbruch's legal certainty theory, Kelsen–Nawiasky's norm hierarchy theory, and the substance-over-form principle. The findings indicated that ACFTA formally held the status of a Presidential Regulation within Indonesia's legal hierarchy but remained fully binding under the principle of pacta sunt servanda. Therefore, the right to preferential tariffs was substantive and could not be nullified solely due to procedural non-compliance that did not affect the material truth of the goods' origin. The identified normative conflict was multi-layered, encompassing hierarchical-vertical, teleological, proportionality, and interpretive dimensions. Analysis of the nine decisions revealed a dominant substantive-hierarchical approach that aligned with all three theoretical frameworks; however, consistent dissenting opinions in six of the nine decisions indicated a systemic deficit in legal certainty. This research formulated a four-pillar model for resolving normative conflicts, which may serve as a reference for the Directorate General of Customs and Excise, the Ministry of Finance, and the Tax Court in strengthening legal certainty for customs and international trade stakeholders.

INTRODUCTION

The ASEAN-China Free Trade Area (ACFTA) is one of the most important regional economic cooperation frameworks in which Indonesia has participated since its implementation in 2010. The preferential tariff facilities provided under ACFTA can only be utilized by importers if the imported goods are proven to fulfill the Rules of Origin (RoO) requirements, as evidenced by the Certificate of Origin (SKA) Form E. Based on the Revised Operational Certification Procedures (OCP) for ACFTA, particularly Rule 15, Form E remains valid for one year from the date of issuance by the authorized issuing body in the exporting country.1 These international provisions aim to accommodate the complexity of global supply chains and address potential administrative delays commonly encountered in international trade transactions.

The problem emerges when these provisions interact with Indonesian domestic regulations. The Directorate General of Customs and Excise (Direktorat Jenderal Bea dan Cukai / DJBC), through the Regulation of the Minister of Finance (PMK) Number

229/PMK.04/2017,2 as amended by PMK Number 35/PMK.04/2023,3 requires the submission of Form E within a significantly shorter period: one working day for red-line importers, three working days for green-lane importers, and five working days for importers with MITA/AEO status, calculated from the issuance of the goods release document. The inconsistency between the one-year validity period stipulated in Rule 15 of the ACFTA OCP and the shorter submission deadlines regulated under the PMK constitutes the central research phenomenon and the basis of the normative conflict examined in this article.

The research gap underlying this study was identified through an examination of previous literature. Yunindhar and Nuryanah's study4 on obstacles to the implementation of free trade agreements in Indonesia primarily focused on macro-level policy aspects and did not include empirical analysis of judicial decisions. Kusumawati and Trihastuti5 examined the post-importation claim mechanism but did not develop a theoretical analysis of normative conflicts. Meanwhile, Cahaya Rizputra6 discussed the position of international agreements within the hierarchy of Indonesian laws and regulations in general but did not specifically address Form E or ACFTA implementation issues. Li's study7 provided a procedural overview of Form E from the perspective of international trade law but did not analyze potential conflicts between ACFTA provisions and Indonesian domestic regulations. Therefore, no previous research has comprehensively integrated the analysis of normative conflicts between ACFTA and PMK provisions with an examination of the ratio decidendi of Tax Court decisions through the combined perspectives of legal certainty theory, the hierarchy of norms theory, and the substance-over-form principle. This research gap represents the novelty and primary contribution of this article to the development of customs and international trade law in Indonesia.

The practical manifestation of these theoretical gaps can be observed in judicial practice. DJBC has issued Tariff and/or Customs Value Determination Letters (Surat Penetapan Tarif dan/atau Nilai Pabean / SPTNP) that revoke ACFTA preferential tariff facilities for importers considered to have submitted Form E beyond the prescribed period, even when the documents were authentic, valid, and compliant with ACFTA requirements. Consequently, several disputes have been brought before the Tax Court, resulting in inconsistent judicial decisions. Some panels of judges have applied the substance-over-form principle and granted importers' appeals when the origin of goods was substantively proven, while other panels have rejected appeals by emphasizing procedural compliance with PMK provisions as binding positive law. This inconsistency in judicial reasoning has generated legal uncertainty that may negatively affect the business climate and the confidence of international trade actors in Indonesia's customs dispute resolution system.

The issues examined in this article also involve significant philosophical implications. Indonesia ratified ACFTA through Presidential Regulation Number 112 of 2018,8 thereby establishing its legal position within the national regulatory framework, while the PMK provisions governing Form E submission procedures occupy a lower level within the hierarchy of legislation. When a lower-level norm effectively overrides the implementation of a higher-level norm, fundamental questions arise regarding the consistency of applying the principle of lex superior derogat legi inferiori within Indonesian customs administration. This issue is closely related to the concept of legal certainty (Rechtssicherheit) developed by Gustav Radbruch, particularly regarding whether the rejection of preferential tariffs solely on

procedural grounds aligns with the values of justice, utility, and certainty that constitute the foundation of law. This philosophical dimension distinguishes the present research from purely technical-administrative studies and strengthens its relevance to the development of customs law discourse based on sound legal theory.

Based on this background, this study aimed to: (1) examine the legal position of ACFTA within the Indonesian customs law framework concerning the granting of preferential tariffs based on Form E; (2) identify the forms of normative conflict between ACFTA provisions and domestic procedural regulations regarding Form E submission practices; and (3) analyze the legal considerations applied by the Tax Court in resolving disputes concerning the rejection of ACFTA preferential tariffs due to Form E issues from the perspectives of legal certainty, hierarchy of norms, and the substance-over-form principle.

The relevance and contribution of this research are multidimensional. Theoretically, this article contributes to the literature on customs law and international trade law by integrating three theoretical perspectives—the grand theory of Radbruch's legal certainty, the middle-range theory of Kelsen–Nawiasky's hierarchy of norms, and the applied substance-over-form principle—into a comprehensive analytical framework for examining Form E disputes. Practically, this research provides recommendations for the Ministry of Finance and the House of Representatives in harmonizing PMK provisions with Indonesia's international commitments, supports the Tax Court in strengthening judicial consistency, and assists importers and customs consultants in understanding their legal rights and compliance strategies. Thus, this study is expected to serve as a reference for resolving similar normative conflicts that may arise under other free trade agreement schemes involving Indonesia.

