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The Legal Framework in Management of Indonesian Special Economic Zones

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ABSTRACT

Keywords:
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The purpose this paper is to determine the legal aspects of special economic zones in the development of the national economy for the welfare of the people, increasing competitiveness for the national interest. In addition, this study uses a normative juridical method with a comparative approach and a descriptive qualitative approach. The results of this study indicate that economic management based on Free Trade Zones and Free Ports is not more profitable than the management of Special Economic Zones, because of that there are many views that various free trade legal products are too beneficial for foreign parties and detrimental to domestic interests.

1. INTRODUCTION

Welfare and social justice are the objectives of the mandate of the Indonesian constitution.¹ Social welfare and the national economy are realized through state power in state assets as embodied in Article 33 of the state constitution of the Republic of Indonesia, whose realization is based on economic democracy for the greatest prosperity of the people.² The substance of economic law is a form of acculturation – the interplay of various multidisciplinary phenomena.³

Nyhart in Sulistiyono argues that economic development requires legal certainty, legal certainty is influenced by legal concepts, namely, as follows:⁴

¹ Kuntana Magnar, Inna Junaenah, and Giri Ahmad Taufik, “Tafsir MK Atas Pasal 33 UUD 1945 : (Studi Atas Putusan MK Mengenai Judicial Review UU No.7/2014, UU No.22/2001, dan UU No.20/2002),” *Jurnal Konstitusi* 7, no. 7 (2004): 1–180.

² “Undang-Undang Dasar Negara Republik Indonesia 1945,” Pub. L. No. Lembaran Negara Republik Indonesia, No. 75, 1959 (1945).

³ Steven G. Medema Nicholas Mercuro, *Economics and the Law: From Posner to Post-Modernism*, Princeton University Press (Princeton New Jersey: Princeton University Press, 1999). P. 1

⁴ Krismiaji, “Peranan Hukum Dalam Pembangunan Ekonomi Di Indonesia,” *Wahana* 14, no. 2 (2011): 91–100.

- a. Predictability – being able to predict the enactment of the law - providing a definite picture - in the future regarding the situation or relationships that are carried out in the present.
- b. Procedural ability, the material law can realize itself properly (effectively);
- c. Codification of objectives, legislation made in accordance with the codification of objectives in the economic sector and in accordance with the purposes desired by the state (regulator);
- d. Balancing factor, a legal system must be able to become a balancing force of various interests in society, the existence of a rule of law that the conflict of values in society is mediated by law, all must obey and be aware of the existence of the law in order to support the state in economic development;
- e. Accommodating. The law must adapt to existing changes, so that in the event of an imbalance due to environmental changes, legal reform is required, so that the legal system provides certainty through clear and definitive formulations, opening opportunities for the restoration of justice through orderly procedures.
- f. The definition and clarity of status, legal function also provides firmness regarding the status of legal subjects and objects in society.

The concept of a welfare state is to place the state to achieve prosperity and social justice for all people.⁵ Countries that adhere to the concept of a welfare state have 4 (four) functions, namely: the state as a servant, the state as a regulator, the state as an entrepreneur, and the state as a referee.

According to Lane, Jan-Erik & Svante Ersson, Francis Fukuyama in Ningrum Natasya Sirait the economic system includes:⁶

- a. Organizing economic decisions (centralized or decentralized in nature);
- b. Provision of information and coordination for the community (free market or regulated in planning);
- c. Ownership of the factors of production (private, cooperative or collective),
- d. Stimulus system (moral or material).

Mochtar Kusumaatmadja and Arief B. Sidharta in Budiman Ginting stated that the main purpose of law is legal certainty which is in addition to benefit and justice for all citizens with all its plural features in their interactions. Legal certainty is inseparable from the function of law, the achievement of order in human life in society. This regularity causes people to live with certainty, meaning that people can carry out the activities needed in social life. Legal certainty is a guarantee and certainty of doing business activities. Moreover, legal certainty is the consistency of regulations and law

⁵ Soeharsono Sagir, "Sistem Ekonomi Kerakyatan: Pro Poor, Pro Job, Pro Growth Ekonomi Ampera, Ekonomi Kosntitusi 1945" (Bandung: Unpad, 2011).

⁶ Ningrum Natasya Sirait, "Indonesia Dalam Menghadapi Persaingan Internasional," *Usu* (Medan: usu.ac.id, 2006).

enforcement in Indonesia, harmonization and consistency in all regulations and intertwined with other regulations.⁷

Neoliberals fail to achieve growth in developing countries through the concepts of poverty reduction, good governance and rights-based development. One of the most striking phenomena in the field of development is the revival of interest in legal institutions and a return to development programs with the rule of law concept.⁸

Pancasila and the people's economy as an economic system that is in accordance with Indonesia, where the economic system can provide equal business opportunities for every business actor. The culture of competition is one of the factors that influenced the occurrence of the economic crisis in 1998, the culture of the Indonesian people in competition so far is not clear and there are no regulations governing the competition.

Neoliberals fail to achieve growth in developing countries through the concepts of 'poverty reduction', 'good governance' and 'rights-based development'. One of the most striking phenomena in the field of development is the revival of interest in legal institutions and a return to development programs with the rule of law concept. Based on the causes, legal reform can occur for sociological reasons - responding to changes that occur in society, political, social, and economic changes, technological advances, and changes in moral beliefs - the need for legal compliance.⁹

The emergence of economic offenses is a consequence of the increasing involvement of the government in carrying out efforts in the field of people's welfare. So that to overcome the conflict of interest between the parties involved, it is necessary to have an order that oversees maintaining security and order in all areas of public life, including security and order in the economic field. The legal instrument is economic criminal law whose application must be applied secondarily, meaning that it is only given a function after other legal means are proven incompetent or inadequate.¹⁰

Special Economic Zones (SEZs) provide locations for MSMEs and cooperatives. The existence of MSMEs is a mandate from economic democracy, in order to encourage upstream and downstream linkages and synergies with large companies, both as business actors and as supporters of other business actors. Special Economic Zones (SEZs) is needed to increase investment through the preparation of areas that have geoeconomics and geostrategic advantages which means to accelerate the achievement of national economic development, because they can maximize industrial activities, exports, imports, and other economic activities that have high

⁷ Sukardi, "Peran Penegakan Hukum Dalam Pembangunan Ekonomi," *Jurnal Hukum & Pembangunan* 46, no. 4 (2016): 434–53, <https://doi.org/10.21143/jhp.vol46.no4.48>.

⁸ Julie Paquin, "Business Law Transplants and Economic Development: An Empirical Study of Contract Enforcement in Dakar, Senegal" (McGill University, Montreal, 2010).

⁹ Vida Allen Sarah Riches, *Business Law*, Ninth Edit (England: Pearson Longman, 1987).

¹⁰ Edi Setiadi, "Reformasi Hukum Pidana, Untuk Mengantisipasi Perkembangan Kejahatan Di Bidang Ekonomi (Economic Crimes)," *Jurnal Sosial Pembangunan* 16, no. 3 (2000): 205–2014.

economic value. SEZs can also accelerate regional development and become a prototype for regional development for economic growth, including industry, tourism, and trade to create jobs.

Based on Article 25 of Government Regulation Number 1 of 2020 it is stated that after the SEZ is established, the SEZ is given a maximum of 3 years until the SEZ is ready to operate and an annual development evaluation is carried out.¹¹ Based on SEZ distribution data throughout Indonesia as of February 2020, it can be seen in Figure 1:

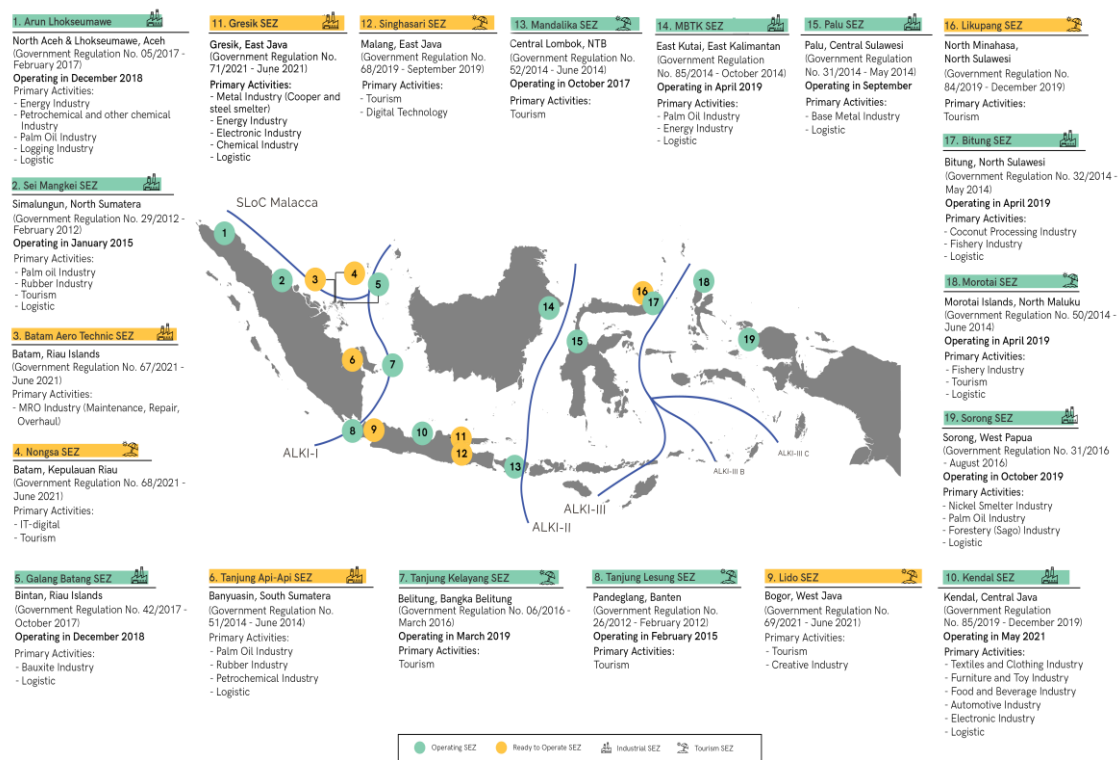


Figure 1. Map of Distribution of Special Economic Zones as of February 20, 2020
Source: gatrik.esdm.go.id

