



RECONSTRUCTION OF REGULATIONS OF BATAM BUSINESS ENTITY GIVING PERMITS FOR INDUSTRIAL LOCATIONS AND SPECIAL ECONOMIC AREAS

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Abstract:

Reconstruction; Authority; Batam Business Entity; Giver of Special Economic Zone Industrial Location Permit. Indonesia's national development aims to create a just and prosperous society. National development will be achieved if economic development can be implemented. Indonesia's economic development is followed by industrial growth and development. With the transition of the legal umbrella status through the birth of Law no. 39 of 2009 concerning Special Economic Zones (SEZ), SEZ is an area with specific boundaries with geo-economic and geo-strategic advantages. It is given special facilities and incentives as an investment attraction. The formulation of the problem in this study is (1) Why is the authority of BP. Batam to give Industrial Location Permits regulated by the Special Economic Zone? (2) What is the Regulatory Authority of BP. Batam to issue a permit for the location of the Special Economic Zone Industry? (3) How to Reconstruct BP's Authority. Batam is the issuer of the Special Economic Zone industrial location permit? Objectives (1) To find and analyze the concept of the Batam Concession Agency towards a Special Economic Zone; (2) To examine and analyze the Regulatory Authority of the Batam Concession Agency granting industrial location permits for Special Economic Zones; (3) To reconstruct the authority of the Batam Concession Agency that grants Industrial Location Permits. Special Economic Zones. From the perspective of the Positive Normative Law that applies in Indonesia; Research Approach: Using sociological juridical method; This research is included in the empirical juridical research. Research Results (1) Aspects, Philosophical Elements; Sociological elements; juridical elements. Research Results (2) Regulation, Law Number 39 of 2009 concerning Special Economic Zones, Jo. Act. Number 11 of 2020 concerning job creation. Research Results (3) Reconstruction, Needs to be reviewed regarding Presidential Decree No. 41 of 1973 concerning industrial areas along with the Act. No. 39 of 2009 concerning Special Economic Zones: Elucidation of Articles 36 and 38. This will result in maladministration and closer to corruption. Conclusion: Presidential Decree Number 41 of 1973 concerning Batam Island Industrial Area, Article 1 paragraph (2) It is not in line with current expectations. No adjustments have been made to the Riau Islands Province Spatial Plan and/or Regency/City Spatial Plan, which can be seen in the Act. No. 39 of 2009 concerning Special Economic Zones: Elucidation of Articles 36 and 38 can result in maladministration.

Keywords: Reconstruction; Authority; Batam Business Entity; Special Economic Zone Industrial Location Permit

Abstrak:

Pemberi Izin Lokasi Industri Kawasan Ekonomi Khusus. Pembangunan nasional Indonesia bertujuan untuk mewujudkan masyarakat yang adil dan makmur. Pembangunan nasional akan tercapai, apabila