METHOD

This study employed normative (doctrinal) legal research to examine legal norms, including legal principles, international agreements, and court decisions. This research approach was selected because the issue examined involved a normative conflict between ACFTA provisions and domestic customs regulations, which required analysis of legal texts and judicial reasoning rather than empirical investigation of social behavior 12.

This study applied three complementary approaches. The statute approach was conducted through an examination of the ACFTA agreement and its Revised OCP, the Customs Law, the Law on International Treaties, the Law on the Establishment of Laws and Regulations, Presidential Regulation Number 112 of 2018, PMK Number 229/PMK.04/2017, PMK Number 35/PMK.04/2023, and the 1969 Vienna Convention. The conceptual approach was applied through an analysis of the concepts of norm conflict, Radbruch's legal certainty theory, Kelsen–Nawiasky's hierarchy of norms theory, lex superior derogat legi inferiori, and the substance-over-form principle. The case approach was conducted through the analysis of nine Tax Court decisions selected based on three criteria: relevance to ACFTA preferential tariff disputes, involvement of procedural issues related to Form E submission, and the availability of sufficient legal reasoning for analyzing the ratio decidendi. The analyzed decisions included PUT-000887,3 PUT-006240,4 PUT-009672,5 PUT-009673,6 PUT-011037, PUT-011277, PUT-011723 (under the PMK 229/2017 regime),789 as well as PUT-004579 and PUT-009629 (under the PMK 35/2023 regime).1011 These decisions were issued by at least five different judicial panels between 2020 and 2025, providing an adequate basis for examining patterns of

legal reasoning in similar disputes. A limited comparative approach was also applied by comparing ACFTA provisions with ATIGA provisions and post-importation preferential tariff claim mechanisms practiced in ASEAN countries.

The legal materials used in this study were classified into three categories based on their characteristics and functions. Primary legal materials consisted of ACFTA international agreements and instruments, including the Revised OCP, the Annex on Rules of Origin, and the 1969 Vienna Convention, as well as national legal instruments, including the 1945 Constitution of the Republic of Indonesia, the Customs Law, the Law on International Treaties, the Tax Court Law, and the Law on the Establishment of Laws and Regulations. Secondary legal materials included academic publications on international trade, customs regulation, and legal theory, including relevant journal articles, previous research findings, and studies published by international organizations such as the ASEAN Secretariat and ERIA. Tertiary legal materials were used as supporting references, including legal dictionaries and customs terminology references published by the World Customs Organization (WCO).

Legal materials were collected through two complementary techniques. First, library research was conducted by reviewing legal documents from official repositories, including the Legal Documentation and Information Network (JDIH) of the Ministry of Finance, the National JDIH, and the ASEAN Secretariat, as well as academic databases such as Google Scholar, Garuda, and SINTA-indexed legal journal portals. Second, Tax Court decisions were traced systematically through the Tax Court Secretariat repository using keywords including Form E, ACFTA Certificate of Origin (SKA ACFTA), preferential tariff, late submission of Certificate of Origin, ACFTA import duties, and rules of origin. The identified decisions were screened based on the predetermined selection criteria, resulting in nine decisions selected as purposive samples. These consisted of decisions issued under the PMK 229/2017 regime involving delayed Form E submissions and decisions under the PMK 35/2023 regime involving issues related to digital document submission.

The validity of the selected decisions was strengthened by the diversity of judicial panels and the inclusion of two different regulatory regimes. The decisions involved multiple panels, including M.IXB, M.XIXA, M.XIXB, and M.VIIA, allowing the study to examine whether patterns of legal reasoning remained consistent across different judicial compositions and regulatory periods. Furthermore, triangulation between normative analysis of legal provisions and analysis of judicial decisions served as a form of cross-validation, ensuring that the conclusions were not based solely on a single category of legal material.

The analysis of legal materials was conducted qualitatively through six stages: inventorying and classifying legal norms based on their hierarchy and substance; interpreting legal provisions through grammatical, systematic, and teleological approaches; analyzing normative conflicts to identify their forms and sources; examining the ratio decidendi of the nine Tax Court decisions to distinguish legal reasoning from obiter dicta; evaluating the findings through the three theoretical frameworks; and formulating prescriptive conclusions that described both the existing legal conditions (sein) and the conditions that should be achieved (das sollen). These analytical stages were organized into four phases: normative mapping, empirical-normative analysis, theoretical evaluation, and prescriptive formulation, ensuring that the research provided a comprehensive and systematic response to the formulated research problems.

RESULTS AND DISCUSSION

Customs Law, Preferential Tariffs, and the Position of the Tax Court

Customs includes the entire arrangement of the movement of goods entering or leaving the customs territory as well as the collection of import and export duties, as stipulated in Law Number 10 of 1995 concerning Customs as amended by Law Number 17 of 2006 (Law No. 10 of 1995 on Customs, as amended by Law No. 17 of 2006). DJBC, as an agency under the Ministry of Finance, carries out its dual function as a state revenue collector and trade facilitator, including in providing preferential tariff facilities based on free trade agreements that Indonesia has ratified. The preferential tariff itself is an import duty rate that is lower than the *Most Favoured Nation* (MFN) tariff, which can only be enjoyed by goods that meet the *rules of origin* of a particular free trade agreement. If a dispute arises regarding the determination of tariffs or customs values between the importer and DJBC, the settlement is under the absolute competence of the Tax Court as regulated by Law Number 14 of 2002 (Law No. 14 of 2002 on the Tax Court).

ACFTA and the Certificate of Origin Form E

ACFTA was established through *the Framework Agreement on Comprehensive Economic Co-operation* signed on November 4, 2002 and effective from January 1, 2010, with the ratification of its amendment protocol in Indonesia through Presidential Regulation Number 112 of 2018. The ACFTA's preferential tariff facility is required upon the fulfillment of substantial criteria in the form *of the Rules of Origin*—including *the criteria of Wholly Obtained*, *Regional Value Content* of at least 40%, and *Change in Tariff Heading*—and the procedural criteria in the form of the submission of a Form E issued by the competent authority. *The ACFTA's Revised OCP* sets out in detail the publication procedures (Rules 11–18), including Rule 15 which guarantees a one-year validity period, and Rule 18 which allows for retrospective publication in the event of an accidental mistake or omission. This retrospective provision affirms ACFTA's philosophy that the essence of the origin of the goods should take precedence over the procedural perfection of the document (ASEAN Secretariat & ERIA, 2017; Medalla & Rosellon, 2012).

