



Entrepreneurship and the Criminalization of Innovation: Reconstructing the Boundaries of *Mens Rea* in Disruptive Logistics Innovation

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Abstract: This study examines the intersection between innovations in cross-border logistics business models, particularly commercial personal-shopping services (*jasa titip*) and digital logistics aggregators, and the customs criminal law regime. It addresses two principal issues: how the element of culpability, or *mens rea*, is constructed in customs offences relevant to logistics innovation, and how the boundaries of criminal liability and a regulatory sandbox framework for the sector should be reconstructed. Employing normative legal research, this study adopts statutory, conceptual, and case approaches. It analyses Articles 102, 103, 107, and 108 of Law No. 10 of 1995, as amended by Law No. 17 of 2006 on Customs; Article 36 and Articles 45–50 of Law No. 1 of 2023 on the Criminal Code; Supreme Court Regulation No. 13 of 2016; and regulations governing consignments and passengers' personal belongings. The analysis also draws on North Jakarta District Court Decision No. 185/Pid.Sus/2016/PN.Jkt.Utr in conjunction with Supreme Court Decision No. 294 K/Pid.Sus/2018. The findings demonstrate that customs offences remain fundamentally grounded in culpability; thus, the perception that strict liability applies is attributable more to law-enforcement practice than to an explicit normative mandate. The principal problem instead lies in the absence of clear parameters for distinguishing administrative non-compliance arising from incompatibilities in documentary formats from intentional conduct aimed at evading state levies. This study proposes six parameters for delineating *mens rea*, together with a normative design for a logistics regulatory sandbox encompassing participant eligibility criteria, limitations on scale and duration, data-sharing obligations, limited legal safeguards, and exit policies. This framework is intended to reposition criminal law as an *ultima ratio*.

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1. Introduction

The contemporary entrepreneurial landscape is undergoing a profound transformation, particularly in the logistics and global supply chain management

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sectors. The accelerating flow of international trade requires businesses to continuously innovate in order to streamline bureaucratic processes and enhance operational efficiency. Technological innovation plays a crucial role in improving the effectiveness of international logistics systems in the era of globalization (Cuandra et al., 2025). As a dynamic ecosystem, the export-import logistics sector no longer relies solely on conventional shipping methods but has evolved through the adoption of digital technologies and disruptive business models. Entrepreneurs operating in this sector are required to remain agile in navigating high operational costs and complex customs regulations. This development has given rise to various forms of service innovation that were previously unforeseen, ranging from cargo aggregators and digital platforms facilitating cross-border shipments to personal-shopping service models (*jasa titip*) that are now operated commercially and systematically. In regions with limited infrastructure, *jasa titip* services have emerged as a highly sought-after solution for reducing shipping costs (Fachruddin et al., 2026).

The rapid pace of such innovation, however, has encountered a positive legal framework that evolves considerably more slowly. The gap between relatively static legal rules and continuously evolving social dynamics frequently creates regulatory gaps (Indah & Triadi, 2025). Regulations governing customs, business licensing, and economic offences remain largely grounded in conventional commercial paradigms developed before integrated digital platforms became central to the distribution of goods. Although the *jasa titip* business model has become a common feature of contemporary commercial activity, the absence of detailed regulatory provisions concerning applicable tariffs and legal protection remains a significant challenge (Angraini et al., 2024; Ramadhan et al., 2023; Kusumastuti, 2020). Consequently, substantial regulatory gaps persist in facilitating an adaptive entrepreneurial ecosystem (Wala & Wala, 2025). At the same time, regulation often assumes an ambivalent role: while providing legal legitimacy on the one hand, it may constrain entrepreneurial activity through excessive bureaucracy on the other (Yusdira et al., 2025).

The tension between entrepreneurial agility and legal rigidity has contributed to an increasingly concerning trend toward the criminalization of business innovation. Executives of logistics companies and operators of export-import forwarding businesses frequently find themselves in a particularly vulnerable position. On the one hand, the pressures of global business competition compel them to continuously streamline supply chains to facilitate faster and more efficient flows of goods at competitive prices. Developments in market conditions and consumer service trends among millennials further demonstrate highly dynamic shifts in economic behavior (Anwar et al., 2022; Mulyanita, 2021). On the other hand, efficiency-driven practices undertaken within regulatory gaps remain particularly

susceptible to being brought within the ambit of economic criminal law when law enforcement authorities apply statutory provisions strictly and literally. Practices such as modifying shipping procedures, digitally consolidating hundreds of individual consignments, or simplifying manifest documentation to improve operational speed may consequently be narrowly construed as document manipulation or fraudulent conduct. From an entrepreneurial perspective, however, such practices may constitute forms of business risk-taking undertaken to maintain commercial viability amid intense competition in global supply chains, rather than conduct motivated by an intention to undermine the national economic order. An adaptive and risk-based regulatory framework should therefore facilitate the emergence and development of new entrepreneurial ventures rather than operate as an impediment to innovation (Fatonah et al., 2025).