pembangunan ekonomi dapat terlaksana. Pembangunan perekonomian Indonesia diikuti dengan pertumbuhan dan perkembangan perindustrian. Dengan beralihnya status payung hukum melalui lahirnya Undang-Undang No. 39 Tahun 2009 tentang Kawasan Ekonomi Khusus (KEK), Pada intinya KEK adalah kawasan dengan batasan tertentu yang memiliki keunggulan geoekonomi dan geostrategis serta diberikan fasilitas dan insentif khusus sebagai daya tarik investasi. Perumusan masalah dalam penelitian ini adalah (1) Mengapa kewenangan BP. Batam Pemberi Izin Lokasi Industri di atur oleh Kawasan Ekonomi Khusus? (2) Bagaimana Regulasi Kewenangan BP. Batam Pemberi izin lokasi Industri Kawasan Ekonomi Khusus? (3) Bagaimana Rekonstruksi Kewenangan BP. Batam pemberi Izin lokasi industri Kawasan Ekonomi Khusus? Tujuan (1) Untuk menemukan dan menganalisis konsep Badan Pengusahaan Batam menuju Kawasan Ekonomi Khusus; (2) Untuk mengkaji dan menganalisa Regulasi Kewenangan Badan Pengusahaan Batam pemberi izin lokasi Industri Kawasan Ekonomi Khusus; (3) Untuk Merekonstruksi Kewenangan Badan Pengusahaan Batam Pemberi Izin Lokasi Industri Kawasan Ekonomi Khusus. Dari pandangan Hukum Positif Normatif yang berlaku di Indonesia; Pendekatan Penelitian: Menggunakan metode yuridis sosiologis; Penelitian ini termasuk kedalam penelitian yuridis empiris. Hasil Penelitian (1) Aspek, Unsur filosofis; Unsur sosiologis; Unsur yuridis. Hasil Penelitian (2) Regulasi, Undang-Undang Nomor 39 tahun 2009 tentang kawasan ekonomi khusus, Jo. UU. Nomor 11 Tahun 2020 tentang Cipta kerja. Hasil Penelitian (3) Rekontruksi, Perlu di tinjau Kembali tetang Kepres No.41 Tahun 1973 tentang daerah industri bererta UU. No. 39 Tahun 2009 Tentang Kawasan Ekonomi Khusus : Penjelasan Pasal 36 dan Pasal 38. Akan berakibat Mal adminstrasi dan lebih dekat kearah Korupsi. Kesimpulan: Keputusan Presiden Nomor 41 tahun 1973 tentang Daerah Industri Pulau Batam, Pasal 1 ayat (2) Sudah tidak sesuai dengan harapan saat ini. Belum dilakukan penyesuaian, Rencana Tata Ruang Wilayah Provinsi Kepulauan Riau, dan/atau Rencana Tata Ruang Wilayah Kabupaten /Kota. Terlihat dalam UU. No. 39 Tahun 2009 Tentang Kawasan Ekonomi Khusus : Penjelasan Pasal 36 dan Pasal 38. Bisa berakibat Mal administrasi.

Kata Kunci: Rekonstruksi; Kewenangan; Badan Pengusahaan Batam.

A. Introduction

Indonesia's National Development aims to realize a just and prosperous society, which is materially and spiritually evenly distributed based on Pancasila and the 1945 Constitution of the Republic of Indonesia within the framework of the Unitary State of the Republic of Indonesia, which is an independent, sovereign, united, independent, and sovereignty of the people in an atmosphere of national life that is safe, peaceful, orderly, and dynamic in a world environment that is free, friendly, orderly and peaceful. National development will be achieved if economic development can be carried out. Indonesia's economic development is followed by industrial growth and development. (Habibullah, 2020)

The aim of the state to promote the general welfare and social justice can be implemented, among others, through the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that; "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." Based on this provision, in principle, the state is given the task of regulating and managing natural resources, which all Indonesian people must obey. It also imposes an obligation on the state to use natural resources for the prosperity of the people. This is an obligation of the state, and then, on the other hand, it is the right of the Indonesian people to gain prosperity through the use of natural resources. This obligation is a constitutional mandate and a manifestation of the social responsibility of the state as the constitution of the state's right to control. (Soemarsono, 2017)

Developing industrial estates is one means to establish environmentally sound industries and provide convenience and attractiveness for investment. This is in line

with the mandate in the Law of the Republic of Indonesia Number 3 of 2014 concerning the industry. Efforts to encourage industrial development must be carried out by developing industrial locations in the form of Industrial Estates. (Makalew et al., 2019)

One of the industrial estates in Indonesia is Batam City, the largest city in the Riau Archipelago Province; Batam City consists of Batam Island, Rempang Island, and Galang Island, as well as other small islands in the Singapore Strait and Malacca Strait. The Bareleng Bridge connects the three islands. Batam is a strategic city because Batam is located on international shipping lanes and is a city that is very close and directly adjacent to Singapore and Malaysia. The construction of Batam was entrusted to a government agency called the Batam Island Industrial Development Authority, now known as the Batam Concession Agency (BP Batam). (Hadiyati, 2019)

Several years later, the implementation of the Free Trade Zone on Batam Island (FTZ. Batam), Bintan Island, and Karimun Island was rolled out, which refers to Law Number 36 of 2000 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2000 concerning Free Trade Areas, and Free Port becomes Law. Based on the considerations as referred to in stipulating the Government Regulation in Lieu of Law Number 1 of 2007 concerning Amendment to Law Number 1 of 2000 concerning Free Trade Areas and Free Ports into Law. And there are many other laws related to the Free Trade Zone Batam (FTZ). Then the central government discussed the Law on Special Economic Zones (SEZ), which will cover the establishment of Special Economic Zones in the Batam Island area and other areas in Indonesia. (Diva Ersya, 2020)