The Standing of International Treaties in the Indonesian Legal System

The relationship between international law and national law has traditionally been explained through the debates of monism and dualism (Maniruzzaman, 2001). Indonesia adheres to a mixed approach that tends to be dualistic but absorbs monistic elements as reflected in Law Number 24 of 2000 concerning International Agreements (Law No. 24 of 2000 on International Agreements; Firdaus, 2014; Juwana, 2019). International agreements that do not concern the strategic interests of the state can be ratified through a Presidential Regulation, so that the ACFTA norm occupies a position at the level of a Presidential Regulation in the hierarchy of laws and regulations according to Law Number 12 of 2011 (Law No. 12 of 2011 on the Establishment of Laws and Regulations, as amended by Law No. 15 of 2019)—higher than a Ministerial Regulation (Huda, n.d.; Listiningrum, 2019). Regardless of its formal status, the content of the ACFTA remains fully binding on Indonesia based on the principle *of pacta sunt servanda* as stipulated in Articles 26 and 27 of the 1969 Vienna

Convention on the Law of Treaties (Vienna Convention on the Law of Treaties, 1969; Yunanto, 2019).

Theoretical Foundation and Conceptual Framework

This research arranges three layers of theory hierarchically. At the grand theory level, Gustav Radbruch's theory of legal certainty outlines three basic values of law—justice (*Gerechtigkeit*), utility (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*)—which are interdependent but must be balanced, with Radbruch's formula as the determining rule when positive law achieves intolerable injustice (Bix, 2011; Samekto, 2025; Santoso, 2021). At the level of middle range theory, *Hans Kelsen's Stufenbau Theorie* visualizes legal norms as hierarchical pyramids whose validity is derived from higher norms, both formally and materially (Murtadho et al., 2024; Muttaqin et al., 2024; Situmorang et al., n.d.), which Hans Nawiasky later developed into four layers of norms from *Staatsfundamentalnorm* to *Verordnung* (Manullang, 2020). At the level of applied theory, the principle *of lex superior derogat legi inferiori* and the principle *of substance over form* are used, which is a principle that prioritizes the essence or substance of a legal action over its formality, as developed in the tradition of international tax and trade law (Main, 2010).

Synthesis of Prior Research and the Research Gap

As a synthesis of the four sub-sections above, a review of the previous literature shows that the study of ACFTA and Form E is generally separated into three groups that have not been integrated with each other. The first group focuses on macro policy aspects and obstacles to the implementation of FTA in general (Sara & Hasnawan, 2024; Wardani et al., 2024; Yunindhar & Nuryanah, 2023), without delving into doctrinal normative conflicts. The second group examines technical mechanisms such as post-import claims (Kusumawati & Trihastuti, 2024) or the sectoral impact of ACFTA on specific industries (Erni, 2025), without constructing a comprehensive theoretical framework of norm conflicts. The third group discusses the position of international treaties in the hierarchy of national law in general (Cahaya Rizputra, 2025; Firdaus, 2014; Listiningrum, 2019), without linking them specifically to the ACFTA or the Tax Court rulings. This study fills the gap between the three groups by bringing together normative conflict analysis, empirical analysis of court decisions, and the integration of three layers of legal theory into a single coherent framework—an approach that has not been found in the literature reviewed.

The three layers of theory are arranged into the following framework of thought: ACFTA guarantees the importer's substantive right to preferential tariffs for goods that meet the RoO, evidenced by Form E; PMK added procedural requirements in the form of a deadline for submission in the number of working days; normative nonconformities arise when the FMD substantially reduces the rights guaranteed by the ACFTA; and the Tax Court becomes a forum where this inconsistency is empirically tested through the application of the three layers of theory, resulting in normative evaluation as well as prescriptive recommendations for the resolution of the conflict in question.

The Legal Standing of ACFTA within Indonesia's Customs Law System

An analysis of the legal basis of ACFTA in Indonesia shows that this agreement was ratified gradually: it began to take effect through Presidential Decree No. 48 of 2004, then it was updated through Presidential Regulation No. 37 of 2011, and refined again through Presidential Regulation No. 112 of 2018. An instrument directly relevant to this study is *the*

Revised OCP ACFTA, where Rule 15 stipulates the validity period of Form E for one year, while Rule 14 provides limited delegation to the importing country to regulate the technical aspects of receiving documents in accordance with its domestic law. A comparative review by the ASEAN Secretariat and ERIA (ASEAN Secretariat & ERIA, 2017) of 47 preferential *rules of origin* schemes shows that the one-year validity period is the most commonly adopted pattern (16 out of 47 FTAs), so the drastic restriction by Indonesia's domestic regulations to three working days is a significant departure from the original intent of the ACFTA drafters, rather than a reasonable technical elaboration.

Referring to Article 7 paragraph (1) of Law Number 12 of 2011, the Presidential Regulation that ratifies ACFTA occupies the fifth position in the hierarchy of laws and regulations—under the law but above the Ministerial Regulation. However, an evaluation that focuses only on the formal-hierarchical dimension will result in erroneous conclusions. The ACFTA has two dimensions that must be assessed separately: the formality dimension of its ratification instrument, and the substantial dimension in the form of fully binding international legal obligations based on the principles *of pacta sunt servanda* as stipulated in Article 26 of the 1969 Vienna Convention (Yunanto, 2019). Article 27 of the same Convention expressly prohibits states from using their national laws as justification for failure to comply with international treaty obligations. Consequently, DJBC cannot use PMK as a basis for denying ACFTA-guaranteed preferential tariff rights if the refusal is not based on substantial non-compliance with the RoO, but merely an administrative delay within a matter of days.