This issue cannot be understood solely at an abstract level, as the tension arises in relation to specific statutory provisions. The consolidation of hundreds of packages belonging to multiple consumers into a single transport document intersects with the obligation to declare goods in the manifest as stipulated in Article 7A(2) in conjunction with Article 102(a). The simplification of goods descriptions intersects with Article 102(h) and Article 103(c), while the use of documents that do not accurately reflect the actual circumstances may potentially fall within the scope of Article 103(a). At the same time, company officers may be subject to Article 107 concerning customs brokerage service providers and Article 108 concerning criminal offences committed by legal entities.

On the other hand, the State has taken regulatory measures through Minister of Finance Regulation No. 96 of 2023 concerning Customs, Excise, and Tax Provisions on the Import and Export of Consignments, as well as Regulation of the Minister of Finance of the Republic of Indonesia No. 203/PMK.04/2017 concerning Provisions on the Export and Import of Goods Carried by Passengers and Crew Members of Means of Transport (Regulation of the Minister of Finance of the Republic of Indonesia No. PMK 34 of 2025 concerning Provisions on the Export and Import of Goods Carried by Passengers and Crew Members of Means of Transport, 2025). The intersection between longstanding criminal law provisions and more recent administrative regulations therefore necessitates a reassessment of the element of culpability.

A review of the existing literature indicates that this issue remains insufficiently addressed. Studies on *jasa titip* have generally been confined to private law and consumer protection (Ramadhan et al., 2023), market behavior and business models (Fachruddin et al., 2026; Angraini et al., 2024; Anwar et al., 2022; Iskandar et al., 2021) or administrative controversies surrounding goods carried by passengers (Kusumastuti, 2020). Research on regulatory sandboxes has

predominantly focused on the financial technology sector (Kartini et al., 2020) and the downstream commercialization of university research (Rizki, 2021), leaving their application to the customs regime largely unexplored. Studies concerning regulatory gaps and judicial law-finding have remained at the level of general legal theory without applying these concepts to the constituent elements of specific criminal offences (Atikah, 2023; Indah & Triadi, 2025). Meanwhile, the literature on entrepreneurship law has examined regulatory barriers primarily at the policy level (Yusdira et al., 2025; Wala & Wala, 2025; Fatonah et al., 2025), while legal scholarship on digital disruption has largely focused on the cyber domain (B. Pratama, 2017; Nugraha, 2021). To date, no study has been identified that specifically examines the element of culpability in customs offences as applied to emerging logistics business models and its implications for the evolving landscape of corporate criminal liability.

Based on the foregoing mapping of the literature, the novelty of this study lies in three principal contributions. First, it translates the normative debate on *mens rea* into an element-by-element analysis of the statutory provisions governing customs offences that have, in practice, been applied to digital logistics businesses, rather than merely advancing a general critique of criminalization. Second, it examines customs offences in light of Indonesia's new Criminal Code, particularly the principle of culpability and the framework of corporate criminal liability, thereby advancing the argument that strict liability should not serve as a general model for customs law enforcement. Third, this study proposes six parameters for demarcating business risk from criminal intent, together with an operational normative design for a logistics regulatory sandbox, including its limitations and an assessment of the legal instruments required for its implementation.

Building on the foregoing discussion, this study addresses two research questions. First, how is the element of culpability, or *mens rea*, constructed in customs offences relevant to logistics innovation? Second, how should the boundaries of criminal liability for logistics innovators be reconstructed, and what regulatory sandbox design could support such a framework? Accordingly, this study aims to systematically elucidate the construction of the element of culpability and to formulate normative parameters and a regulatory design that may assist legislators, customs authorities, and law enforcement agencies in assessing cases arising from innovations in logistics business models.