SEZ is an area with certain boundaries within the jurisdiction of the Unitary State of the Republic of Indonesia which is determined to carry out functions with certain economic benefits. The main objective of SEZ development is to create economic growth, equitable development, and increase the nation's competitiveness. SEZs are developed through the preparation of areas that have geoeconomics and geostrategic advantages and functions to accommodate industrial activities, exports, imports, and other economic activities that have high economic value and international competitiveness. The presence of SEZs is expected to be able to build economic capacity and competitiveness at the national level through the added value of industry

¹¹ Sekdenas, "Perkembangan Kawasan Ekonomi Khusus Konsep Dasar & Pembagian Peran Dalam Pengembangan Kek," 2020.

and tourism as well as other economic value chains. Until 2021 there will be 8,686 new workers absorbed in 19 SEZs in Indonesia with the following details¹²: Arun Lhokseumawe SEZ; Sei Mangkei SEZ; BAT (Batam Aero Technic) SEZ; Nongsa SEZ; Galang Batang SEZ; Tanjung Api-Api SEZ; Tanjung Kelayang SEZ; Tanjung Lesung SEZ; Lido SEZ; Kendal SEZ; Gresik SEZ; Singasari SEZ; Mandalika SEZ; Maloy Batuta Trans Kalimantan (MBTK) SEZ; Palu SEZ; Likupang SEZ; Bitung SEZ; Morotai SEZ; Sorong SEZ. Through this article, the author examines the legal aspects in the management of special economic zones

2. RESEARCH METHODS

The research method used is a normative juridical and comparative juridical method which is qualitative.¹³ The approach used in this study is a comparative approach,¹⁴ which is to compare the regulation on special economic zones (SEZ) and on Free Trade Zone and Free Port in Indonesia. The comparative law approach is carried out in order to obtain attitudes and policies that have developed in Indonesia. In conducting a comparison of the legal system, we review from three aspects, namely the legal substance (substance), structure (structure) and legal culture (culture).¹⁵ The use of normative juridical and comparative juridical methods is then analyzed qualitatively, namely analyzing the data as a whole and is a holistic unit,¹⁶ using various legal norms found in the legislation.¹⁷ This holistic nature is one of the characteristics of the quantitative approach method.¹⁸

3. RESULT AND DISCUSSION

3.1. Free Trade Zone and Free Port

Free Trade Zones (FTZ) and Free Ports – KPBPB- based on Article 1 point 1 of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs states that Free Trade Areas are areas within the jurisdiction of the Indonesian state including economic area. an exclusive area that is separate from the

¹² Iwan Supriyatna and Mohammad Fadil Djailani, "Dari 13 KEK Terbangun, Tenaga Kerja Terserap Baru 8.686 Orang," suara.com, October 2019..

¹³ Sri Mamudji Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: CV Rajawali, 1985). Hal 14

¹⁴ W.E.Butler and V.N. Kudriatsev (ed), *Comparative Law and Legal System, Historical and Socio-Legal Perspectives*, (New York : Oceana Publications, Inc.,1985),p.69. see also. Konrad Zweigert; Hein Kötz, *Introduction to Comparative Law*, 2nd Ed. Re (Oxford: Oxford : Clarendon Press, 1987). hal.2.

¹⁵ Lawrence M. Friedman, *American Law* (New York: W.W. Norton & Company, 1984).

¹⁶ Matthem B. Milles and Michael Huberman, *Qualitative Data Analysis*, 2nd Ed (California: Sage Publications Inc, 1994). P 137

¹⁷ Yvonna S.Lincoln, Norman K.Denzin, *The Sage Handbook of Qualitative Research* (California: Sage Publications, 1994). P. 212

¹⁸ Kenneth D. Bailey, *Methods of Social Research*, 3rd ed (New York: The Free Press, 1987). P. 62

customs area, where the customs area is an area with certain boundaries at seaports, airports, or other places determined for the traffic of goods which are fully under the supervision of the Directorate General of Customs and Excise, so that the entry and exit of goods to and from KPBPB is free from the imposition of import duty, value added tax, sales tax on luxury goods, and excise. Government Regulation (PP) of the Republic of Indonesia Number 41 of 2021 concerning the Implementation of Free Trade Areas and Free Ports as a rule for implementing customs law by taking into account the provisions of Article 115A paragraph (2) of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, Article 16B paragraph (1) of Law Number 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, and the provisions of Article 152 and Article 185 letter b Law Number 11 of 2020 concerning Job Creation.

Batam is one of the Free Trade Areas, Batam's existence as an FTZ is due to its location at the cross-border gate of the strategic economic golden triangle of ASEAN countries - between Indonesia, Singapore, and Vietnam. Through Law Number 44 of 2007, the Riau Islands region (Bintan, Batam and Karimun) became a free trade area and free port. The effort to make Batam a free trade area and a Batam free port (Free Trade Zone) is a new legitimacy effort for Batam Island to continue the function of Batam Island as an industrial area with international standards. Entering the era of globalization, people will be more accustomed to the presence of the free market. This is not surprising because indeed one of the characteristics of globalization is the fading of state boundaries economically.¹⁹ However, the existence of the FTZ has created an income gap for local people, because PMA is more concerned with a small number of managers in the company, most of whom are foreign nationals, the large number of unemployed local residents due to limited skills possessed by the Batam people make it difficult for them to find work. The development of MSMEs in the FTZ area has weakened due to lack of capital and limited mastery of their superior knowledge and technology, an extensive and well-organized network of foreign relations, expertise and aggressiveness in the field of advertising and mastery of various complementary services.

3.2. Legal Basis for Special Economic Zones

Investment in Special Economic Zones (SEZ) as regulated in Article 31 of Law number 25 of 2007 where the development of special economic zones must be carried out with investment activities in general, this can be seen from the objectives of SEZ

¹⁹Mahadiansar Alfiandri, "Dampak Perencanaan Perubahan Free Trade Zone Menjadi Kawasan Ekonomi Khusus Di Kota Batam," *KEMUDI: Jurnal Ilmu Pemerintahan* 4, no. 2 (2020): 292–307, <https://doi.org/10.31629/kemudi.v4i2.1945>.

development, namely: increasing investment in special areas, accelerating investment in special economic zones. centers of equity and economic growth, earning foreign exchange because of increased exports, increasing the competitive advantage of export products, and encouraging the improvement of the quality of human resources through technology transfer. According to the economic development model of a region, the SEZ/SEZ is divided into a) FTZ, b) Bonded Zone, c) Export Processing Zone and d) Integrated Industrial Estate. The SEZ Law states that a SEZ can be formed consisting of one or a combination of: a) Export Processing Areas; b) Bonded Storage; c) Industrial Estate; d) Technology Development Area; e) Financial Services Area; f) Other Economic Zones.

Special Economic Zones are further regulated through Law Number 39 of 2009. The consequences faced in developing SEZs are legal and institutional reforms, because legal certainty, strengthening of legal institutions and law enforcement officers, political stability and economic opportunities are the main requirements for growth and development. economic equity through a multiplier effect, where an increase in the economic center of special regions will have an impact on national economic growth. Laws that are considered pro-foreign include Law No. 30 of 2007 on Energy and Law No. 25 of 2007 on Investment. On the other hand, the government is also considered to have allowed foreign domination in three strategic areas, namely energy, banking, and telecommunications, to exceed 50 percent. It seems that foreign domination of economic sectors in Indonesia is expanding and spreading. Foreign domination can cover various sectors, namely finance, energy, mineral resources, telecommunications, and plantations.

The drafting of the Capital Market Law has sparked controversy and reactions from many parties, both from the House of Representatives (DPR) and the public, because the law is liberal and pro-foreign capital, bringing the consequences of testing the law through a judicial review mechanism, the Constitutional Court (MK). The Constitutional Court) canceled one of the articles of land tenure rights because it was considered a violation of the 1945 Constitution.