The hierarchical relationship between the three legal instruments—Rule 15 of the ACFTA OCP (through the Presidential Regulation), Article 16 paragraph (1) in conjunction with Article 85 paragraph (3) of the Customs Law, and PMK—shows a pattern of progressive norm contraction and is inversely proportional to its hierarchical position. The highest norm (international treaty) guarantees a one-year validity period; intermediate norms (laws) provide the authority to set tariffs within 30 days from the Notification of Import of Goods (PIB); while the lowest norm (PMK) actually narrows the period to three working days accompanied by the heaviest sanction, namely the revocation of substantive rights of preferential tariffs. In Nawiasky's framework, the Customs Law is positioned as *Formell Gesetz* which is absolutely superior to the PMK as *Verordnung*, so that the provisions of the PMK that eliminate substantive rights due to administrative delays alone have exceeded the limits of the delegated authority of Article 13 paragraph (2) of the Customs Law—ultra *vires* because they have never been ordered by the norm that delegated them.

The mapping of the hierarchy and substance of the term of Form E can be summarized as follows: Rule 15 of the OCP ACFTA, which is at the level of Presidential Regulation through Presidential Regulation Number 112 of 2018, stipulates that Form E is valid for one year from the date of issuance, without regulating sanctions for revocation of rights for late submission. Article 16 paragraph (1) in conjunction with Article 85 paragraph (3) of Law Number 17 of 2006 concerning Customs, which has a legal status, authorizes the Customs and Excise Officer to set the tariff within 30 days from the Notification of Import of Goods, with the consequence of proportionate administrative sanctions, not the revocation of substantive rights. On the other hand, PMK Number 229/PMK.04/2017 juncto PMK Number 35/PMK.04/2023, which is at the level of ministerial regulation as an implementing regulation (*Verordnung*), requires the submission of Form E a maximum of three working days from the SPPB with the consequence

of revocation of preferential tariff rights and the imposition of MFN tariffs. This mapping clearly shows a progressive contraction of norms: the period of time guaranteed by higher norms (one year at the level of international agreements, 30 days at the level of legislation) is instead drastically narrowed by the norm at the lowest position in the hierarchy chain (three working days at the level of ministerial regulation)—a normative anomaly rarely found in sound legislative practice.

This pattern of reversal of the practical hierarchy—in which the norms that should be subject are actually applied effectively in the day-to-day administration of customs—is a symptom of what administrative law experts call the phenomenon of "*the tyranny of implementing regulations*", i.e. the tendency of the bureaucracy to treat its own implementing regulations as the highest norm in everyday practice, overriding the formally higher norms but is considered too abstract to apply directly. The courts, as the institution that serves to correct this kind of practical hierarchy reversal, plays a central role that will be discussed further in the next sub-section.

The conceptual fallacy underlying the practice of refusal of preferential tariffs is to view the submission of Form E as a stand-alone procedural obligation, regardless of the substantive rights it guarantees. In fact, the right to preferential tariff arises when the goods have met the RoO, not when Form E is submitted to the customs officer; Form E is only an instrument of verification (declarative condition), not a condition that constitutes the right itself (a constitutive condition). This understanding is reinforced by Rule 18 *of the Revised OCP ACFTA* which allows for the retrospective issuance of Form E, which explicitly indicates that the essence of the origin of the goods takes precedence over the completeness of the formalities of the document.

The Anatomy of Normative Conflict between ACFTA and Domestic Procedural Regulations

Further analysis revealed that the normative conflict between ACFTA and FMD is multi-layered, consisting of four interrelated typologies. First, the hierarchical-vertical conflict, namely the conflict between Rule 15 of the ACFTA OCP (one year) and Article 16 paragraph (1) of the Customs Law (30 days) on the one hand, and PMK (three working days) on the other. This conflict is doctrinally supposed to be resolved through the principle *of lex superior derogat legi inferiori*, whereby the lower norm must be subject to the higher norm. Second, teleological conflict, namely the conflict between the goal of facilitating free trade which is the essence of ACFTA and the goal of procedural order in customs administration that the PMK wants to achieve; When procedural order is upheld at the expense of substantive rights, implementing instruments that are supposed to facilitate the goals of higher norms actually hinder and negate them. Third, the conflict of proportionality, namely the significant disparity between the weight of administrative-formal violations (delays of several days) and the weight of material-economic sanctions (revocation of the right of preference, imposition of MFN tariffs that can reach billions of rupiah); Article 85 paragraph (3) of the Customs Law has actually hinted at a proportionate form of administrative sanction, not the revocation of substantive rights. Fourth, the conflict of interpretation, namely the difference in interpretation of the scope of the delegation of Rule 14 of the OCP ACFTA between the DJBC—which views it as a blanket *authority*—and the majority of the panel of judges who interpret it in a limited

way, only covers the technical-operational aspects of the submission of documents, not the determination of the legal consequences of delay.

Textual, systematic, and teleological arguments support a limited interpretation of Rule 14. Textually, the delegation clause in the provision relates to the receipt of documents in the specific scenario of a third-party invoice, not a general provision regarding the consequences of delay. Systematically, if Rule 14 is intended to give the importing country complete freedom to determine the legal consequences of delay, the existence of Rule 15 which explicitly prescribes a one-year validity period becomes meaningless—an outcome of interpretation that must be avoided under the principle *of effet utile* in international treaty law. Telelogically, the explicit purpose of ACFTA is to facilitate free trade, not to create *a disguised trade barrier* through domestic procedures. This interpretation is further reinforced by Rule 16 of the ACFTA OCP, which asserts that a minor discrepancy does not automatically invalidate the validity of the certificate of origin, as long as the origin of the goods is not in doubt—a philosophy consistent throughout *the ASEAN* rules of origin architecture.

Against the argument that the phrase "*domestic laws, regulations and administrative rules of the importing party*" in Rule 14 gives the importing country full freedom to regulate the consequences of delay laws, there are at least three counterarguments that are normatively stronger, as outlined above: a textual argument that limits the scope of the clause in the third-party invoice scenario; systematic arguments that keep Rule 15 from losing its meaning (*effet utile*); and the teleological argument that prevents the abuse of delegates from becoming a veiled trade barrier. These three arguments are consistent with the rules of interpretation of international agreements in Articles 31 to 33 of the 1969 Vienna Convention, which require interpretation to be carried out in good faith according to the common meaning in the context of the agreement and by referring to the object *and purpose*.