The Batam Concession Agency is the Batam Island Industrial Area Development Authority or better known as the Batam Authority Agency. Existence of the Concession Agency which was preceded by the Batam Authority Agency based on Presidential Decree Number 41 of 1973 and has the authority to manage Batam Island, along with the enactment of Law Number 44 of 2007 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2007 concerning Amendments to Law Number 36 of 2000 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2000 concerning Free Trade Areas and Free Ports to become Law of the Republic of Indonesia. (Rahmawati, 2014)

Batam Concession Agency is the Batam Free Trade Area and Free Port Concession Agency (BP. Batam), a central government agency established based on the Government Regulation of the Republic of Indonesia Number 46 of 2007 concerning Free Trade Zones and Free Ports. As the implementation of the Regional Government, Batam Island is designated as Batam City, following Law Number 53 of 1999, concerning the Establishment of Pelalawan Regency, Rokan Hulu Regency, Rokan Hilir Regency, Siak Regency, Karimun Regency, Natuna Regency, Kuantan Singingi Regency, and Batam city. "Riau Archipelago Province, abbreviated as Kepri, is an expansion area of Riau Province. This province was formed based on Law Number 25 of 2002 concerning the Establishment of the Riau Islands Province on September 24, 2002." "However, the new government's administration began two years later, precisely on July 1, 2004, by the Minister of Home Affairs Hari Sabarno on behalf of President Megawati Soekarnoputri."

Then the institutional establishment of the Batam Free Trade Area and Free Port Management Agency (Number Kep-59/M.Ekon/12/2008) by the Chairman of the National Council for Free Trade Areas and Free Ports. Regulation of the Coordinating Minister for the Economy of the Republic of Indonesia Number 1 of 2016 concerning

Revocation of the Decree of the Coordinating Minister for the Economy as Chair of the National Council for Free Trade Areas and Free Ports Number KEP-59/M.EKON/12/2008 concerning Guidelines for Institutional Establishment of the Free Trade Zone and Free Port Concession Agency. Batam Concession Agency is a non-structural institution in the form of a Public Service Agency; Non-structural Institutions are not regulated in “Law Number 39 of 2008 concerning State Ministries.”

Non-structural Institutions (LNS) are established through specific laws and regulations to support the implementation of state and government functions, which may involve elements of the government, private sector, and civil society, and are financed by the state budget. First, there is a conflict of regulations between the Batam City Government and the Batam Concession Agency. Second, there is no regulation regarding the working relationship between the Batam City Government and the Batam Concession Board. Third, there is a tug-of-war of interest in the financial management of resources and permits in Batam City.

The existence of dualism of authority in investment administration services in Batam City has a negative impact on investors, and these impacts include: First, there is no legal certainty for investors as investors. Second, longer and longer licensing procedures and times. Third, double costs or additional costs for investors. The Batam City Government bases its authority on Law Number 23 of 2014 concerning Regional Government which, in essence, has stated that the land sector is a concurrent Government Affair handed over to the regions, which is the basis for the implementation of Regional Government.

This authority has implications for the disharmony of the implementation of Batam Island due to the institutional dualism that manages it so that it will impact society in general. To improve and expedite the implementation of the development of the Batam Island Industrial Area, it is deemed necessary to review and refine the regulation of Batam Island as an Industrial Area as stipulated in Law no. 39 of 2009 concerning Special Economic Zones. After the transition of the legal umbrella status through Law No. 39 of 2009 concerning Special Economic Zones and Government Regulation of the Republic of Indonesia No. 62 of 2019, the Head of the Batam Concession Board, as referred to, is held as *Ex-Officio* by the Mayor of Batam.

B. Formulation of the Problem

Based on the above background, the problem can be formulated as follows:

1. Why is the authority of the Batam Concession Agency to issue Industrial Location Permits regulated by the Special Economic Zone?
2. What is the Batam Concession Board Regulatory Authority that gives the Industrial Location Permit for Special Economic Zones?
3. How is the Reconstruction of the Authority of the Batam Concession Agency granting industrial location permits for Special Economic Zones?