Foreign domination in the national economy needs to be trimmed so that natural wealth can be enjoyed by the people. Foreign corporations have controlled eighty percent of the mining sector and left environmental damage in some places. The government must demand renegotiation of all cooperation contracts with foreign corporations that cultivate Indonesia's natural wealth. The continuous exploitation of natural resources by foreign corporations is detrimental to Indonesia, because Indonesia only gets taxes and royalties.²⁰

²⁰ Abdullah Aman Damai Maria S.W. Sumardjono, Nurhasan Ismail, Ernan Rustiadi, *Pengaturan Sumber Daya Alam Di Indonesia : Kajian Kritis Undang-Undang Terkait Penataan Ruang*

3.3. Strategic Measures in Optimizing Tax Revenue

The juridical basis of the rules for implementing Special Economic Zones, namely that in order to implement the provisions of Article 150 and Article 185 letter b of Law Number 11 Year 2020 concerning Job Creation, it is necessary to stipulate a Government Regulation concerning the Implementation of Special Economic Zones; 1. Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia; Law Number 39 of 2009 concerning Special Economic Zones (State Gazette of the Republic of Indonesia of 2009 Number 147, Supplement to the State Gazette of the Republic of Indonesia Number 5066); Law Number 11 of 2020 concerning Copyright Number 245, Supplement to the State Gazette of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2020 Indonesia Number 6573). In Article 1 Paragraph 1 it is stated that Special Economic Zones, hereinafter referred to as KEK, are areas with certain boundaries within the jurisdiction of the Unitary State of the Republic of Indonesia which are determined to carry out economic functions and obtain certain facilities whose implementation is regulated through the KEK Administrator who has the task of administering business permits, other permits, services, and supervision in SEZs. Article 2 Paragraph (1) states that the implementation of SEZ includes:

- a. Location, criteria, and business activities.
- b. Proposal for the establishment of SEZ.
- c. Determination of SEZ.
- d. Development and operation of SEZs.
- e. SEZ institutional.
- f. SEZ management; and
- g. The facilities provided in the administration of special economic zones are customs facilities, circulation of goods and services, ease of licensing, ease of doing business due to the completeness of supporting facilities and infrastructure as well as the availability of land and spatial planning and other facilities.

Location, Criteria and Business Activities of SEZs are as follows:

- a. New areas.
- b. Expansion of existing SEZs; or
- c. All or part of the locations of the Free Trade Zone and Free Port (KPBPB), including KPBPB Batam, KPBPB Bintan, and KPBPB Karimun which were formed based on the law governing KPBPB before or after the stipulated period ended must meet the following criteria:
 - 1) in accordance with the regional spatial plan and does not have the potential to disturb the protected area.

- 2) have clear boundaries; and
- 3) amount of land proposed to become SEZ has been controlled not more than 50 % (fifty percent) of the planned.

In accordance with the regional spatial layout plan as referred to in Article 5 letter a, it is a cultivation area with a designation based on a regional regulation concerning regency/municipal spatial planning plans. The business activities in SEZ are regulated in Article 9 Paragraph (1), where is business activities in SEZ consist of:

- a. Production and processing;
- b. Logistics and distribution;
- c. Research, digital economy, and technology development;
- d. Tourist
- e. Energy development;
- f. Education;
- g. Health;
- h. Sport;
- i. Financial services;
- j. Creative industry;
- k. SEZ development and management;
- l. Provision of SEZ infrastructure; and/or
- m. Another economy.

Whereas in Paragraph (2) it is stated that other economic activities as referred to in paragraph (1) letter m shall be determined by the National Council. Paragraph (3) In determining other economic activities as referred to in paragraph (2), the National Council may ask for consideration from the minister or the head of the relevant institution. Paragraph (4) the implementation of business activities as referred to in paragraph (1) is regulated in accordance with the SEZ zoning plan. Paragraph (5) In the SEZ, locations are provided for micro, small, medium-sized enterprises, and cooperatives, both as business actors and as supporters of the activities of companies within the SEZ. Paragraph (6) In SEZ, supporting facilities and housing for workers can be built which are separated from the location of business activities. This government regulation also regulates the submission of special economic zones proposed by the regional government.

Tulus Tambunan and Coenrad Muller Scheepers in Victoria Natali Makalew, Vecky A.J. Masinambouw, Een N. Walewangko said that the existence of SEZs will have a multiplier effect - accelerating and increasing labor absorption, local, regional, national and international investment flows to the regions - which in turn will improve the welfare of society in general. however, the existence of SEZs requires the availability of facilities and infrastructure as well as skilled workers - for that to be the task of the Ministry of Manpower - which is included in one of the priorities of the

national program to realize Harmonious Industrial Relations and Competent Industrial Humans in accordance with industrial needs. For this reason, the cooperation of various parties is needed, including the provision of skilled personnel and professional management institutions that can support the establishment of SEZs in an area, including the development of Field Work Practices. Balai Besar (BLK), Development/Improvement of Special High Schools (SMK) and Capacity Building for KEK Administrators.²¹

3.4. The Role of Law in Special Economic Zones

An integrated legal system is needed to support investment needs and economic nationalism in Indonesia in the application of special economic zones. Lawrence M. Friedman states that the legal system will always be bound by the structure, substance and legal culture. These three elements will greatly support stability as well as economic development and investor comfort.

Thoughts on economic development are found in the work of Adam Smith in *The Wealth of Nation* and the work of Abbe de Condillac in *Government and Commerce*. According to Baghwaty, Adam Smith's work has inspired a number of trade theorists, including the models developed by David Ricardo. Adam Smith's thinking describes how one factor of production works in the production process of two goods assuming a constant level of labor productivity from two countries that have relative productivity levels, and the two countries involved in trade are assumed to benefit from the trade. The sustainability of trade is determined by profits, where the law of the free market applies, namely the price (the balance between supply and demand) determines the allocation of resources.

The market mechanism has a weakness - when a market failure (distortion) occurs, free trade is not the best policy - on the contrary, the policy can be harmful rather than beneficial, such as a monopoly and protection through the imposition of import tariffs. Developing countries often impose large import tariffs within the framework of infant industry policies, namely by protecting their emerging industries as part of a substitution import strategy (i.e., a strategy to produce imported goods for domestic needs then develop them for export needs). The goal is to create a monopolistic domestic industrial power, so that the economies of scale of the industry can be achieved more quickly and are able to compete with industries from developed countries. As a result, the allocation of production sources cannot run according to the law of the market (the invisible hand) but is determined by government policy. Trade between countries occurs when each country develops different products so that it creates demand and supply between countries on the basis of differences in the goods

²¹ Victoria Natali Makalew, Vecky A . J. Masinambouw, "Analisa Kontribusi Kawasan Ekonomi Khusus (KEK) Terhadap Struktur Perekonomian Sulawesi Utara."

they produce. Trade between countries does not only occur because of product differences (comparative advantage), but also develops when there is a difference in product efficiency (competitive advantage). Differences in products and differences in efficiency are the drivers of trade between countries. The development process brings consequences for the process of change and legal reform.²²

Development is basically a change towards a better life.²³ Furthermore, according to Max Weber, the role of law in development is a coercive order that has potential support from state power.²⁴ The development of a formal rational legal system as a reflection and prerequisite for the growth of modern capitalism, furthermore, the role of law in change according to Roscoe Pound is as a tool to make social change (social engineering). Meanwhile, J. Bentham argues that to carry out the function of social engineering, the law can be used to make changes in society. The phenomenon of mutually influencing the relationship between the legal system and the economic system of a country is described in Talcot Parsons and further development by Harry C. Bredemeir which states the concept of input-output.²⁵

Laws obtain inputs and produce results for other sub-systems. Each sub-system has its own function: First, the economic sub-system has an adaptation function, which is a function of how the community can utilize the resources around it optimally. The focus of economic problems is to formulate rational behavior in dealing with needs, while law formulates various rational policies in overcoming the situation.²⁶ Second, the political sub-system functions as the achievement of goals (goal pursuance), namely that every member of the community always has a need-to-know which direction the community's goals are to be moved. With politics, society is brought together as a totality to determine a common goal; third, the social sub-system functions as integration and fourth, the cultural sub-system functions to maintain patterns (pattern maintenance).²⁷

In other words, law is basically a crystallization or formalization of economic will and political will that interact and compete. On the other hand, according to Adam Smith, economics and politics basically have different goals, namely on the one hand creating a source of income for the community so that self-sufficiency is achieved and

²² Erman Rajagukguk, *Peran Hukum Dalam Pembangunan Ekonomi*, Jilid 2 (Jakarta, 2000). P. 10

²³ Arief Budiman, *Teori Pembangunan Dunia Ketiga*, Cet. 4 (Gramedia Pustaka Utama, 2000). P.1

²⁴ Soerjono Soekanto, *Beberapa Permasalahan Hukum Dalam Kerangka Pembangunan Di Indonesia* (Jakarta: UI Press, 1983). P. 155

²⁵ Rosemary Hunter, *Thinking About Law: Perspective on The History* (Australia: Allen & Unwin St.Leonard, 1975).P. 35

²⁶ Vilhem Aubert, *Sociology of Law* (Harmondsworth: Penguin, 1969). P. 40

²⁷ Mahfud MD, *Politik Hukum Di Indonesia* (Malang: LP3ES, 1998). P. 7

on the other hand providing various facilities for the government so that it can carry out its duties and functions.²⁸

Burg's in J.D Ny Hart said that the functioning of the law in economic growth is determined through 3 elements, namely stability, predictability, and justice the three elements are interrelated in maintaining balance in achieving a goal, both individuals, groups and the general public.²⁹ The explanation regarding these three elements is as follows.³⁰ First, Stability, through the authority of the procedure as well as its substance, the state becomes the main actor in maintaining harmony between various interests, individual, group and public interests. Through laws and other policies, it is hoped that a balance between supply and demand will be achieved, a balance between overall national production and the needs of society. Second, predictability, that is for the law to be effective, it must be predictable and provide legal guarantees and certainty in providing future development projections. With predictions, humans or society have guidelines for actions that will be carried out in relation to other humans and have certainty how other parties will act.³¹

In addition, the law must have procedural capabilities in dispute resolution. These procedures are related to the circumstances when a dispute occurs and the mechanism or procedure for resolving disputes in courts or other dispute resolution forums such as arbitration or conciliation. Theoretically, dispute resolution procedures must be structured effectively and efficiently. Third, fairness (fairness) Law is a means to facilitate the process of resolving disputes that occur with the aim of creating justice for the community and preventing unfair and discriminatory practices. The law must be able to accommodate a clear balance, definition, and status for the interests of individuals or groups in society.