The four typologies of conflict do not stand alone, but form a normative conflict ecosystem that shows that the issue of Form E ACFTA is much deeper than just administrative technicalities. It is a systemic issue of how domestic law interacts with international treaty obligations and how substantive justice must be balanced with formal-procedural legal certainty.

2.9 Analysis of the Tax Court's Legal Reasoning

The nine judgments analyzed constitute a corpus of jurisprudence representative of the Form E dispute pattern in the ACFTA scheme, covering a wide range of commodities ranging from *air conditioners*, motorcycles, stainless steel products, alloy steel rods, to melamine molds and engine bearing components—a diversity of disputes that reinforces the generalization of findings across industry sectors. The PUT-000887 ruling, which relates to the import *of air conditioners* from China, became an opening precedent, where DJBC rejected the preferential tariff because Form E was submitted after the third day since the SPPB, without any dispute regarding the authenticity of the documents or the status of the origin of the goods. The Panel unanimously granted the appeal by referring to the 30-day period of Article 16 paragraph (1) of the Customs Law as a firm application of the principle *of lex superior derogat legi inferiori*, without being accompanied by *a dissenting opinion*—indicating a complete normative consensus at the early stage of this jurisprudence series. The PUT-006240 decision takes the argument one step further by explicitly stating that international rules in the *free trade area* scheme cannot be limited by lower domestic rules without the agreement of both

parties, thus applying pacta sunt servanda directly at the agreement level, not just a comparison of PMK with domestic law.

Decision PUT-006240, which relates to the import of 41 types of motorcycles from China and was rejected by the DJBC because the hardcopy of Form E was only submitted on the eighth day since the SPPB, granted the appeal unanimously with considerations that brought the analysis of the hierarchy of norms one step ahead of PUT-000887: the panel not only referred to the Customs Law, but explicitly stated that as long as Form E is valid and submitted within the deadline for customs determination authority, Tariff preferences remain legally binding. This ruling is the first in a series of jurisprudence that places direct arguments at the level of international agreements, rather than simply comparisons of FMD versus domestic law, thus closing the argumentative loophole that could previously be exploited by parties who adhere to a formalistic interpretation of Rule 14 of the ACFTA's OCP.

The series of decisions PUT-009672, PUT-009673, PUT-011037 provide significant jurisprudence value because they involve the same applicant and commodity—*Cold Rolled* and *Prime Stainless Steel Coils*—with almost identical delays, but decided by different panels (PUT-009672 and PUT-009673 by M.XIXA; PUT-011037 by M.XIXB), which independently reached the same ratio decidendi: the substance of the origin of the goods outweighed the procedural weaknesses, and the three-day delivery obligation was not in line with the authority of the 30-day limit of the Customs Law. This consistency across assemblies indicates that the substantive-hierarchical approach is not a personal preference of one assembly, but a normative logic that can be replicated. These three decisions were also the first to emerge a consistent *dissenting opinion* from one of the member judges, who argued that Rule 14 of the ACFTA's OCP expressly delegated the obligation to submit the SKA to domestic law so that the delay aborted the right of preference—a formalistic-positivistic approach that, as analyzed in the previous section, contains a hermeneutical error of failing to check whether the PMK has exceeded the boundary. The authority of its delegates, at the same time, ignores the principle that in a conflict between the lower norm and the higher norm, the judge is obliged to set aside the lower norm, not the other way around.

Decision PUT-011277, which relates to the import of hot alloy steel rods from China with Form E that has been proven to be valid issued by the competent authority, is the most explicit reference in applying the principle *of substance over form*, with the assembly's unequivocal statement that the timing of submission of physical documents is not a crucial and fundamental factor in determining the validity of the use of ACFTA preferential tariffs, provided that the document is valid, while the Appellant still has a period of 30 days to research and set the tariff. Decision PUT-011723, which relates to the import of melamine molds and experienced an increase in tariff from 0% to MFN 5% due to Form E being submitted four days after SPPB, integrates two normative sources at once—Rule 15 OCP ACFTA and Article 16 paragraph (1) of the Customs Law—in one coherent consideration, although again colored by *dissenting opinions* of a member judge who argued that Rule 14 of the ACFTA's OCP explicitly delegated to domestic rules and failure to meet the three-day deadline legally eliminated the right to preferential tariffs.

The last two decisions, PUT-004579 and PUT-009629, were completed under the PMK regime Number 35/PMK.04/2023 which brought two significant innovations: the official recognition of the submission *of color SKA softcopies* through electronic portals

(CEISA/SLIM) as a legal alternative to physical hardcopies, and the provision that if the importer has submitted a *softcopy*, the original hardcopy is no longer mandatory. In PUT-004579, which imported MBBR Media PE, the panel granted the appeal on the grounds that the applicant was proven to have uploaded *a softcopy* at the time of the import notification within a validity period of 12 months, so that the procedural obligations had been legally fulfilled through the customs digital platform, although again it was colored by *a dissenting opinion* from another judge who argued that *the softcopy* was only accepted after the deadline for the issuance of SPPB—a formalistic approach that is now easier to break because PMK 35/2023 itself has explicitly recognized the digital mechanism. In PUT-009629, which imported *bearings* and *pillow blocks* from China and experienced a technical failure of the E-Form transmission electronic system due to *an error on the part of the* Chinese supplier, the panel nevertheless granted the appeal by affirming that despite the delay in the delivery of electronic data, the submission of Form E was still within the time range of the Appellant's authority to set the customs tariff (30 days from the PIB), and the technical failure Transmissions beyond the control of the importer cannot eliminate the right of material preference protected by international treaties. This decision opens up a new legal dimension regarding the risk allocation of customs digital infrastructure failures which will be increasingly relevant as the CEISA and INSW systems develop in the future, as well as again colored by *dissenting opinions* that apply the legal fiction principle that the risk of *system errors* is fully borne by importers.