2. Methods

This study employs normative or doctrinal legal research, which examines legal materials and secondary data to address legal problems, as conceptualized by Soerjono Soekanto and Sri Mamudji. It also draws on the identification and analysis of legal rules, legal principles, and legal doctrines to address the legal issues under

examination, as articulated by Peter Mahmud Marzuki. Three approaches are employed in this study. First, the statutory approach is used to examine customs law provisions, general criminal law provisions, and administrative regulations governing consignments and goods carried by passengers. Second, the conceptual approach is employed to examine the doctrine of culpability, corporate criminal liability, ultimum remedium, and the concept of a regulatory sandbox. Third, the case approach is used to examine how courts assess the element of intent in customs cases involving documentation and customs brokerage services ([Indah & Triadi, 2025](#)).

The primary legal materials comprise the 1945 Constitution of the Republic of Indonesia, particularly Article 28D(1); Law of the Republic of Indonesia No. 17 of 2006 concerning the Amendment to Law No. 10 of 1995 on Customs, particularly Articles 7A, 102, 102A, 103, 103A, 104, 107, 108, and 109; Law No. 1 of 2023 on the Criminal Code, particularly Articles 12, 36, and 45–50, together with their elucidations; Law of the Republic of Indonesia No. 8 of 1981 on Criminal Procedure, particularly Article 191; Regulation of the Supreme Court of the Republic of Indonesia No. 13 of 2016 concerning Procedures for Handling Criminal Cases Involving Corporations; Minister of Finance Regulation No. 96 of 2023 concerning Customs, Excise, and Tax Provisions on the Import and Export of Consignments; Regulation of the Minister of Finance of the Republic of Indonesia No. 203/PMK.04/2017 concerning Provisions on the Export and Import of Goods Carried by Passengers and Crew Members of Means of Transport; and Regulation of the Minister of Finance of the Republic of Indonesia No. PMK 34 of 2025 concerning Provisions on the Export and Import of Goods Carried by Passengers and Crew Members of Means of Transport. For comparative purposes, this study also examines Article 216(1) of Law of the Republic of Indonesia No. 4 of 2023 on the Development and Strengthening of the Financial Sector and Regulation of the Financial Services Authority of the Republic of Indonesia No. 3 of 2024 concerning the Implementation of Financial Sector Technological Innovation. The judicial decisions analyzed are North Jakarta District Court Decision No. 185/Pid.Sus/2016/PN.Jkt.Utr in conjunction with Supreme Court Decision No. 294 K/Pid.Sus/2018. These decisions were selected because they demonstrate divergent assessments by the court of first instance and the court of cassation regarding whether the element of culpability was established in relation to customs documentation. Secondary legal materials consist of books, scholarly journal articles, and case commentaries, while tertiary legal materials comprise legal dictionaries.

The legal materials are analyzed using a qualitative-prescriptive method supported by explicitly defined techniques of legal interpretation. Grammatical

interpretation is employed to examine key phrases contained in the statutory formulations of the offences, including “intentionally,” “false or falsified,” “incorrect,” and “known or reasonably suspected.” Systematic interpretation is employed to situate customs offences within the framework of the general provisions of criminal law, given that the elucidation of Law No. 1 of 2023 affirms that the provisions governing corporate criminal liability in Book One also apply to criminal offences regulated outside the Criminal Code and that the principle of no punishment without culpability remains a fundamental principle of criminal law. Teleological interpretation is employed to ascertain the regulatory objectives of customs law, namely safeguarding state revenue and supervising the movement of goods, rather than imposing criminal punishment for mere imperfections in documentary formats. The findings are subsequently formulated prescriptively in the form of parameters for delineating *mens rea* and a normative design for a regulatory sandbox.

3. Results

Mokhammad Najih and Sudarto, as cited by Teguh Prasetyo, define criminalization as a process or policy (criminalization policy) through which particular conduct is designated as a criminal offence and subjected to criminal sanctions, either by recognizing a previously unregulated form of harmful conduct as a criminal offence or by introducing a new formulation of an offence (Zaki & Satriano, 2023).

Innovation constitutes a deliberate effort undertaken by an individual or legal entity to develop something new that did not previously exist and that may provide benefits to individuals or society (Batoebara, 2021). Meanwhile, according to Law No. 11 of 2010, in the context of improving the quality of life, innovation refers to a new instrument, product, or idea that did not previously exist and whose creation is expected to offer utility and value. A person who continuously engages in innovation may be regarded as innovative, while a person who undertakes innovation is referred to as an innovator. Such innovations may result from intellectual endeavors, research, assessment, or practical application and may generate economic benefits for the innovator or society.