Special economic zones are regulated by Law Number 39 of 2009 concerning Special Economic Zones, which means that the sociological basis is to accelerate strategic economic development in certain areas to maintain a balance between the progress of an area within the national economic unit and maintain balance not to disturb the environment and protected forests. For this reason, the government issued an implementing regulation from the SEZ regulation, which as stated in Article 3 that in the SEZ can be built supporting facilities and housing for workers and in each SEZ provided locations for MSMEs, and cooperatives, both as a Business Actor or as a

²⁸ Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, ed. R. H. caampbell and A.S. Skinner, Volume I (Indianapolis: IibertyClasic, 1979). P.397

²⁹ Leonard J. Theberge, *Law and Economic Development*, ed. Vol. 9 (Denver: Journal of International Law and Policy 231, 1980). P. 232

³⁰ J.D Nyhart, *The Role of Law and Economic Development, Paper Knowledge . Toward a Media History of Documents* (Massachusetts: Massachusetts Institite of Technology, 2014). See Erman Rajagukguk, *Peran Hukum Dalam Pembangunan Ekonomi* (Jakarta: Pascasarjan FH UI, 2000). P. 60-76

³¹ David M. Trubek, "Toward a Social Theory of Law: An Essay on the Study of Law and Development," *Yale Law Journal* 82, no. 1 November (1972): 1–50.P. 13

supporter of company activities that are within the SEZ and are located in a position close to international trade routes or close to international shipping lanes in Indonesia or located in areas of superior resource potential and have clear boundaries.

In the implementing regulations of SEZ, namely Government Regulation number 2 of 2011 concerning the Implementation of Special Economic Zones in Article 3, it is stated that special economic zones that carry out economic functions within areas with certain boundaries within the jurisdiction of the Unitary State of the Republic of Indonesia in certain zone groups include the following:

- a. Export processing zone - where the production is intended for export;
- b. Logistics activity zone - storage, assembly, sorting, packing, distribution, repair and reconditioning of machinery activities from within the country and from abroad.
- c. Industrial zone - which processes raw materials, raw materials, semi-finished goods, and/or finished goods, as well as agroindustry with a higher value for their use, including industrial design and engineering activities whose production is for export and/or for domestic use;
- d. Technology development zone for research and technology activities, design and engineering, applied technology, software development, and services in the field of information technology;
- e. Tourism Zone, tourism business activities to support the implementation of entertainment and recreation, meetings, exhibitions, and related activities.
- f. Energy Zone research and development activities in the energy sector and the production of alternative energy, renewable energy, and primary energy.
- g. Other Economic Zones – determined through the National Council

In addition, the government issued Government Regulation Number 96 of 2015 which was updated with Government Regulation Number 12 of 2020 concerning Ease of SEZ Facilities with the aim of increasing investment and accelerating business implementation in Special Economic Zones that can support national economic development and economic development in certain areas to increase employment. Business actors in SEZs include Business Entities and/or Business Actors who carry out activities in the business sector in SEZs, according to Government Regulation Number 12 of 2020 concerning Ease of SEZ Facilities where facilities and facilities are in the form of: a. taxation, customs, and excise; b. goods traffic; c. employment; d. immigration; e. land and spatial planning; f. business license; and/or g. other facilities and amenities.³²

In Indonesia, the role of law in carrying out economic development can be seen since 1969, when the initial planned development was carried out in stages and each

³² “Presiden Jokowi Teken PP Tentang Fasilitas Dan Kemudahan Di Kawasan Ekonomi Khusus,” *kontan.co.id*, 2020.

stage took 5 years. The First 25 Years of Long-Term Development (PJPI 1969-1994) carried out in five years (Pelita). Each Pelita is compiled in the GBHN and stipulated by an MPR Decree. In that regard, the relationship between the legal system and the economic system of a country is mutually influencing.³³

4. CONCLUSION

The existence of Free Trade Zones and Free Ports is not more profitable and that creates problems in management so that it has an impact on reducing state revenues and also increasing income inequality and the low development of MSMEs compared to the existence of special economic zones launched by the government based on Law Number 25 of 2007 concerning Investment promulgated on April 26, 2007 and in one of the chapters that regulated in Chapter XIV, namely concerning Special Economic Zones (SEZ) as regulated in Article 31. Development of special economic zones must be carried out with investment activities in general, this can be seen from the objectives of SEZ development, namely: increasing investment, employment, obtaining foreign exchange because of increasing exports, increasing the competitive advantage of export products, increasing the use of local resources, services and capital to increase exports and encouraging the improvement of the quality of human resources through technology transfer. Special Economic Zones require the availability of facilities and infrastructure as well as skilled workers, for this reason, it is the task of the Ministry of Manpower which is included in one of the priorities of the national program to create harmonious Industrial Relations and Competent Industrial Human Resources (HR) - to prepare skilled workers in accordance with the needs of the industry, With the regulations related to this SEZ, the role of the government as a mediator or regulator of economic acceleration and facilitating the absorption of labor and its welfare, so that the existence of the SEZ can be felt by the community, especially in regional areas.

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³³ Sunaryati Hartono, *Hukum Ekonomi Pembangunan Indonesia* (Bbandung: Bina Cipta, 1988).

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[variajusticia] Editor Decision

2021-12-20 09:17 PM

Dear Suparji Achmad:

Greetings from Varia Justicia

This is to inform you that Editorial Office of Varia Justicia reached a decision regarding your submission to Varia Justicia, "The Legal Aspects In Management Special Economic Zones".

Our decision is: Revisions Required

You are expected to revise your manuscript as per the following suggestions. Read all part of the email carefully and act without fail. Editor Comment - As per new Varia Justicia Policy, References must be arranged as per Chicago Manual of Style edition 17th (fullnote) guidelines. **Reviewer A comments:** Kindly follow the reviewer's suggestion in the document attached. **Reviewer B comments:** **Note on Plagiarism and Similarity:** Varia Justicia follows ZERO Plagiarism policy. We check all articles by iThenticate (Turnitin software). You are expected to see attached similarity report as well and take the following actions:

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Managing Editor

[Varia Justicia](#)

[variajusticia] Editor Decision

2021-12-29 12:04 AM

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We have reached a decision regarding your submission to Varia Justicia, "The Legal Aspects In

Management Special Economic Zones".

Our decision is to: **Accept Submission**

Before we publish your article, kindly follow the instructions:

1. Find the Article Processing Charges (APC) attachment in the next email.
2. Kindly make a payment to **Bank Syariah Indonesia (BSI ex-BSM) account 7141830311** on behalf of Varia Justicia
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Regards
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Managing Editor of Varia Justicia

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[variajusticia] Editor Decision

2022-01-04 08:17 PM

Suparji Achmad:

The editing of your submission, "The Legal Aspects In Management Special Economic Zones," is complete. We are now sending it to production.

Submission

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Chrisna Bagus Edhita Praja
variajusticia@ummgl.ac.id

Major Revision

1. The author doesn't provide the clear explanation regarding the topic, the analysis is too superficial.
2. Between aims of this study, analysis and conclusion shall to synchronized
3. Kindly follow the reviewer's suggestions and comments
4. The author revision made in the same document, if needed, the author can write the author's response letter

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Legal Aspects In Management Special Economic Zones

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ABSTRACT

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The purpose of this paper is to find the legal aspects analyze the potential of special economic zones in national economic development, to realize people's welfare, and increase competitiveness, for the national interest, in addition to economic development of special economic zones in carrying out special government functions and for the national interest. Law as a function of developmental change also frames the reality of economic development. The formulation of the problem in this research What are the legal aspects in the management of special economic zones? This study was conducted through research method used in writing is the normative juridical method - normative juridical research is research that refers to legal norms contained in legislation, international conventions and court decisions. In addition, this study using and comparative approach juridical qualitative - the approach used in This research is a comparative approach, which is to compare the background and function of the regulation on special economic zones (SEZ) in several countries in developing special economic zones. This study shows that the The goal success of the implementation of a free trade area is strongly influenced by the existence of a law that can balance the protection of national interests and attract investment. This is very important considering that there is a view that various legal products are too beneficial for foreign parties and detrimental to domestic interests, there is a relationship between the legal system and the economic system of a country that influences each other in the development of Special Economic Zones.