A comparative synthesis of the nine verdicts yielded some important findings. First, eight of the nine decisions consistently adopted a substantive-hierarchical approach that prioritized the material truth of the origin of the goods over procedural formalities. Second, *dissenting opinions* appeared consistently in six of the nine decisions, indicating the existence of two structurally conflicting legal paradigms in the Tax Court system: formalistic positivism and hierarchical substantialism. Third, the change from PMK 229/2017 to PMK 35/2023 does not resolve the difference in normative interpretation, but only shifts the focus of the conflict from the submission of physical documents to the submission of digital documents. Fourth, none of the nine decisions questioned the validity of Form E or the truth of the origin of the goods substantially, asserting that this conflict was purely procedural-administrative. Fifth, there is an escalation in the depth of the normative hierarchy argument throughout the series of rulings, from simply comparing PMK with the Customs Law to explicitly including an analysis of the position of ACFTA through the Presidential Decree—an indication of the institutional learning process among judges, even though the Tax Court does not formally adhere to a binding precedent system (*stare decisis*)). Sixth, from the perspective of the distribution of the assembly and time, the nine decisions were decided by at least five different assemblies in the range of 2020 to 2025, covering both the PMK 229/2017 and PMK 35/2023 regimes. This distribution reinforces the external validity of the research's findings: the dominant substantive-hierarchical pattern is not an artifact of a single assembly or a particular period, but rather a relatively consistent and replicable pattern across different assembly compositions and regulatory regimes, a strong indication that the pattern reflects legal reasoning rooted in sound normative logic, not just statistical coincidence.

2.10 Evaluation Based on Gustav Radbruch's Theory of Legal Certainty

Tested with the three basic values of Radbruch law, the PMK's provisions regarding the deadline for submitting Form E resulted in mixed evaluations. From the aspect of clarity of the formulation, PMK offers high formal certainty because the three-working day deadline is definitive and does not raise textual doubts. However, from the aspect of systemic consistency, the PMK actually creates legal uncertainty because it contradicts higher norms—the one-year validity of Rule 15 of the ACFTA OCP and the 30-day period of Article 16 paragraph (1) of the Customs Law—so that importers are faced with three conflicting norms without clear direction on which norms must be adhered to, a condition that Radbruch calls the antinomy of norms. The inconsistency of the Tax Court's decision itself also worsens predictability, because the outcome of preferential tariff appeals has the potential to depend on the composition of the panel that handles cases, rather than on the legally applicable norms objectively—a failure of the judicial system to provide predictability as an element of legal certainty. This uncertainty in turn creates *real compliance costs* for business actors in the form of legal risk premiums that must be taken into account in the import cost structure.

From the aspect of fairness (*Gerechtigkeit*), an analysis of the nine judgments showed that in all cases, two relevant legal facts—the origin of the goods from an ACFTA member state and the validity of the issuance of Form E by the competent authority—proved positive, while the indication of abuse or fraud proved nil. The rejection of preferential tariffs simply because of a delay in the submission of documents for several days, which could result in a tariff difference of 5% to 20% of the value of imports, is contrary to Radbruch's principle of distributive fairness because it treats importers who are substantially entitled on an equal footing with importers who do not meet the RoO qualifications at all. Tested with the Radbruch Formula, the injustice resulting from the denial of preferential tariffs due to minor administrative delays, which impose significant economic losses on business actors with narrow profit margins, has exceeded the acceptable tolerance limits of the business community's legal consciousness, thus demanding the primacy of substantive justice values over mere formal certainty. The dimension of procedural justice is also an important note: the practice of DJBC directly setting MFN tariffs without giving importers the opportunity for clarification exacerbates the issue of fairness, different from a number of *other ASEAN rules of origin* schemes that regulate the obligation to clarify first.

From the aspect of usefulness (*Zweckmäßigkeit*), PMK does pursue legitimate goals in the form of efficiency of customs administration and acceleration of port waiting times. But these uses must be weighed against other, more fundamental uses: the smooth flow of international trade, the fulfillment of Indonesia's commitments as a member of the ACFTA, and Indonesia's credibility in the eyes (Sara & Hasnawan, 2024; Wardani et al., 2024) of trading partners. The rigid implementation of the PMK has the potential to send a signal that Indonesia's domestic technical regulations can be abused as a veiled trade barrier, contrary to the essence of free trade facilitation that is the goal of the ACFTA. The convergence of Radbruch's three values—legal certainty, justice, and utility—that consistently lead to a single common conclusion, rather than clashing with each other as is common in difficult legal cases, is a strong methodological

indication that the substantive-hierarchical approach is not merely a policy choice, but a coherent demand flowing from the philosophical foundations of the law itself.

2.11 Evaluation Based on the Kelsen-Nawiasky Norm Hierarchy Theory

Tested through the criteria of Kelsen material validity, FMD faces two problems that simultaneously weaken its validity claims. First, the inconsistency with the Customs Law: the restriction on the submission of Form E to three working days has reduced the period of fulfillment of documents from the 30 days guaranteed by law to three days stipulated by the PMK, a direct material contradiction that should render the PMK provision not having binding legal force based on the principle of *lex superior derogat legi inferiori*. Second, the inconsistency with Rule 15 of the ACFTA OCP which has been ratified through a Presidential Regulation: PMK which effectively limits the validity period of one year to three working days creates a material inconsistency with norms that rank higher in the hierarchy of laws and regulations. These two issues, when combined, show the phenomenon of norm derivation failure (*Ableitungsversagen*): PMK which is supposed to function as a derivative norm instead creates a new normative substance that is independent and contrary to the two norms of the source of authority.

An evaluation of the nine rulings shows that the majority of the panel has applied the principle *of lex superior derogat legi inferiori*, albeit with variations in the depth of analysis. Some rulings apply this principle to the level of comparison of PMK with the Customs Law alone, while others—especially those decided afterwards—deepen the analysis down to the level of the Presidential Regulation ratifying the ACFTA. This argumentative gap can be overcome through the *cascading hierarchical argument* method that traces the chain of norm validity in its entirety: first, checking the alignment of PMK with the delegation of Article 13 paragraph (2) of the Customs Law; second, checking the alignment of the substance of FMD with Article 16 paragraph (1) of the Customs Law; and third, checking the alignment of the substance of FMD with Rule 15 OCP ACFTA as ratified through the Presidential Regulation. Consistent application of this three-step method will result in a much more robust normative hierarchy argument that is difficult to break by formalistic arguments that only adhere to a narrow reading of Rule 14 of the ACFTA's OCP.