The criminalization of innovation refers to the imposition of criminal sanctions on individuals whose innovations are characterized as criminal conduct because their creative activities or novel approaches have not been specifically regulated or are considered to conflict with rigid regulatory frameworks (Rangkuti & Andrianto, 2025).

Jasa titip constitutes an innovative business model in commerce that enables consumers to obtain requested goods through a third-party service, whereby an

intermediary purchases goods or products at the consumer's request in exchange for remuneration in the form of a service fee.

The consignment note serves as a customs declaration, while the regulatory framework defines the legal status of courier service companies and requires electronic commerce operators to establish partnerships with the Directorate General of Customs and Excise. It further places such operators in the position of importers, together with the corresponding customs obligations. On the other hand, Minister of Finance Regulation No. 34 of 2025 provides that goods carried by passengers for commercial purposes or entrusted to them for delivery to other parties do not fall within the category of passengers' personal belongings eligible for customs exemptions.

A mapping of the applicable legal framework demonstrates that these business models do not operate entirely within a regulatory vacuum. Accordingly, business operators are confronted not with a complete absence of legal norms, but rather with a mismatch between the existing regulatory framework and the operational architecture of emerging business models. This distinction is important to avoid overstating the argument that a legal vacuum exists.

This regulatory mismatch creates three points of intersection with customs criminal law. First, the consolidation of packages belonging to multiple consumers into a single transport document intersects with the manifest requirements stipulated in Article 7A(2) in conjunction with Article 102(a). Second, the simplification of descriptions concerning the types and quantities of goods intersects with Article 102(h) and Article 103(c). Third, the splitting of consignments to fall within the applicable exemption threshold intersects with the prohibition against submitting inaccurate declarations and may fall within the scope of Article 103(a) where it involves the use of recipient identities that do not correspond to the actual recipients. These three points of intersection involve different degrees of culpability and therefore cannot be assessed according to a uniform standard.

4. Discussion

4.1 The Anatomy of Logistics Disruption and Its Intersection with the Customs Regime

The transformation of the logistics industry in the contemporary era has fundamentally reshaped the competitive landscape at both the global and national levels. Supply chain development no longer follows exclusively linear and conventional patterns but has accelerated significantly through the widespread adoption of digital technologies. Technological innovation plays a central role in

disrupting international logistics systems, giving rise to new business models that place particular emphasis on enhancing operational efficiency, reducing delivery times, and substantially lowering distribution costs (Cuandra et al., 2025).

Within this rapidly evolving commercial ecosystem, logistics entrepreneurs are increasingly required to develop innovative approaches to streamline bureaucratic procedures associated with cross-border shipments, which are often time-consuming and impose substantial costs on consumers. Export-import logistics practices that previously relied heavily on large-scale, established intermediaries are now increasingly being disrupted by digital aggregator platforms and alternative logistics services operated by smaller businesses with greater operational agility. These emerging models reflect a broader transformation in the logistics sector, in which technological integration and organizational flexibility enable smaller market participants to respond more rapidly to changing commercial demands.

The phenomenon of cross-border *jasa titip* represents a particularly illustrative example of operational disruption in logistics within an increasingly borderless economy. Initially, *jasa titip* activities may have been perceived merely as small-scale informal economic activities undertaken incidentally by individuals while traveling. However, as market demand has increased and access to information through social media has expanded, this business model has evolved into an increasingly organized alternative logistics network, supported by a substantial customer base and generating considerable economic activity. This service aggregation model offers consumers an alternative means of reducing shipping costs, particularly for communities residing in areas with limited access to conventional logistics infrastructure (Fachruddin et al., 2026).

Entrepreneurs operating in this sector strategically utilize the baggage allowances of commercial airline passengers or employ consolidated bulk-cargo arrangements to reduce the burden of comparatively high conventional shipping costs. Through these unconventional methods, commercial goods from abroad can reach end consumers at more competitive prices than those associated with standard importation processes involving large-scale customs intermediaries. These operational practices reflect core characteristics of entrepreneurship, particularly the ability to identify market opportunities under constraints and the willingness to assume business risks in creating new economic value for society. The ability of a business entity to maintain its viability in an era of disruption is significantly influenced by the capacity of its leadership to rapidly integrate various forms of innovation and respond effectively to dynamic changes within the industry (Anwar et al., 2022).