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1. INTRODUCTION

The purpose of the establishment of the Republic of Indonesia is in the context of realizing the ~~general welfare~~ (welfare, ~~state~~) and social justice.¹ To realize this goal, the national economy must be organized based on economic democracy with the principles of togetherness, efficiency and justice by maintaining a balance of progress and national economic unity. This objective shows that Indonesia is oriented towards the economy in the implementation of the life of the nation and state. The substance of the theory of the economic approach in law can be described as follows: Law and economics can be defined as the application of economic theory (primarily micro economics and their basic concept of welfare economics) to examine the formation structure, processes, and economic impact of law and legal institutions.²

Nyhart, Adi Sulistiyono in Krismiaji stated that there are six concepts in law that have an influence on the development of economic life, namely:³

1. Predictability – being able to predict the enactment of the law - providing a definite picture - in the future regarding the situation or relationships that are carried out in the present;
2. Procedural ability, the material law can realize itself properly (effectively);
3. Codification of objectives, legislation made in accordance with the codification of objectives in the economic sector and in accordance with the purposes desired by the state (regulator);
4. Balancing factor - providing a balance between conflicting values in society;
5. Accommodation - must be agile - quick responsive with successfullness - Changes that are very fast will essentially cause a loss of balance, this restoration is possible because in this turmoil the legal system provides a grip of certainty through clear and definitive formulations, opens opportunity for the restoration of justice through orderly procedures and so on.

According to the concept of the welfare state, the state is seen as a tool to achieve the goals of prosperity and social justice for all people.⁴ Countries that adhere to the concept of a welfare state have 4 (four) functions, namely: ~~the state as provider~~ (the state as a servant), the state as regulator, the state as entrepreneur, and the state as referee. ~~Through this article, the author examines the legal aspects in the management of special economic zones.~~

¹ The 1945 Constitution of the Republic of Indonesia. Article 33 The concept of the welfare state in the 1945 Constitution was first conveyed by Muhammad Hatta, and it was stated in Article 33 which reads: (1) The economy is structured as a joint effort based on the principle of kinship; (2) Production branches which are important to the state and which affect the livelihood of the people are controlled by the state; (3) The earth and water and the natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people; (4) togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity. (5) Further provisions regarding the implementation of this Article shall be regulated in the Law.

² Steven G. Medema Nicholas Mercuro, *Economics and the Law: From Posner to Post-Modernism*, Princeton University Press (Princeton New Jersey: Princeton University Press, 1999). P. 1

³ Krismiaji, "Peranan Hukum Dalam Pembangunan Ekonomi Di Indonesia," *Wahana* 14, no. 2 (2011): 91–100, <http://jurnalwahana.aaykpn.ac.id/wahana/article/view/52/pdf>.

⁴ Soeharsono Sagir, "Sistem Ekonomi Kerakyatan: Pro Poor, Pro Job, Pro Growth Ekonomi Ampera, Ekonomi Kosntitusi 1945" (Bandung: Unpad, 2011).

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~~The arrangement of the economic system~~ According to Lane, Jan-Erik & Svante Ersson, Francis Fukuyama in Ningrum Natasya Sirait the economic system, said ~~that the system~~ includes 4 things, namely:⁵

- a. Organizing economic decisions (centralized or decentralized in nature),
- b. Provision of information and coordination for the community (free market or regulated in planning),
- c. Ownership of the factors of production (private, cooperative or collective),
- d. Stimulus system (moral or material).

Mochtar Kusumaatmadja and Arief B. Sidharta In Budiman Ginting said-argued that legal certainty is the real goal of law in addition to benefit and justice for all citizens with all their various features, ~~—~~ which are plural in their interactions. Legal certainty is inseparable from the function of law, ~~—~~ the achievement of order in human life in society. This regularity causes people to live with certainty, meaning that people can carry out the activities needed in social life. Legal certainty is a guarantee and certainty of doing business ~~in the business world~~ activities. Moreover, Legal-legal certainty is the consistency of regulations and law enforcement in Indonesia, harmonization and consistency in all regulations and intertwined with other regulations. ~~The consistency of regulations is indicated by the existence of regulations that do not conflict with each other, and can be used as guidelines for a sufficient period of time, so that it does not seem that every change of official is always followed by a change of regulations that can conflict with each other.~~⁶

In contrast to neo-liberalism, which prioritizes synergy between stakeholders, the community, the business world, and the government. Julie Paquin said that a legal institution is needed to ensure that the goals of growth and poverty reduction in developing countries are achieved, as follows:⁷ neo-liberal prescriptions to generate growth in the developing world, concepts like poverty reduction, good governance, and ~~rights-based~~ rights-based development emerged as new mantras. One of the most striking phenomena in the development field has been the resurgence of interest in legal institutions.

An economic system that is in line with Pancasila and a people's economy which is considered the right economic pillar to be applied in Indonesia will be achieved by providing equal business opportunities for every business actor, both large and small, which is nothing but the essence of the current market economy. After the 1998's economic crisis occurred, ~~it was realized that many factors influenced the occurrence of the Indonesian economic crisis in 1998~~, one of which was the culture of competition. Competition is a culture that is considered incompatible with the culture of the people in Indonesia. It is not easy to change behavior after doing it for more than for about 30 thirty years under the New Order regime. It turns out that every economic system implemented is not accompanied by a clear competition policy. ~~In this case the policy in question is more than just a regulation or law because it establishes a pattern that is expected to provide the basis for the form of its implementing regulations, namely laws.~~

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⁵ Ningrum Natasya Sirait, "Indonesia Dalam Menghadapi Persaingan Internasional," *Usu* (Medan: usu.ac.id, 2006).

⁶ Sukardi, "Peran Penegakan Hukum Dalam Pembangunan Ekonomi," *Jurnal Hukum & Pembangunan* 46, no. 4 (2016): 434–53, <https://doi.org/10.21143/jhp.vol46.no4.48>.

⁷ Julie Paquin, "Business Law Transplants and Economic Development: An Empirical Study of Contract Enforcement in Dakar, Senegal" (McGill University, Montreal, 2010).

The standard law-and-economics view of litigation behavior proceeds from the assumption that plaintiffs will sue whenever the expected value of doing so exceeds expected cost. Tethered to the profit motive, private enforcement will thus operate in a kind of market-clearing, “auto-pilot” mode. Assumptions about the essential profit motivation of private enforcers offer a useful starting point for thinking about the behavior of private litigation regimes by highlighting some of private enforcement’s benefits and costs compared to regulatory alternatives. For instance, private enforcement’s champions assert that the profit-motivated nature of private enforcement renders it more cost-effective and nimbler than poorly incentivized or sclerotic public enforcement bureaucracies. A further claim is that profit-seeking private enforcers will provide a politically insulated, “failsafe” source of enforcement if public enforcement agencies, such as the Securities and Exchange Commission or the Federal Trade Commission, suffer from lassitude, resource constraints, or “capture” by regulated interests.⁸

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Legal changes can be divided into two broad categories according to their causes. The first type of legal change is caused by the law responding to changes taking place in society. Political, social and economic changes, technological advancements and changing moral beliefs all lead eventually to changes in the law. Indeed, the law must be responsive to new circumstances and attitudes if it is to enjoy continued respect. The second type of legal change arises from the need to keep the law in good working order. Like any piece of sophisticated machinery, the law machine must be kept in a neat and tidy condition, maintained on a regular basis, with essential repairs undertaken when necessary. We will now examine these two types of legal change in more detail.⁹

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The emergence of economic offenses is a consequence of the increasing involvement of the government in carrying out efforts in the field of people's welfare. So that to overcome the conflict of interest between the parties involved, it is necessary to have an order that is in charge of maintaining security and order in all areas of public life, including security and order in the economic field. The legal instrument is economic criminal law whose application must be applied secondarily, meaning that it is only given a function after other legal means are proven incompetent or inadequate.¹⁰

National Economic Development aims to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia and the mandate of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVI/MPR/1998 concerning Economic Politics in the context of economic democracy with the principles of togetherness, efficiency with justice, sustainable, environmentally sound, independent, and by maintaining a balance of progress and national economic unity as well as the existence of political and economic alignments that provide more opportunities and support for micro, small, medium enterprises (MSMEs), and cooperatives and at the same time provide benefits to domestic industry. In this regard, the Special Economic Zone (SEZ) provides a location for MSMEs and cooperatives in order to encourage upstream and downstream linkages and synergies with large companies, both as business actors and as supporters of other

⁸ David Freeman Engstrom, “Private Enforcement’s Pathways: Lesson From Qui Tam Litigation,” *Columbia Law Review* 114, no. 8 (2014): 1913–2006.

⁹ Vida Allen Sarah Riches, *Business Law*, Ninth Edit (England: Pearson Longman, 1987).

¹⁰ Edi Setiadi, “Reformasi Hukum Pidana, Untuk Mengantisipasi Perkembangan Kejahatan Di Bidang Ekonomi (Economic Crimes),” *Jurnal Sosial Pembangunan* 16, no. 3 (2000): 205–2014.

following details. Nine Special Economic Zones Spread throughout Indonesia, SEZs that have been in operation:¹³

1. Sei Mangkei SEZ
2. Tanjung Lesung SEZ
3. Palu SEZ
4. Mandalika SEZ
5. Galang Batang SEZ
6. Arun Lhokseumawe SEZ
7. Tanjung Kelayang SEZ
8. Bitung SEZ
9. Morotai SEZ
10. KEK Maloy Batuta Trans Kalimantan (MBTK)
11. KEK Sorong
12. Kendal SEZ

SEZ in Development Stage:

1. Tanjung Api-Api SEZ
2. Singasari SEZ
3. Likupang SEZ
4. KEK BAT (Batam Aero Technic)
5. Nongsa SEZ
6. KEK Lido
7. SEZ Gresik

Through this article, the author examines the legal aspects in the management of special economic zones. The Problem Question about this article how is the legal aspects in the management of special economic zones?