The above two issues, when combined, point to a phenomenon that in Kelsen's theory is called the failure of norm derivation (*Ableitungsversagen*): PMK, which is functionally supposed to act as a derivative norm (*abgeleitete Norm*) that technically describes the commands of a higher norm, instead creates a new normative substance that is independent and contrary to the two norms that are the source of its authority. In Kelsen's terminology, this phenomenon can be categorized as a legal product that is defective in original validity (*Geltungsmangel*), which theoretically cannot produce a binding legal obligation against the party whose rights are guaranteed by higher norms, even though factually the PMK is still applied by the DJBC apparatus until it is annulled by the competent forum—in this case the Tax Court through its appeal decision, or the Supreme Court through a *judicial review* mechanism against regulations under the law.

The inconsistencies in jurisprudence identified in this study have reached a level that can be categorized as a systemic crisis of legal certainty: if the outcome of an appeal depends on the composition of the panel that happens to examine the case, rather than on objective legal norms, the judicial system has failed to carry out its primary function of providing certainty

and predictability. From the perspective of the hierarchy of norms as a whole, it can be concluded that the PMK which stipulates sanctions for the revocation of preference tariffs for the delay in submitting Form E does not have valid material validity, because it is vertically contrary to the Presidential Regulation on the ratification of ACFTA and the Customs Law.

2.12 Evaluation Based on the Substance-Over-Form Principle

Consistent application of the *substance over form principle* requires a careful classification of the types of inconsistencies in Form E filings: formal-administrative inconsistencies, which do not affect the material correctness of legal facts (such as delays in the submission of physical documents or constraints on electronic transmission), are categorically different from substantive-fatal inconsistencies, which invalidate the substance of the legal facts themselves (such as falsification of documents or manipulation of original data goods). All nine decisions analyzed showed that the inconsistencies that occurred were exclusively formal-administrative; None of the cases involved substantive inconsistencies. Consequently, the rejection of the preferential tariff by the DJBC in the nine cases consistently applies legal consequences that should only apply to substantive-fatal defects (revocation of rights) to the actual facts belonging to the category of formal-administrative defects (which should only have the consequence of minor administrative sanctions).

The most explicit implementation of the substance *over form* principle is found in PUT-011277, while other rulings apply it implicitly through an emphasis on the material truth of the origin of the goods. The formalistic approach consistently adopted by *dissenting* judges has three fundamental weaknesses. First, the approach fails to distinguish constitutive requirements (RoO, which establishes rights) from declarative requirements (Form E, which proves rights). Second, such an approach cannot explain the existence of ACFTA Rule 18 OCP which permits the retrospective issuance of Form E, which explicitly recognizes that procedural omission does not necessarily eliminate substantive rights. Third, such an approach leads to normatively unacceptable consequences: two importers with identical profiles can be treated very differently—one enjoys a 0% tariff and the other pays an MFN tariff—simply because of a few days' difference in the submission of documents, an injustice that Radbruch calls *gesetzliches Unrecht*: an injustice that is legalized by positive law but unacceptable by legal consciousness. However, the application of *the substance over form principle* remains limited to certain contexts: in cases where the non-conformity touches the substance of the origin of the goods, such as falsification of documents, this principle cannot be used as an excuse to pass an unentitled importer.

2.13 A Prescriptive Model for Resolving the Normative Conflict

Based on the comprehensive evaluation above, this study formulates a normative conflict resolution model that relies on four mutually reinforcing pillars. The first pillar is a balanced criterion for accepting Form E, which prioritizes substantive-material criteria (validity of Form E, the truth of the origin of the goods, no indication of counterfeiting) with procedural criteria as support that can be relaxed if the substance has been met. The second pillar is the alignment of domestic regulations with ACFTA commitments, including the adjustment of the deadline for submitting Form E with a 30-day period of Article 16 paragraph (1) of the Customs Law, changes in late sanctions from revocation of rights to proportional administrative sanctions, and equality of physical and digital proof mechanisms. As a concrete elaboration, this study recommends the adoption of a *post-importation claim* mechanism as implemented by seven

out of ten ASEAN countries—Brunei Darussalam, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam—with the claim period varying from 30 days to one year after the import notification. The adoption of this mechanism does not conflict with the WTO or ACFTA commitments, as indicated by Article 3.23 of the RCEP on *Post-Importation Claims for Preferential Tariffs*, and would be a more comprehensive structural solution than simply extending the deadline for submission.

The proposed solution, if applied consistently, has the potential to make a substantial contribution to the three fundamental pillars of Radbruch law that are the main evaluative benchmarks of this research. In the context of legal certainty, this model is expected to address the conflict of norms that have been causing inconsistencies, as the PMK that is aligned with the Customs Law and ACFTA will provide firm, coherent, and anticipatory rules for all stakeholders, while inconsistencies in Tax Court decisions will be mitigated as a more structured analytical framework is available for judges. In the context of fairness, this approach will ensure that importers who are materially entitled to preferential tariffs will not lose their rights simply because of procedural constraints that do not indicate a substantial violation, so that the principle of equal treatment of equals can be met. In the context of benefits, this solution will strengthen Indonesia's image as a country with a stable and reliable international trade climate, increase trade partners' confidence in the consistency of ACFTA implementation, and strengthen Indonesia's position in negotiating next-generation free trade agreements such as RCEP and IPEF.

The third pillar is the jurisprudence guidelines for Tax Court judges, including the testing of the tiered hierarchy of norms, the testing of substance based on the characterization matrix of formal-administrative versus substantive-fatal defects, the proportionality test of sanctions, and the testing of the usefulness of ACFTA's trade facilitation objectives. The fourth pillar is the improvement of the pre-court dispute resolution mechanism, including the development of *an advance ruling mechanism* regarding the classification of Form E defects as well as *rule-to-rule* verification on *a government-to-government basis* between Indonesian customs authorities and issuing authorities in China. These four pillars are designed to reinforce each other: the first pillar establishes substantive criteria, the second pillar pours them into binding norms, the third pillar ensures consistency of its application in the judicial sphere, and the fourth pillar prevents the escalation of disputes to the path of litigation. Its implementation requires cross-institutional coordination between the Ministry of Finance, DJBC, the Tax Court, as well as the Ministry of Foreign Affairs and the Ministry of Trade, considering that the experience of the transition from PMK 229/2017 to PMK 35/2023 shows that the progress of digitalization alone has not resolved the root of the hierarchical-vertical problem that is at the core of this normative conflict.