4.2 The Construction of *Mens Rea* in Customs Offences

To address the first research question, the constituent elements of each relevant offence must be systematically examined. Table 1 maps the prohibited conduct, the required form of culpability, the legal subjects, and the applicable sanctions under the customs provisions that have, in practice, been applied to logistics business operators, while also comparing them with the corresponding administrative sanction mechanisms.

Table 1. Mapping of the Elements of Customs Offences Relevant to Logistics Innovation

Provision	Prohibited Conduct	Form of Culpability	Legal Subject	Legal Consequences
Article 7A(3)	A carrier fails to submit a customs declaration for the goods being transported.	Intent is not required.	Carrier	Administrative fine ranging from IDR 10,000,000 to IDR 100,000,000.
Article 102(a)	Transporting imported goods that are not listed in the manifest as referred to in Article 7A(2).	Criminal offence; culpability must still be established even though the term “intentionally” is not expressly stipulated.	Any person, including a carrier	Imprisonment for 1–10 years and a fine ranging from IDR 50,000,000 to IDR 5,000,000,000.
Article 102(h)	Intentionally declaring the type and/or quantity of imported goods incorrectly in a customs declaration.	Intent is expressly required.	Any person	Imprisonment for 1–10 years and a fine ranging from IDR 50,000,000 to IDR 5,000,000,000.
Article 102A	Acts constituting smuggling in the export sector, including intentionally declaring the type and/or quantity of exported goods	Intent accompanied by a consequence element.	Any person, including an exporter	Imprisonment for 1–10 years and a criminal fine.

	incorrectly, resulting in the non-fulfilment of state levies.			
Article 103(a)	Submitting a customs declaration and/or supplementary customs documents that are false or falsified.	Requires knowledge of the falsity of the documents.	Any person	Imprisonment for 2–8 years and a fine ranging from IDR 100,000,000 to IDR 5,000,000,000.
Article 103(c)	Providing incorrect oral or written information used for the fulfilment of customs obligations.	Intent with respect to the falsity of the information.	Any person, including passengers and border crossers	Imprisonment for 2–8 years and a criminal fine.
Article 103(d)	Stockpiling, storing, possessing, purchasing, selling, exchanging, acquiring, or providing imported goods that are known or reasonably suspected to have originated from a criminal offence under Article 102.	Intent or gross negligence, reflected in the phrase “reasonably suspected.”	Any person	Imprisonment for 2–8 years and a criminal fine.
Article 107	A customs brokerage service provider that processes a customs declaration under the authority of an importer or exporter and commits an act subject to criminal punishment.	Constructed through the doctrine of participation; culpability must still be established on the part of the authorized representative.	Customs brokerage service provider	Punished as the perpetrator of the relevant offence.

Article 108	A criminal offence committed by or on behalf of a legal entity, company, association, foundation, or cooperative.	Culpability is identified through the management or the person giving the instruction.	Legal entity and/or its management	Prosecution and sanctions may be imposed on the legal entity, its management, or both.
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Source: Authors' compilation based on Law No. 10 of 1995, as amended by Law No. 17 of 2006 on Customs.

A grammatical interpretation of the provisions mapped in the table yields findings that challenge assumptions commonly held in practice. Article 102(h) expressly employs the phrase “intentionally,” meaning that an incorrect declaration concerning the type or quantity of goods constitutes smuggling only where intent is established. Article 103(a) employs the phrase “false or falsified,” which inherently requires the perpetrator’s knowledge of the falsity of the documents, while Article 103(d) explicitly distinguishes between “known” and “reasonably suspected” as two distinct degrees of culpability. The legislature also differentiates between enforcement mechanisms, as certain violations of customs declaration obligations are addressed through administrative fines under Article 7A(3), rather than through criminal sanctions. Accordingly, the customs regime is not structured around strict liability as a general model of liability.

These findings call for a reassessment of the prevailing approach, including concerns among business operators that the law has eliminated the requirement to establish criminal intent. The principal issue lies not in the formulation of the statutory provisions themselves, but rather in law enforcement practices that may treat every physical discrepancy between the actual goods and the accompanying documentation as evidence of intent without examining the source of the discrepancy. In practice, data discrepancies may originate from the owners of the goods or overseas consignors, while aggregators merely transmit the information provided to them. Where procedural law does not provide clear assessment parameters, the evidentiary burden may, in practice, shift to business operators to demonstrate the absence of criminal intent. It is this shift that creates the risk of administrative errors being subjected to criminalization.