2. RESEARCH METHODS

The research method used in writing this dissertation is a normative juridical and comparative juridical method which is qualitative. Normative juridical research is research that refers to legal norms contained in laws and regulations, international conventions and court decisions.¹⁴

The approach used in this study is a comparative approach,¹⁵ which is to compare the background and function of the regulation on special economic zones (SEZ) in several countries in developing special economic zones. The comparative law approach is carried out in order to obtain attitudes and policies that have developed in several countries. In conducting a comparison of the legal system, we review from three aspects, namely the legal substance (substance), structure (structure) and legal culture (culture).¹⁶

¹³ Iwan Supriyatna | Mohammad Fadil Djailani, "Dari 13 KEK Terbangun, Tenaga Kerja Terserap Baru 8.686 Orang," suara.com, October 10, 2019, <https://www.suara.com/bisnis/2019/10/10/124130/dari-13-kek-terbangun-tenaga-kerja-terserap-baru-8686-orang?page=all..>

¹⁴ Sri Mamudji Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: CV Rajawali, 1985). Hal 14

¹⁵ W.E. Butler and V.N. Kudriatsev (ed), *Comparative Law and Legal System, Historical and Socio-Legal Perspectives*, (New York : Oceana Publications, Inc., 1985), h.69. Lihat juga Konrad Zweigert; Hein Kötz, *Introduction to Comparative Law*, 2nd Ed. Re (Oxford: Oxford : Clarendon Press, 1987). hal.2.

¹⁶ Lawrence M. Friedman, *American Law* (New York: W.W. Norton & Company, 1984).

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The use of normative juridical and comparative juridical methods is then analyzed qualitatively, namely analyzing the data as a whole and is a holistic unit¹⁷, using various legal norms found in the legislation.¹⁸ This holistic nature is one of the characteristics of the qualitative approach method.¹⁹

3. RESULTS AND DISCUSSION

3.1 Legal Basis for Special Economic Zones

Law No. 25 of 2007 concerning Investment was promulgated on April 26, 2007 and in one of the chapters regulated in Chapter XIV, namely concerning Special Economic Zones (SEZ) as regulated in Article 31. The development of a special economic zone has to do with activities investment in general, this can be seen from the objectives of SEZ development, namely: increasing investment, employment, foreign exchange earnings as a result of increasing exports, increasing the competitive advantage of export products, increasing the use of local resources, services and capital for increasing exports and encouraging an increase in the quality of human resources through technology transfer.²⁰

As a continuation of these provisions, Law Number 39 of 2009 concerning Special Economic Zones was issued. The purpose of developing SEZs is, among others: to provide opportunities for increased investment through the preparation of areas that have advantages and are ready to accommodate industrial activities, export-import and economic activities that have high economic value, increase foreign exchange earnings for the country through international trade; and increasing employment, tourism and investment opportunities.

The process of economic development, including the development of the SEZ, brings consequences for changes and legal reforms. The implementation of SEZ requires conducive ~~law-regulations~~ and legal institutions. Legal certainty is an element that is as important as political stability and economic opportunity. Strengthening legal institutions is a precondition for economic change, crucial to the viability of new political systems, and an agent of social change.

Laws that are considered pro-foreign include Law No. 30 of 2007 on Energy and Law No. 25 of 2007 on Investment. On the other hand, the government is also considered to have allowed foreign domination in three strategic areas, namely energy, banking, and telecommunications, to exceed 50 percent. It seems that foreign domination of economic sectors in Indonesia is expanding and spreading. Foreign domination can cover various sectors, namely finance, energy, mineral resources, telecommunications, and plantations.

In addition, Law no. 25 of 2007 concerning Investment (UUPM) is considered as the basis for the complete surrender of Indonesia's natural wealth to foreign investment. ~~The birth~~ Designing of the Capital Market Law has sparked controversy and

¹⁷ Matthem B. Milles and Michael Huberman, *Qualitative Data Analysis*, 2nd Ed (California: Sage Publications Inc, 1994). P 137

¹⁸ Yvonna S.Lincoln, Norman K.Denzin, *The Sage Handbook of Qualitative Research* (California: Sage Publications, 1994). P. 212

¹⁹ Kenneth D. Bailey, *Methods of Social Research* (New York: The Pree Press, 1987). P. 62

²⁰ Menurut model pengembangan perekonomian suatu kawasan, maka SEZ/KEK terbagi atas : a) FTZ, b) Bonded Zone, c) Export Processing Zone dan d) Kawasan Industri Terpadu. Dalam UU KEK disebutkan bahwa KEK dapat dibentuk terdiri dari satu atau kombinasi dari : a) Kawasan Pengolahan Eksport; b) Tempat Penimbunan Berikat; c) Kawasan Industri; d) Kawasan Pengembangan Teknologi; e) Kawasan Jasa Keuangan; f) Kawasan Ekonomi lainnya.

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reactions from many parties, both from the [House of Representatives \(DPR\)](#) and [civil the society](#), due to the [very](#)-liberal nature of the law and pro-foreign capital. Through a judicial review mechanism, the Constitutional Court (MK) annulled one of the articles on land tenure rights because it was deemed to have violated the 1945 Constitution.²¹

Foreign domination in the national economy needs to be trimmed so that natural wealth can be enjoyed by the people. Foreign corporations have controlled [80-eighty](#) percent of the mining sector and left environmental damage in some places. The government must demand renegotiation of all cooperation contracts with foreign corporations that cultivate Indonesia's natural wealth.²² The continuous exploitation of natural resources by foreign corporations is detrimental to Indonesia, because Indonesia only gets taxes and royalties.²³

3.2 SEZ Regulation in the Job Creation Law (Omnibus Law)

The juridical basis of the rules for implementing Special Economic Zones, namely that in order to implement the provisions of Article 150 and Article 185 letter b of Law Number 11 Year [2020](#) concerning Job Creation, it is necessary to stipulate a Government Regulation concerning the Implementation of Special Economic Zones; 1. Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia; Law Number 39 of 2009 concerning Special Economic Zones (State Gazette of the Republic of Indonesia of 2009 Number 147, Supplement to the State Gazette of the Republic of Indonesia Number 5066); Law Number 11 of 2020 concerning Copyright Number 245, Supplement to the State Gazette of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2020 Indonesia Number 6573). In Article 1 Paragraph 1 it is stated that Special Economic Zones, hereinafter referred to as KEK, are areas with certain boundaries within the jurisdiction of the Unitary State of the Republic of Indonesia which are determined to carry out economic functions and obtain certain facilities whose implementation is regulated through the KEK Administrator who has the task of administering business permits, other permits, services, and supervision in SEZs. Article 2 Paragraph (1) states that the implementation of SEZ includes:²⁴

- a. Location, criteria, and business activities;
- b. Proposal for the establishment of SEZ;
- c. Determination of SEZ;
- d. Development and operation of SEZs;
- e. SEZ institutional;
- f. SEZ management; and
- g. The facilities and amenities include the following:

²¹ “Undang-Undang Republik Indonesia Nomor 25 Tahun 2007 Tentang Penanaman Modal (Lembaran Negara RI Tahun 2007 Nomor 67, Tambahan Lembaran Negara RI Nomor 4724),” Pub. L. No. Lembaran Negara RI Tahun 2007 Nomor 67, Tambahan Lembaran Negara RI Nomor 4724) (2007). Paragraph 22

²² Hal serupa pernah dilakukan Presiden Bolivia, Evo Morales, dan Presiden Venezuela, Hugo Chaves, dan terbukti sukses.

²³ Abdullah Aman Damai Maria S.W. Sumardjono, Nurhasan Ismail, Ernan Rustiadi, *Pengaturan Sumber Daya Alam Di Indonesia : Kajian Kritis Undang-Undang Terkait Penataan Ruang Dan Sumber Daya Alam, Fakultas Hukum Universitas Gajah Mada* (Yogyakarta: Gajah Mada Press, 2011). P. 42

²⁴ “Peraturan Pemerintah Republik Indonesia Nomor 40 Tahun 2021 Tentang Penyelenggaraan Kawasan Ekonomi Khusus (Lembaran Negara RI Tahun 2021 Nomor 50, Tambahan Lembaran Negara RI Nomor 6652)” (1945). Paragraph 1 point 1 and 4

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- (i). Taxation, customs and excise;
- (ii). Traffic of goods;
- (iii). Employment;
- (iv). Immigration;
- (v). Land and spatial planning;
- (vi). Business licensing; and/or
- (vii). other facilities and amenities.

Location, Criteria and Business Activities of SEZs are as follows: a. new areas; b. expansion of existing SEZs; or c. all or part of the locations of the Free Trade Zone and Free Port (KPBPB), including KPBPB Batam, KPBPB Bintan, and KPBPB Karimun which were formed based on the law governing KPBPB before or after the stipulated period ended must meet the following criteria: a. in accordance with the regional spatial plan and does not have the potential to disturb the protected area; b. have clear boundaries; and c. amount of land proposed to become SEZ has been controlled not more than 50 % (fifty percent) of the planned.

In accordance with the regional spatial layout plan as referred to in Article 5 letter a, it is a cultivation area with a designation based on a regional regulation concerning regency/municipal spatial planning plans. The business activities in SEZ are regulated in Article 9 Paragraph (1) Where business activities in SEZ consist of:

- a. Production and processing;
- b. Logistics and distribution;
- c. Research, digital economy, and technology development;
- d. Tourist
- e. Energy development;
- f. Education;
- g. Health;
- h. Sport;
- i. Financial services;
- j. Creative industry;
- k. SEZ development and management;
- l. Provision of SEZ infrastructure; and/or
- m. Another economy.