C. Research Method

From the perspective of the Positive Normative Law that applies in Indonesia, positive law is a collection of written and unwritten legal principles and rules currently applicable and binding in general or in particular and enforced by or through the government or courts in the Indonesian state. Another name for normative legal research is doctrinal legal research, also known as library research or document study.

Meanwhile, the Constructivism Paradigm is an interpretive paradigm, or constructivism can be called a denial of the positivism paradigm. Suppose in the positivism paradigm, and it is believed that reality can be observed repeatedly, and the results are the same and can be generalized. In that case, the interpretive paradigm or constructivism denies it. Constructivism understands that the truth of reality is relative and applies according to specific contexts relevant to social actors. Constructivism thus rejects generalizations in an attempt to produce unique descriptions. Using the sociological juridical method, which in other words is a type of sociological, legal research and can also be referred to as field research, namely examining applicable legal provisions and what is happening in reality in society, in other words, research conducted on the actual situation or real events that occur in the community intending to know and find the facts and data needed, after the data required is collected then leads to problem identification which ultimately leads to problem-solving. This research is included in the empirical juridical research. (Helmi, 2020)

D. Discussion

Philosophical elements are defined as considerations or reasons that illustrate that the regulations that are formed take into account the views of life, awareness, and legal ideals, which include the spiritual atmosphere and the philosophy of the Indonesian nation originating from Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. (Arif et al., 2021) The sociological element illustrates that regulations are formed to meet the community's needs in various aspects. The sociological basis concerns empirical facts regarding the development of problems and needs of society and the state. Institutionally, the Batam Authority Agency and the Batam Concession Board are different. The juridical element illustrates that regulations are formed to overcome legal problems or fill legal voids by considering existing rules, which will be changed or revoked to ensure legal certainty and a sense of community justice.

Aspects that affect BP. Batam "Regarding Presidential Decree Number 41 of 1973 concerning Batam Island Industrial Area, Article 1 paragraph (1). Batam Island, which is included in the territory of the Level I Region (one) of Riau Province, is designated as an Industrial Area, hereinafter in this Presidential Decree referred to as Batam Island Industrial Area; paragraph (2). In connection with what is stipulated in paragraph (1) of this article, the entire area of Batam Island is the working environment of the Batam Island Industrial Area." The sound of Article 1 paragraph (2) is no longer under the current development of Batam City.

As a regulation, the issuance of industrial location permits, which were previously given authority to the Batam Concession Board, was transferred to the Special Economic Zone, which is very relevant for Batam's economic growth in addition to attracting investors. Law Number 39 of 2009 concerning special economic zones, Article 48 paragraph (1), at the time this Law is in force, Article 49 of Law Number 39 of 2009 concerning special economic zones, reads; By changing the status of the Free Trade Zone and Free Port as referred to in Article 48 paragraph (1) or the expiration of the stipulated period as referred to in Article 48 paragraph (2), Law Number 36 of 2000 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2000 concerning Free Trade Areas and Free Ports. As amended by Law Number 44 of 2007 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2007 concerning Amendment to Law Number 36 of 2000 concerning Stipulation of

Government Regulation in Lieu of Law Number 1 of 2000 concerning Free Trade Areas and Free Port is revoked and declared invalid. (Saputra & Rachmawati, 2015)

The development of economic activities within KPBPB is carried out in accordance with the Batam, Bintan, and Karimun National Strategic Area Spatial Plans, Riau Islands Province Spatial Plans, City Regency Spatial Plans, and detailed spatial plans. If a detailed spatial plan has not been determined, the development of economic activities within the KPBPB is carried out under the National Strategic Area Spatial Plan.

The philosophical, sociological, and juridical elements are considered, and the reasons for its formation whose writings are placed sequentially from philosophical, sociological, and juridical. The philosophical element is defined as a consideration or reason that illustrates that the regulations formed take into account the views of life, awareness, and legal ideals, which include the spiritual atmosphere and the philosophy of the Indonesian nation originating from Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. The sociological element illustrates that regulations are formed to meet the community's needs in various aspects. The sociological basis actually concerns empirical facts regarding the development of problems and needs of society and the state.