This framework has been further reinforced following the entry into force of Law No. 1 of 2023 on the Criminal Code on 2 January 2026. Article 36(1) affirms that a person may be held criminally liable only for an offence committed intentionally or negligently, while paragraph (2) provides that an offence committed through negligence is punishable only where expressly stipulated by law. These provisions embody the principle of *geen straf zonder schuld* (no punishment without culpability). The elucidation of the Law does recognize the possibility of strict

liability; however, it treats such liability as an exception applicable only in specific circumstances rather than as a general rule. The same elucidation further affirms that the provisions on corporate criminal liability contained in Book One also apply to offences regulated outside the Criminal Code. Accordingly, the construction of culpability in customs offences must be interpreted within this framework.

At the corporate level, Articles 45–50 of the Criminal Code recognize corporations as subjects of criminal offences and attribute corporate culpability through the conduct and culpability of corporate officers holding functional positions, namely those authorized to represent the corporation, make decisions on its behalf, and exercise supervision over its activities. Article 48 provides that a corporation may be held criminally liable where the relevant conduct benefits the corporation, is committed within the scope of its business or activities, and the corporation fails to take preventive measures or permits the criminal offence to occur. This framework is consistent with Article 4(2) of Supreme Court Regulation No. 13 of 2016, which establishes three criteria for assessing corporate culpability: the corporation obtains a benefit or advantage from the offence; it permits the offence to occur; and it fails to take the necessary measures to prevent the offence and ensure compliance with applicable legal provisions. For logistics aggregator companies, these criteria may provide a basis for a defence that has thus far been underutilized, as the existence and effective implementation of a functioning customs compliance system may support a finding that the requirements for establishing corporate culpability have not been satisfied.

Judicial practice demonstrates that this dividing line is indeed determined by an assessment of the defendant's knowledge and functional role. In the case decided by North Jakarta District Court Decision No. 185/Pid.Sus/2016/PN.Jkt.Utr, the defendant, who served as a director of an exporting company, was not subjected to criminal punishment because the court of first instance found that the discrepancies in the export documentation could not be attributed to him, given that the customs declaration had been processed through a customs brokerage service provider. In Decision No. 294 K/Pid.Sus/2018, however, the Supreme Court held that the *judex facti* had erred in applying the law and found the defendant guilty of the criminal offence stipulated in Article 103(a) in conjunction with Article 55(1)(1) of the Criminal Code. The Supreme Court reasoned that the defendant's position as a director required him to ensure the validity of the documents used and that the technical delegation of customs formalities to an authorized representative did not negate his knowledge of and intent with respect to those documents.

The divergent assessments of the two judicial levels reveal two important points. On the one hand, delegating responsibility for document processing to a third party does not automatically exclude criminal liability. Accordingly, the proposition that an aggregator should invariably be regarded as a victim of fraudulent conduct

by the owners of the goods cannot be accepted as a general rule. On the other hand, the decisions underscore that what must be established is the perpetrator's knowledge and intent, rather than merely the existence of a discrepancy between the documentation and the actual condition of the goods. In other words, the existing legal framework already provides a basis for distinguishing administrative errors from criminal intent, but this distinction has yet to be supported by parameters capable of consistent application. The need to formulate such parameters therefore constitutes the response to the first research question and, at the same time, provides the foundation for addressing the second.

4.3 Parameters for Reconstructing the Boundary Between Business Risk and *Mens Rea*

Before formulating these parameters, it is necessary to clarify a conceptual misconception. The business judgment rule is often regarded as a shield for directors against the risk of criminal liability, whereas the doctrine originates in corporate law and serves to assess directors' civil liability for business decisions that result in losses to the company. The doctrine cannot simply be transposed into criminal law as a ground for excluding criminal liability, because criminal liability is determined on the basis of the constituent elements of an offence and culpability. What may instead be drawn from the doctrine is its underlying evaluative logic—namely, good faith, due care, the absence of conflicts of interest, and an adequate informational basis—as factual indicators for determining the presence or absence of intent. Subject to this qualification, the following parameters are formulated as guidelines for the evidentiary assessment of culpability, rather than as a new category of grounds for excluding criminal liability.