Whereas in Paragraph (2) it is stated that other economic activities as referred to in paragraph (1) letter m shall be determined by the National Council. Paragraph (3) In determining other economic activities as referred to in paragraph (2), the National Council may ask for consideration from the minister or the head of the relevant institution. Paragraph (4) the implementation of business activities as referred to in paragraph (1) is regulated in accordance with the SEZ zoning plan. Paragraph (5) In the SEZ, locations are provided for micro, small, medium-sized enterprises, and cooperatives, both as business actors and as supporters of the activities of companies within the SEZ. Paragraph (6) In SEZ, supporting facilities and housing for workers can be built which are separated from the location of business activities. This government regulation also regulates the submission of special economic zones proposed by the regional government.²⁵

²⁵ Peraturan Pemerintah Republik Indonesia Nomor 40 Tahun 2021 Tentang Penyelenggaraan Kawasan Ekonomi Khusus (Lembaran Negara RI Tahun 2021 Nomor 50, Tambahan Lembaran Negara RI Nomor 6652).

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Tulus Tambunan and Coenrad Muller Scheepers in Victoria Natali Makalew, Vecky A.J. Masinambouw, Een N. Walewangko said that the existence of the Special Economic Area is the growth of supporting areas that will accelerate and increase the absorption of labor, local, regional, national and international investment flows to the region, which in turn will improve the welfare of the community in general²⁶. With the development plan for Special Economic Zones, it is hoped that the community will be able to take advantage of the policy to increase economic level and increase technology transfer, innovation and increase national productivity and structural transformation, as well as become an arena for promoting trade and investment.²⁶

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Special Economic Zones require the availability of facilities and infrastructure as well as skilled workers, for this reason, it is the task of the Ministry of Manpower which is included in one of the priorities of the national program to create harmonious Industrial Relations and Competent Industrial Human Resources (HR)— to prepare skilled workers. in accordance with the needs of the industry - as stated in Article 10 of Law Number 25 of 2007 concerning Investment states that (1) Investment companies in meeting the needs of workers must prioritize Indonesian citizens. (2) Investment companies have the right to use foreign national experts for certain positions and expertise in accordance with the provisions of laws and regulations. (3) Investment companies are required to improve the competence of Indonesian citizens through job training in accordance with the provisions of laws and regulations. To meet the needs of manpower in accordance with the needs of industry, cooperation between various parties is needed, including the Provision of Skilled Personnel and Professional Management Institutions that can support the establishment of SEZs in an area, including the construction/development of Job Training Centers (BLK), Construction/Improvement of Schools Special Intermediate (SMK) and Capacity Building for KEK Administrators.²⁷

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3.3 The Role of Law in Special Economic Zones

In order to integrate the needs of investment and economic nationalism in Indonesia in the implementation of special economic zones, it is necessary to strengthen the Indonesian legal system.²⁸ Referring to Lawrence M. Friedman's theory, every legal system always contains three elements, namely structure, substance and legal culture.²⁹ First structure.

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“First many features of a working legal system can be called structural the moving parts, so speak of the machine Courts are simple and obvious example; their structures can be described; a panel of such and such size, sitting at such and such a time, which this or that limitation on jurisdiction. The shape size, and power of legislature is another element structure. A written constitution is still another important feature in structural landscape of law. It is, or attempts to be, the expression or blueprint of basic features of the country's legal processes, the organization and framework of government.”

²⁶ Victoria Natali Makalew, Vecky A . J. Masinambouw, “Analisa Kontribusi Kawasan Ekonomi Khusus (KEK) Terhadap Struktur Perekonomian Sulawesi Utara.”

²⁷ Victoria Natali Makalew, Vecky A . J. Masinambouw.

²⁸ Peter de Cruz, *Perbandingan Sistem Hukum: Common Law, Civil Law, dan Socialist Law*, (Jakarta: Nusa Media, 2010), hlm.68.

²⁹ Lawrence M. Friedman and Grant M. Hayden, *American Law: An Introduction, American Law: An Introduction* (New York: New York W. W. Norton & Co, 1984). P. 7

Friedman's description above shows that the structure as part of the legal system includes the institutions created by the legal system including the judiciary (court) legislative and executive. The legal structure component is a representation of the institutional aspect that plays the role of law enforcement and law making. The structure in its implementation is a uniformity related to one another in a legal system. **Second, substance;**

"The second type of component can be called substantive. These are the actual products of the legal system-what the judges, for example, actually say and do. Substance includes, naturally, enough, those propositions referred to as legal rules; realistically, it also includes rules which are not written down, those regulations of behavior that could be reduced to general statement. Every decision, too, is a substantive product of the legal system, as is every doctrine announced in court, or enacted by legislature, or adopted by agency of government."

Friedman's description above shows that the legal substance includes the results of the structure which include laws and regulations, decisions and doctrines. Legal substance as an aspect of the legal system is a reflection of the applicable rules, norms and behavior of the people in the system. **Third, legal culture**

"Legal culture can be defined as those attitudes and values that are related to law and the legal system, together with those attitudes and values affecting behavior related to law and its institution, either positively or negatively. Love of litigation, or a hatred of it, is part of the legal culture, as would be attitudes toward child rearing in so far as these attitudes affect behavior which is at least nominally governed by Law. The legal culture, then is a general expression for the way the legal system fits into the culture of the general society."

Friedman's description above shows that legal culture includes views, attitudes or values that determine the operation of the legal system. People's views and attitudes towards are very varied, because they are influenced by sub-cultures such as ethnicity, gender, education, descent, belief (religion) and environment. The views and attitudes of these people greatly affect the rule of law.³⁰ Thoughts on economic development are

³⁰ W. Friedmann, *The State And The Rule of Law in a Mixed Economy* (London: Stevens & Son, 1971). See Geelhoed, *De Intervierende Staat (Aazet een Instrumentenleer)* Staaatgeverij S'Gravehega, 1983. In Gunarto Suhadi, *Peranan Hukum : Dalam Pembangunan Ekonomi* (Yogyakarta: Univ. Atma Jaya, 2002). P. 8. There are three typologies of the role of the state in the name of law in encouraging economic development, namely; First, the state acts as a regulator (stuurende) and jury (referee) by using general and individual (special) administrative law instruments. Government actions include providing information, and making decisions with the aim of influencing citizens in general, for example issuing regulations on investment, rental rates, monetary policy, banking, capital markets and government control through various macroeconomic regulations and the establishment of other selective norms as well as those included in the category of coercive action in a decision on the dispute of the parties; Second, the state can act as a provider of various needs of its citizens through the provision of social benefits and other actions that lead to social rechtstaat. The role of the state as a provider is an embodiment of the main task of the state in the social welfare state system; Third, the role of the state as an entrepreneur or entrepreneur is carried out through the establishment of state-owned enterprises to carry out the function as an agent of development. This task as an agent of development can be carried out primarily as a driving force for the country's growth in general, advancing certain economic sectors that cannot receive private attention and carrying out vital efforts.

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found in the work of Adam Smith in *The Wealth of Nation* and the work of Abbe de Condillac in *Government and Commerce*.

According to Baghwaty, Adam Smith's work has inspired a number of trade theorists, including the models developed by David Ricardo. Adam Smith's thinking describes how one factor of production works in the production process of two goods assuming a constant level of labor productivity from two countries that have relative productivity levels, and the two countries involved in trade are assumed to benefit from the trade. The sustainability of trade is determined by profits, where the law of the free market applies, namely the price (the balance between supply and demand) determines the allocation of resources. The market mechanism has a weakness - when a market failure (distortion) occurs, free trade is not the best policy - on the contrary, the policy can be harmful rather than beneficial, such as a monopoly and protection through the imposition of import tariffs. Developing countries often impose large import tariffs within the framework of infant industry policies, namely by protecting their emerging industries as part of a substitution import strategy (i.e., a strategy to produce imported goods for domestic needs then develop them for export needs). The goal is to create a monopolistic domestic industrial power, so that the economies of scale of the industry can be achieved more quickly and are able to compete with industries from developed countries. As a result, the allocation of production sources cannot run according to the law of the market (the invisible hand), but is determined by government policy. Trade between countries occurs when each country develops different products so that it creates demand and supply between countries on the basis of differences in the goods they produce. Trade between countries does not only occur because of product differences (comparative advantage), but also develops when there is a difference in product efficiency (competitive advantage). Differences in products and differences in efficiency are the drivers of trade between countries. The development process brings consequences for the process of change and legal reform.³¹

Development is basically a change towards a better life.³² Furthermore, according to Max Weber, the role of law in development is a coercive order that has potential support from state power.³³ The development of a formal rational legal system as a reflection and prerequisite for the growth of modern capitalism, furthermore, the role of law in change according to Ruscou Pound is as a tool to make social change (social engineering). Meanwhile, J. Bentham argues that to carry out the function of social engineering, the law can be used to make changes in society.