2.14 Limited Comparative Review and Answers to the Research Questions

Limited comparative studies show that the problem of late submission of SKA is not an exclusive problem of ACFTA. Within the framework of ATIGA, Rule 14 *of the Rules of Origin* provides for provisions that are consistent with Rule 15 of the ACFTA's OCP—the Twelve-month validity period of Form D with a *force majeure exemption*—and Rule 16 of ATIGA explicitly governs the treatment of minor nonconformities, which assert that typographical errors or other minor nonconformities do not automatically invalidate the validity of the certificate of origin as long as the origin of the goods is not doubted. Form D dispute resolution

in Indonesia generally adopts an approach that is in line with that applied by the majority of the panel of judges of the Tax Court in the ACFTA case, where the substance of the origin of the goods takes precedence over procedural formalities.

A stronger comparison empirically can be drawn from the practice of post-import preferential tariff claim mechanisms among the ten ASEAN member states. The data shows that seven countries—Brunei Darussalam, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam—have adopted the mechanism with a claim period varying from 30 days (Vietnam) to one year (Brunei Darussalam, Laos, Malaysia, Singapore, Thailand) after the import notification, generally on the condition that the notification of claim intent is retroactive at the time of the initial import notification. On the other hand, Indonesia, along with Cambodia and Myanmar, are minority groups that still maintain a rigid "mandatory in advance" regime, without providing room for post-import correction. The fact that the majority of ASEAN countries have developed mechanisms that are philosophically in line with the principle *of substance over form* further confirms that the issues under consideration are structural in Indonesia's *rules of origin* regulatory architecture as a whole, not just a technical issue of one FTA scheme (Chiukira, 2019; Erni, 2025; Yanto et al., 2025). It should also be noted that the adoption of such mechanisms by seven ASEAN countries does not contradict WTO provisions or the basic commitments of the free trade agreements to which it refers, including the RCEP which explicitly contains Article 3.23 on *Post-Importation Claims for Preferential Tariff*—emphasizing that the obstacles to Indonesia adopting such a mechanism are not obstacles to international law, but merely domestic policy choices that can and should be revised.

As a final synthesis, the three formulations of this research problem are answered as follows. First, the legal position of the ACFTA is twofold: it is formally in the strata of the Presidential Regulation, but it is substantially fully binding under *the pacta sunt servanda*, so that the preferential tariff rights it guarantees are substantive, not merely procedural. Second, the normative conflict between ACFTA and PMK manifests itself in four typologies—hierarchical-vertical, teleological, proportionality, and interpretation—that are intertwined but boil down to one fundamental problem: the lower norm factually overrides the higher norm in the day-to-day practice of customs administration. Third, the legal considerations of the Tax Court show a dominant tendency towards the substantive-hierarchical method, which when tested with the three layers of theory of this research has proven to be successful in balancing legal certainty, justice, and usefulness in a convergent manner, although the existence *of consistent dissenting opinions* indicates a deficit of systemic legal certainty that requires further treatment through regulatory reform and more structured jurisprudence guidelines.

CONCLUSION

This research was motivated by a fundamental incompatibility between the validity period of the Form E Certificate of Origin stipulated under Rule 15 of the Revised Operational Certification Procedures (OCP) for ACFTA and the submission deadlines prescribed under Minister of Finance Regulation Number 229/PMK.04/2017 and Number 35/PMK.04/2023. This inconsistency has contributed to divergent Tax Court decisions in resolving disputes concerning the rejection of ACFTA preferential tariff facilities. Aiming to examine the legal position of ACFTA, the forms of normative conflict arising from its implementation, and the

legal considerations applied by the Tax Court in resolving such disputes, this normative legal research found that ACFTA held a dual position: formally, it was positioned at the level of a Presidential Regulation, but substantively, it remained fully binding under the principle of pacta sunt servanda. Therefore, the preferential tariff rights provided under ACFTA were substantive in nature and could not be denied solely due to procedural non-compliance that did not affect the material validity of the goods' origin. The identified normative conflicts were multi-layered, encompassing hierarchical-vertical, teleological, proportionality, and interpretive dimensions, with a pattern of norm contradiction in which lower-level regulations potentially restricted the implementation of higher-level international commitments. Analysis of the nine Tax Court decisions revealed the dominance of a substantive-hierarchical approach that aligned with Radbruch's three fundamental legal values, was consistent with Kelsen–Nawiasky's hierarchy of norms theory, and corresponded with the substance-over-form principle. However, the consistent dissenting opinions found in six of the nine decisions indicated a systemic deficit in legal certainty that required structural improvement rather than merely ad hoc technical adjustments.

Overall, the findings of this study confirmed that resolving normative conflicts between ACFTA and national customs regulations was not merely a technical-administrative issue but also a fundamental question concerning how Indonesia balanced legal certainty, fairness for business actors, and its commitment to the regional free trade framework. The four-pillar resolution model formulated in this study—consisting of balanced Form E acceptance criteria, harmonization of domestic regulations, jurisprudential guidelines, and improvement of pre-litigation mechanisms—was expected to serve as a practical reference for the Directorate General of Customs and Excise (Direktorat Jenderal Bea dan Cukai / DJBC), the Ministry of Finance, and the Tax Court in strengthening legal certainty for stakeholders in customs and international trade.

This research had several limitations that should be acknowledged. First, as normative legal research, this study did not involve interviews with DJBC officials, importer surveys, or field observations that could provide additional insight into the empirical dimensions of policy implementation. Second, although the nine Tax Court decisions analyzed represented diverse time periods and judicial panel compositions, they remained purposively selected samples and did not necessarily represent the entire population of Form E-related disputes adjudicated by the Tax Court. Third, comparative analysis with other free trade agreement schemes and post-importation claim mechanisms in ASEAN countries was conducted on a limited basis and was not intended to constitute a comprehensive comparative legal study. Future research should further examine similar issues within the AKFTA, AJCEP, and RCEP frameworks, as well as investigate the feasibility of implementing post-importation claim mechanisms within the broader context of Indonesian customs law. Further studies may also adopt a socio-legal approach to complement normative findings with empirical evidence regarding the impact of customs policies on business actors and state revenue.

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