Table 2. Parameters for Demarcating Innovative Business Risk and *Mens Rea* in Customs Cases

No.	Parameter	Concrete Indicators	Tendency of Legal Qualification
1	Source of data discrepancies	The data originate from the owner of the goods or an overseas consignor; the business operator conducts reasonable verification within its capacity; and there are no internal instructions to alter the data.	Administrative domain
2	Fulfilment of obligations concerning state levies	Import duties and taxes on imports are paid in accordance with the applicable rates; there is no pattern	Administrative domain

		of systematic customs undervaluation.	
3	Transparency and traceability	All transactions are recorded in an auditable system; the goods are not physically concealed; and the data can be reconciled with the customs system.	Administrative domain
4	Methods of concealment	The description of the goods materially deviates from their actual condition; identities that do not correspond to the actual recipients are used; consignments are repeatedly split to circumvent the applicable exemption threshold; or documents are falsified.	Indicator of intent; criminal domain
5	Response to identified discrepancies	Voluntary disclosure; payment of outstanding state levies; and improvement of procedures following a warning.	Administrative domain and mitigating factor
6	Compliance system and the role of corporate officers	Customs compliance procedures, training, and segregation of functions are in place; corporate officers holding functional positions neither know of, instruct, nor permit the irregularities.	Negates corporate culpability under Article 48 of the Criminal Code and Article 4(2) of Supreme Court Regulation No. 13 of 2016

Source: Authors' analysis.

The six parameters should not be assessed in isolation but rather cumulatively. Where the indicators under the first three parameters are satisfied and those under the fourth parameter are absent, the conduct should be characterized as administrative non-compliance and addressed through corrective measures and administrative fines. Conversely, the presence of the fourth parameter, particularly when accompanied by repeated conduct and a refusal to undertake corrective measures, constitutes a strong indicator of intent and may provide a basis for the application of Article 102(h) or Article 103. The fifth and sixth parameters serve to assess the degree of culpability, both in determining corporate criminal liability and in determining the appropriate severity of punishment.

The legal consequences arising from these parameters should operate on a graduated basis. The first level entails an obligation to undertake corrective measures and pay any outstanding state levies. The second level consists of

administrative fines as provided by law. The third level—and only where indicators of intent are established—is criminal prosecution. This graduated framework reflects the principle of *ultimum remedium*, under which criminal law operates as a measure of last resort where administrative instruments are inadequate. Where a case has proceeded to trial and the conduct is established but the requisite element of culpability is not satisfied, the court has a legal basis to render a judgment releasing the defendant from all legal charges, as provided for in Article 191(2) of the Criminal Procedure Code. Judicial law-finding becomes particularly important at this stage as a means of addressing deficiencies in statutory regulation and resolving gaps that give rise to legal uncertainty (Atikah, 2023; Indah & Triadi, 2025).

4.4 Normative Design of a Logistics Regulatory Sandbox

The foregoing parameters address the issue at the level of case assessment but do not prevent such cases from arising in the first place. An upstream regulatory instrument in the form of a regulatory sandbox is therefore required. Indonesia already has an established normative reference for such a framework, namely Article 216(1) of Law of the Republic of Indonesia No. 4 of 2023 on the Development and Strengthening of the Financial Sector, which provides a legal basis for regulating technological innovation in the financial sector, as well as Regulation of the Financial Services Authority of the Republic of Indonesia No. 3 of 2024 concerning the Implementation of Financial Sector Technological Innovation, including provisions governing participant eligibility criteria, monitoring, the determination of evaluation outcomes, and exit policies (Kartini et al., 2020; Rizki, 2021). This model may be adapted to the logistics sector with appropriate adjustments to its specific risk characteristics, particularly risks to state revenue and risks associated with the supervision of the movement of goods.

The normative design of the logistics regulatory sandbox proposed in this study comprises six elements. First, institutional arrangements and authority: the Directorate General of Customs and Excise would serve as the administrator and coordinator of a cross-agency consortium involving the ministry responsible for trade, the ministry responsible for transportation, the agency responsible for investment affairs, and representatives of law enforcement agencies, with the aim of preventing overlapping or conflicting interpretations. Second, participant eligibility criteria: participants would be Indonesian legal entities whose business models do not yet have corresponding documentary formats within the customs system, demonstrate measurable efficiency benefits, and possess adequate data-system readiness. Third, limitations on scale and duration: the sandbox would establish thresholds for the value and volume of consignments within each specified period, together with a twelve-month testing period that may be extended once.

Fourth, participant obligations: these would include regular data exchange with the customs system, guarantees for the payment of import duties and taxes on imports, periodic reporting, and mechanisms for consumer compensation.

