

Omnibus Law

Legal Insight

Job Creation Act: More Benefits and Opportunities in The Economic Zones

In order to boost economic development throughout the region, the Government has in recent years developed economic zones: Special Economic Zones/*Kawasan Ekonomi Khusus* (SEZ) and Free Trade Zones and Free Ports/*Kawasan Perdagangan Bebas dan Pelabuhan Bebas* (FTZFP). With the Job Creation Act Law No. 11 of 2020, which amends the Special Economic Zones Act Law No. 39 of 2009, Free Trade Zones and Free Ports Act Law No. 36 of 2000 which was amended by Law No. 44 of 2007 ("**Job Creation Act**"), the Government has stepped up further in promoting the economic zones by offering more attractive benefits and special facilities. These areas are prepared to maximize industrial activities, export, import, and other economic activities that have high economic value. In this article, we will provide a brief analysis on the SEZ and FTZFP provided under the Job Creation Act and its implementing regulations, Government Regulation No. 40 of 2021 concerning the Operation of Special Economic Zones ("**GR 40/2021**") and Government Regulation Number 41 of 2021 concerning the Operation of Free Trade Zones and Free Ports ("**GR 41/2021**").

1. Special Economic Zones

By statutory definition, SEZ means an area with certain boundaries within the jurisdiction of the Republic of Indonesia which has been determined to carry out economic functions and obtain certain facilities. Currently, there are 15 (fifteen) SEZ locations with a total area 17,403.42 ha (seventeen thousand four hundred three point four two hectares) across Indonesia

Proposing SEZ

Indonesian business entities or regional governments may propose an area for a SEZ as long as they are able to fulfil certain requirements including providing documents evidencing the possession of all or part of the area. The required proportion of the land which must be already possessed is now set at a definite 50% (fifty percent) of the area. This new requirement is likely to ensure that the SEZ plan goes well after the permit is issued.

Ease and Benefits of Operating Businesses in SEZ

With regard to benefits, like under the previous regulations, the present SEZ regime offers a number of facilities which range from ease in application of license, customs, excise, tax, land, employment, immigration, and other amenities which can be granted by the authority within the SEZ.

SEZ administrators have the authority to grant all business license for activities in SEZ. The issuance of business licenses will be carried out through the OSS system based on risk-based business licenses which will be implemented this year. Furthermore, one easier licensing offered is that business entities do not require building approvals for their building as long as the business entity has established building guidelines or estate regulations.

For fiscal incentives, the GR 40/2021 provides incentives in the form of: (i) Income Tax, (ii) Value Added Tax (VAT) or VAT and Sales Tax on Luxury Goods, (iii) Import Duty and Pajak Dalam Rangka Impor (PDRI), and/or excise.

Income Tax facilities

- Reduction of income tax for any revenues received from performing main activities, and income tax facilities for any revenues received from performing other activities.
- Land procurement, land/building sale or lease are not subject to Income Tax.
- Income tax facility for foreign expatriates with certain criteria.

VAT or VAT and Sales Tax on Luxury Goods

- Non-collection of VAT or VAT and Sales Tax on Luxury Goods for certain Taxable Goods/Services and Consumer Goods.
- Exemption of VAT for certain Taxable Goods/Services viewed as strategic.

Import Duty and Tax in the Context of Import (Pajak Dalam Rangka Impor/PDRI), and/or excise

- Deferment, exemption, non-collection or reduction of import duty with certain criteria.
- Exemption from excise provided that the goods concerned are raw or auxiliary materials for production.
- Non-collection of PDRI for certain criteria

Local Tax and Regional Levy

- Reduction, exemption or relief from Local Tax and Regional Levy for SEZ for Tourism

Land and Building Tax

- Reduction of Duty on Acquisition of Rights to Land and Buildings and reduction of Land and Building Tax, as well as other facilities provided by the Regional Government.

Another notable breakthrough on SEZ can be seen through Presidential Regulation No. 10 of 2021 concerning Investment Business Fields (or also known as the Positive List). This new breakthrough is a special treatment given for technology-based start-up companies located in SEZ by which they will be excluded from being required to make the minimum investment for foreign investment companies of Rp10,000,000,000 (ten billion Rupiah) (excluding land and building for premises). In our experience, the minimum investment set for foreign investors by the Government is often viewed by investors as a hindrance, especially for non-manufacturing foreign investment companies.

Business Activities in the SEZ

In order to complete the ecosystem within the SEZ, education and health sectors are now included in the scope of business activities that are allowed to operate in SEZ. This shows more activities may have the opportunities to obtain the benefits of SEZ. Hence, the activities allowed within the SEZ encompass (a) production and manufacturing; (b) logistics and distribution; (c) technology development; (d) tourism; (e) education; (f) health; (g) energy; and other economic purposes as set by the National Economic Council. These activities will be implemented in accordance with the SEZ zoning plan.

2. Free Trade Zone and Free Port

FTZFP is an area located in the jurisdiction of the Republic of Indonesia which is separate from the customs area so that it is free from imposition of import duties, value added tax, sales tax on luxury goods, and excise. In Indonesia, there are 5 (five) FTZFP with a total area of 127,472 ha (one hundred twenty seven thousand four hundred seventy two hectares) which are oriented for export activities.

Business activities in FTZFP will be given facilities in the form of entry and release of goods, taxation, customs, excise, immigration, prohibitions and restrictions, and other facilities.

Ease and Benefits of Operating Businesses in Business Activities in the FTZFP ***FTZFP***

With regard to benefits, just as the previous regulations offered, FTZFP now offer a number of facilities which range from ease in export and import of goods, tax, customs, excise, immigration, prohibitions and restrictions, and other amenities which can be granted by the authority within the FTZFP.

FTZFP administrators have the authority to grant all business licenses for activities in FTZFP. The issuance of business licenses will be carried out through the OSS system based on risk-based business licenses which will be implemented this year. The activities allowed within the FTZFP encompasses (a) marine and fisheries; (b) agriculture; (c) forestry; (d) energy and mineral resources; (e) industry; (f) trading; (g) public works and housing; (h) transportation; (i) health; (j) culture; (k) tourism; (l) telecommunication; (m) logistic; (n) water resources; (o) waste and the environment.

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