Philosophical, Sociological, and Juridical Foundations The formation of laws and regulations must be carried out based on the principles of the establishment of good laws and regulations, which include: Clarity of objectives; the appropriate forming institution or official; suitability between types, hierarchies, and payload materials; can be implemented; usability and effectiveness; clarity of formulation; and openness. One of the principles above is the principle of implementation, which means that every formation of laws and regulations must take into account the effectiveness of these laws and regulations in society philosophically, sociologically, and juridically.

With the transition of the legal umbrella status through the birth of Law no. 39 of 2009 concerning Special Economic Zones (SEZ), regarding the transfer of the status of Free Trade Zones and Free Ports as the expiration of the period specified in the Special Economic Zones is given facilities and waivers in the fields of business licensing, business activities, industry, trade, ports, and immigration for foreign business people, as well as being provided with security facilities.

The general part of the explanation of Law No. 39 of 2009 states that the function of SEZ is to conduct and develop businesses in the fields of trade, services, industry, mining and energy, transportation, maritime and fishery, post and telecommunications, tourism, and other areas. Following this, SEZ consists of one or several zones, including export processing zones, logistics, industry, technology development, tourism, and energy, whose activities can be aimed at exports and domestic purposes. Following Article 1 point 2, Zone is an area within the SEZ with certain limits whose utilization is under its designation. Meanwhile, based on Article 3, in the SEZ, supporting facilities and housing for workers can be built.

In essence, SEZ is an area with specific boundaries with geo-economic and geo-strategic advantages and is given special facilities and incentives as an investment attraction. Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government. Informing the drafting of the Perkada regarding Detailed Spatial Planning (RDTR) in order to go to the Special Economic Zones according to the Law. No. 39 of 2009 Jo Law. No. 11 of 2020 concerning Job Creation. (Ramdani, 2020)

1. It is necessary to review the Presidential Decree No. 41 of 1973 concerning the industrial area of Batam Island, among others: “The entire area of Batam Island is the working environment of the Batam Island Industrial Area.”
2. Law needs to be reviewed. No. 39 of 2009 concerning Special Economic Zones: Elucidation of Articles 36 and 38 will result in maladministration and closer to corruption.

Until the implementation of BP. Batam is less efficient in determining the zone/boundary area of the industrial area to the Special Economic Zone. As a result, the Industrial Investment Document Service and the Community Settlement Document Service are mixed, resulting in the decline of Batam’s economy and harming the State in particular and society in general.

E. Closing

As regulated in Article 1 paragraph (1) of Law No. 39 of 2009 concerning Special Economic Zones, the function of the Special Economic Zone is to conduct and develop business in the fields of trade, services, industry, mining and energy, transportation, maritime and fishery, post and telecommunications, tourism, and other areas. The sociological element illustrates that regulations are formed to meet the community’s needs in various aspects. The sociological basis actually concerns empirical facts regarding the development of problems and needs of society and the state. Institutionally, the Batam Authority Agency and the Batam Concession Board are different. The juridical element illustrates that regulations are formed to overcome legal problems or fill legal voids by considering existing rules, which will be changed or revoked to ensure legal certainty and a sense of community justice. This effort needs to be carried out comprehensively and comprehensively considering the various policies related to investment. For power to be exercised, a ruler or organ is needed so that the state is conceptualized as a set of positions (*een ambten complex*) where the positions are filled by several officials who support the right and certain obligations based on the subject-obligation construction. In essence, SEZ is an area with specific boundaries with geo-economic and geo-strategic advantages and is given special facilities and incentives as an investment attraction. Reconstruction is a process of rebuilding, re-creating, or reorganizing the existing legal structure and culture to improve and function as it should. Presidential Decree Number 41 of 1973 concerning Batam Island Industrial Area, Article 1 paragraph (2) “the entire area of Batam Island is the working environment of Batam Island Industrial Area.” It doesn’t live up to expectations at this point. No adjustments have been made to the Riau Archipelago Province Spatial Plan and/or Regency/City Spatial Planning. They were seen in Law no. 39 of 2009 concerning Special Economic Zones: Elucidation of Articles 36 and 38, which can result in maladministration.

According to law no. 37 of 2008 concerning the Ombudsman, maladministration is defined as behavior or acts against the law, exceeding authority, using authority for purposes other than those for which the authority is intended, including negligence or neglect of legal obligations in the administration of the State and government that cause material and/or immaterial losses to communities and individuals.

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