Fifth, limited legal safeguards: procedural deviations occurring within an approved testing scenario would be addressed through corrective measures and administrative sanctions, provided that obligations concerning state levies remain fulfilled and no indicators of intent, as specified in the fourth parameter of Table 2, are established. These safeguards would not apply to document falsification, the smuggling of prohibited or restricted goods, or other criminal offences falling outside the approved testing scenario, thereby ensuring that the regulatory sandbox does not become a mechanism for impunity. Sixth, exit policy: successful participants would obtain registered status, and their documentary formats would be incorporated into a ministerial regulation, whereas unsuccessful participants would have their testing terminated and remain subject to obligations to settle outstanding consumer rights.

A legisprudential consideration must be addressed explicitly to ensure that this proposal does not remain merely conceptual. The limited legal safeguards contemplated under the fifth element cannot be established solely through a ministerial regulation because they concern the application of criminal law provisions prescribed by statute. Three possible avenues are available. The first, and institutionally the most robust, is to introduce a chapter governing the regulatory sandbox through an amendment to the Customs Law, in the same manner that the financial-sector regulatory sandbox derives its legal basis from statute. The second is to issue prosecutorial guidelines and establish a joint agreement among the customs authority, the police, and the public prosecution service, affirming the priority of administrative resolution for regulatory sandbox participants. The third is the development of jurisprudence through judicial decisions that consistently apply the parameters of culpability. The second and third avenues are transitional in nature, whereas the first constitutes the ultimate legislative objective to be pursued.

Implementing this framework requires strengthening institutional capacity. Judges, investigators, and public prosecutors should receive appropriate training on the characteristics of digital logistics business models to ensure that the assessment of culpability does not rest solely on discrepancies in documentation ([F. S. Pratama, 2020](#); [Nugraha, 2021](#); [B. Pratama, 2017](#)). Cross-ministerial harmonization is also necessary to prevent regulations issued by one government institution from conflicting with the policies of another, as such regulatory conflicts constitute one of the principal sources of uncertainty reported by business operators ([Yusdira et al., 2025](#)).

At the macroeconomic level, the legal certainty generated by the proposed parameters and regulatory sandbox has the potential to restore confidence in pursuing innovation. The adoption of information technology is essential to reducing national logistics costs, which have long constrained the competitiveness of export products (Cuandra et al., 2025), and such adoption can proceed effectively only where business operators are not exposed to uncertainty regarding the risk of criminal prosecution for procedural errors. Adaptive and risk-based regulation should foster the emergence of new entrepreneurial ventures rather than operate as a barrier to innovation (Fatonah et al., 2025). An increase in the volume of compliant commercial activity may, in turn, contribute to higher revenues from import duties and taxes.

5. Conclusion

The construction of culpability in customs offences relevant to logistics innovation remains fundamentally grounded in the principle of culpability. Article 102(h) expressly requires intent, Article 103(a) requires knowledge of the falsity of documents, and Article 103(d) distinguishes between the degrees of culpability reflected in the terms “known” and “reasonably suspected,” while certain violations of customs declaration obligations are addressed through administrative sanctions. The entry into force of Article 36 of Law No. 1 of 2023 further reinforces the proposition that strict liability constitutes an exception rather than the general model of criminal liability. Accordingly, the criminalization of logistics innovation is more appropriately understood as arising from law enforcement practices and the absence of clear assessment parameters, rather than solely from a regulatory vacuum.

The boundaries of criminal liability are therefore reconstructed through six parameters of demarcation: the source of data discrepancies, fulfilment of obligations concerning state levies, transparency and traceability, methods of concealment, responses to identified discrepancies, and the compliance system and role of corporate officers. These parameters are to be assessed cumulatively and give rise to graduated legal consequences, ranging from corrective measures and administrative sanctions to criminal prosecution as a measure of last resort. At the preventive level, this study proposes a logistics regulatory sandbox comprising six elements. The limited legal safeguards afforded under this framework require a statutory basis, while prosecutorial guidelines and jurisprudence may serve as transitional mechanisms pending the establishment of such a legislative foundation.

This study is limited by its analysis of only two judicial decisions and by the fact that the proposed parameters have not been tested against large-scale law enforcement data. Future research should therefore examine these parameters

against a broader body of customs-related judicial decisions over a defined period and assess the institutional readiness of the Directorate General of Customs and Excise to administer a regulatory sandbox for the logistics sector.

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