The phenomenon of mutually influencing the relationship between the legal system and the economic system of a country is described in Talcot Parsons and further development by Harry C. Bredemeir which states the concept of input-output.³⁴ Laws obtain inputs and produce results for other sub-systems. Each sub-system has its own function: First, the economic sub-system has an adaptation function, which is a function of how the community can utilize the resources around it optimally. The focus

³¹ Erman Rajagukguk, *Peran Hukum Dalam Pembangunan Ekonomi*, Jilid 2 (Jakarta, 2000). P. 10

³² Arief Budiman, *Teori Pembangunan Dunia Ketiga*, Cet. 4 (Gramedia Pustaka Utama, 2000). P.1

³³ Soerjono Soekanto, *Beberapa Permasalahan Hukum Dalam Kerangka Pembangunan Di Indonesia* (Jakarta: UI Press, 1983). P. 155

³⁴ Rosemary Hunter, *Thinking About Law : Perspective on The History* (Australia: Allen & Unwin St.Leonard, 1975).P. 35

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of economic problems is to formulate rational behavior in dealing with needs, while law formulates various rational policies in overcoming the situation.³⁵

Second, the political sub-system functions as the achievement of goals (goal pursuance), namely that every member of the community always has a need to know which direction the community's goals are to be moved. With politics, society is brought together as a totality to determine a common goal; third, the social sub-system functions as integration and fourth, the cultural sub-system functions to maintain patterns (pattern maintenance).³⁶ In other words, law is basically a crystallization or formalization of economic will and political will that interact and compete with each other. On the other hand, according to Adam Smith, economics and politics basically have different goals, namely on the one hand creating a source of income for the community so that self-sufficiency is achieved and on the other hand providing various facilities for the government so that it can carry out its duties and functions.³⁷

According to Burg's, there are three elements that must be developed in the legal system in order to play a role in economic development, namely stability, predictability and fairness.³⁸ This is in accordance with the opinion of J.D.Ny.Hart, as follows:³⁹

First, stability, the role of the state which is authorized by law is basically in order to maintain a balance to achieve a goal. This balance includes the interests of individuals, groups and public interests that are related to the challenges being faced both at home and abroad. Through other laws and policies, it is hoped that a balance between demand and supply will be achieved, a balance between the overall national production and the overall needs of the community. Second, predictability that is for the law to be effective, it must be predictable and provide legal guarantees and certainty in providing future development projections. With predictions,⁴⁰ humans or society have guidelines for actions that will be carried out in relation to other humans and have certainty how other parties will act. In addition, the law must have procedural capabilities in dispute resolution. These procedures are related to the circumstances when a dispute occurs and the mechanism or procedure for resolving disputes in courts or other dispute resolution forums such as arbitration or conciliation. Theoretically, dispute resolution procedures must be structured effectively and efficiently. Third, fairness (fairness) Law is a means to facilitate the process of resolving disputes that occur with the aim of creating justice for the community and preventing unfair and discriminatory practices. The law must be able to accommodate a clear balance, definition and status for the interests of individuals or groups in society.

Special economic zones are regulated by Law Number 39 of 2009 concerning Special Economic Zones, which means that the sociological basis is to accelerate strategic economic development in certain areas in order to maintain a balance between the progress of an area within the national economic unit and maintain balance —not to

³⁵ Vilhem Albert, *Sociology of Law* (Baltimore: Penguin Books, 1979).P. 40

³⁶ Mahfud MD, *Politik Hukum Di Indonesia* (Malang: LP3ES, 1998). P. 7

³⁷ Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, ed. R. H. caampbell and A.S. Skinner, Volume I (Indianapolis: libertyClasic, 1979). P.397

³⁸ Leonard J. Theberge, *Law and Economic Development*, ed. Vol. 9 (Denver: Journal of International Law and Policy 231, 1980). P. 232

³⁹ J.D Nyhart, *The Role of Law and Economic Development, Paper Knowledge . Toward a Media History of Documents* (Massachusetts: Massachusetts Institute of Technology, 2014). See Erman Rajagukguk, *Peran Hukum Dalam Pembangunan Ekonomi* (Jakarta: Pascasarjan FH UI, 2000). P. 60-76

⁴⁰ David M. Trubek, "Toward a Social Theory of Law: An Essay on the Study of Law and Development," *Yale Law Journal* 82, no. 1 November (1972): 1–50.P. 13

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disturb the environment and protected forests. For this reason, the government issued an implementing regulation from the SEZ regulation, which as stated in Article 3 that in the SEZ can be built supporting facilities and housing for workers and in each SEZ provided locations for micro, small, medium enterprises (MSMEs), and cooperatives, both as a Business Actor or as a supporter of company activities that are within the SEZ and are located in a position close to international trade routes or close to international shipping lanes in Indonesia or located in areas of superior resource potential and have clear boundaries.⁴¹

In the implementing regulations of SEZ, namely Government Regulation number 2 of 2011 concerning the Implementation of Special Economic Zones in Article 3, it is stated that special economic zones that carry out economic functions within areas with certain boundaries within the jurisdiction of the Unitary State of the Republic of Indonesia in certain zone groups include the following:⁴²

1. Export processing zone - where the production is intended for export;
2. Logistics activity zone - storage, assembly, sorting, packing, distribution, repair and reconditioning of machinery activities from within the country and from abroad.
3. Industrial zone - which processes raw materials, raw materials, semi-finished goods, and/or finished goods, as well as agro-industry with a higher value for their use, including industrial design and engineering activities whose production is for export and/or for domestic use;
4. Technology development zone for research and technology activities, design and engineering, applied technology, software development, and services in the field of information technology;
5. Tourism Zone, tourism business activities to support the implementation of entertainment and recreation, meetings, exhibitions, and related activities.
6. Energy Zone research and development activities in the energy sector and the production of alternative energy, renewable energy, and primary energy.
7. Other Economic Zones – determined through the National Council

In addition, the government issued Government Regulation Number 96 of 2015⁴³ which was updated with Government Regulation Number 12 of 2020⁴⁴ concerning Ease of SEZ Facilities with the aim of increasing investment and accelerating business implementation in Special Economic Zones that can support national economic development and economic development in certain areas to increase employment. Business actors in SEZs include Business Entities and/or Business Actors who carry out activities in the business sector in SEZs, according to Government Regulation Number 12 of 2020 concerning Ease of SEZ Facilities where facilities and

⁴¹ Undang-Undang Republik Indonesia Nomor 39 Tahun 2009 Tentang Kawasan Ekonomi Khusus (Lembaran Negara RI Tahun 2009 Nomor 147, Tambahan Lembaran Negara RI Nomor 5066).

⁴² Peraturan Pemerintah Nomor 2 Tahun 2011 Tetang Penyelenggaraan Kawasan Ekonomi Khusus (Lembaran Negara RI Tahun 2011 Nomor 3),” Pub. L. No. Lembaran Negara RI Tahun 2011 Nomor 3 (2011).

⁴³ “Peraturan Pemerintah Republik Indonesia Nomor 96 Tahun 2015,” Kementerian hukum dan hak Asasi Manusia § (2015).

⁴⁴ “Peraturan Pemerintah Nomor 12 Tahun 2020 Tentang Fasilitas Dan Kemudahan Di Kawasan Ekonomi Khusus (Lembaran Negara RI Tahun 2020 Nomor 55, Tambahan Lembaran Negara RI Nomor 6472)” (n.d.).

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facilities are in the form of:⁴⁵ a. taxation, customs and excise; b. goods traffic; c. employment; d. immigration; e. land and spatial planning; f. business license; and/or g. other facilities and amenities.

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In Indonesia, the role of law in carrying out economic development can be seen since 1969, when the initial planned development was carried out in stages and each stage took 5 years. The First 25 Years of Long-Term Development (PJPI 1969-1994) carried out in five years (Pelita). Each Pelita is compiled in the GBHN and stipulated by an MPR Decree. In that regard, the relationship between the legal system and the economic system of a country is mutually influencing.⁴⁶

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4. CONCLUSION

The purpose of the Special Economic Zones is to improve the economy through foreign investment that can provide incentives and facilities for business actors which so far have not been maximally accommodated in Law Number 25 of 2007 concerning Investment promulgated on April 26, 2007 and in one of the chapters that regulated in Chapter XIV, namely concerning Special Economic Zones (SEZ) as regulated in Article 31. Development of special economic zones must be carried out with investment activities in general, this can be seen from the objectives of SEZ development, namely: increasing investment, employment, obtaining foreign exchange as a result of increasing exports, increasing the competitive advantage of export products, increasing the use of local resources, services and capital to increase exports and encouraging the improvement of the quality of human resources through technology transfer.

Special Economic Zones require the availability of facilities and infrastructure as well as skilled workers, for this reason, it is the task of the Ministry of Manpower which is included in one of the priorities of the national program to create harmonious Industrial Relations and Competent Industrial Human Resources (HR) - to prepare skilled workers in accordance with the needs of the industry, With the regulations related to this SEZ, the role of the government as a mediator or regulator of economic acceleration and facilitating the absorption of labor and its welfare, so that the existence of the SEZ can be felt by the community, especially in regional areas.

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⁴⁵ "Presiden Jokowi Teken PP Tentang Fasilitas Dan Kemudahan Di Kawasan Ekonomi Khusus," kontan.co.id, 2020, <https://kek.go.id/berita/2020/03/Presiden-Jokowi-Teken-PP-tentang-Fasilitas-dan-Kemudahan-di-Kawasan-Ekonomi-Khusus-280>.

⁴⁶ Sunaryati Hartono, *Hukum Ekonomi Pembangunan Indonesia* (Bbandung: Bina Cipta, 1988).

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