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ADDRESS

Summitmas I, 16th & 17th Floors
Jl. Jend. Sudirman Kav. 61-62
Jakarta 12190

PHONE

+6221 5080 8300 | +6221 252 1272

FAX

+6221 252 2750/51

 makarim.com  Makarim & Taira S.

The Omnibus Law on Job Creation – An Overview of the Increase in Incentives provided by the Government of Indonesia to create a ‘comfortable business environment’ for Investors in Special Economic Zones

Following our firm’s previously published advisory series on the Omnibus Law on Job Creation (the “**Job Creation Law**”), including among others our overview of the changes to the regulations regarding investment, land, and manpower, this advisory specifically highlights the key provisions of the Job Creation Law on Special Economic Zones amending the following regulations:

1. Law No. 39 of 2009 on Special Economic Zones (“**Law 39/2009**”);
2. Law No. 36 of 2000 on The Issuance of a Government Regulation in Lieu of Law No. 1 of 2000 on Free Trade and Free Port Zones to be Law; and
3. Law No. 37 of 2000 on The Issuance of a Government Regulation in Lieu of Law No. 2 of 2000 on Free Trade and Free Port Zones to be Law.

A. SPECIAL ECONOMIC ZONE

To create jobs and ease the investment environment for business actors, the Indonesian government is committed to providing support for the development zones declared Special Economic Zones (“**SEZ**”). As the implementation of its commitment, the government makes changes to some provisions on the management and operation of SEZ of Law 39/2009 and introduces the following new benefits of investment under the Job Creation Law:

I. NEW BUSINESS SECTORS WITHIN SEZ

The Job Creation Law removes export processing from the business activities permitted within SEZ and adds new business activities in the Education and Health sectors.

The following is the current list of business activities permitted in SEZ under the Job Creation Law:

- a. production and processing;
- b. logistics and distribution;
- c. technological development;
- d. tourism;
- e. education;
- f. health;
- g. energy; and/or
- h. other economy.

The implementation and requirements for the new business activities in e. and f above, ie Education and Health, remain under the central government’s authority with regard to the licensing services.

According to the Job Creation Law, there will be zones allocated to business operations determined by the Administrator.

II. NEW CRITERIA FOR PROPOSED SEZ

The proposed locations must meet the following criteria:

- a. the location must comply with the Regional Spatial Plan and not have the potential to disturb protected areas;
- b. the location must have clear boundaries; and
- c. the land that is proposed to be a SEZ must be at least 50% (fifty percent) of the planned land that is partially or wholly controlled.

III. THE NEW RIGHTS AND DUTIES OF AN ADMINISTRATOR

Previously, Law 39/2009 was silent on the rights and duties of the Administrator in its role of administering the operation of a SEZ. Now, according to the Job Creation Law, the Administrator is a unit responsible for the organization of Business Licensing, other licensing, services and supervision in the SEZ with the following rights and duties:

1. The Rights of the Administrator

The administrator is entitled to receive a report or explanation from Business Entities and Business Actors engaged in a commercial business in the SEZ, about their business activities.

2. The Duties of the Administrator

The Administrator's duties are to administer the following:

- a. the Business Licenses and other permits that business entities and business actors need to engage in their business activities in the SEZ;
- b. the non-licensing services that Business Entities and Business Actors need; and
- c. the supervision and control of the operations of the SEZ.

IV. THERE IS NO LIMITATION ON IMPORTING GOODS INTO A SEZ

1. No limitation on Imported Goods

Previously, Article 27 of Law 39/2009 imposed limitations and restrictions on importing goods into a SEZ. The Job Creation Law relaxes importing into SEZs by lifting the policy that limits imports of goods into SEZs, but still restricts imports of certain goods determined under the applicable laws and regulations.

2. Import and export activities will be administered through an integrated electronic system

In response to the development of integrated electronic licensing services, the Job Creation Law acknowledges that applications and submissions for import and export permits will be processed through a national integrated electronic system. The Central Government will provide the electronic system for applications for import and export permits in SEZs.

V. NEW TAX FACILITIES AND BENEFITS FOR TAX PAYERS IN SEZs

The government has introduced the following new tax facilities and incentives for tax payers in SEZs:

1. In addition to the Income Tax facilities, the government may provide additional Income Tax facilities depending on the type of business activities in SEZs under a government regulation.

2. The Utilization of Intangible Taxable Goods (*Barang Kena Pajak tidak berwujud*) and Taxable Services (*Jasa Kena Pajak*) in SEZs, are provided with facilities that are not subject to Value Added Tax or Value Added Tax and Sales Tax On Luxury Goods.
3. Exemptions or relief from regional taxes and regional levies are provided that can be deductions from Duties on the Acquisition of Land and Buildings and Land and Building Tax from the regional government. The regional government may also provide other incentives related to regional tax and levies in addition to the above.
4. New incentives for consumer goods imported into SEZs.
Under Article 32A of the Job Creation Law, imports of consumer goods into a SEZ in which the main activities are not production and processing are given the following facilities:
 - a. for consumption goods which are not Excisable Goods (*Barang Kena Cukai*) in a certain amount and type according to the line of business import duty exemptions are given and they are free of taxes on imports; and
 - b. consumer goods which are Excisable Goods are subject to excise but are exempt from import duties and taxes on imports.

In addition to the above, under the Job Creation Law, the central government can provide other facilities and benefits to business entities in SEZs. The above new incentives and benefits will be regulated further under the implementing regulations of the Job Creation Law.

VI. REMOVAL OF THE MINIMUM WAGE REQUIREMENT

Article 45 of Law 39/2009 on The Setting and Enforcement of the Minimum Wage by Governors no longer applies as the provision has been removed under the Job Creation Law.

VI. EASE OF THE MANAGEMENT OF LAND TITLE

Previously, under Article 36 of Law 39/2009, business actors and business entities in SEZs were **only** provided ease of the acquisition of land.

The Job Creation Law now expands the above benefit for business actors and business entities to ease, accelerate, and provide special procedures for acquiring land titles, as well as their renewal and extension.

VII. FREE TRADE AND FREE PORT ZONES MAY APPLY FACILITIES AND BENEFITS IN THE SEZ IN THEM

Under Article 150 number 37 of the Job Creation Law, amending Article 48 (5) of Law 39/2009, Free Trade Zones and Free Ports which are not designated SEZs and are located separately from residential areas may apply provisions on the traffic of goods or be granted the SEZ facilities above (as relevant).

B. THE NEW LEVIES FACILITY FOR FREE TRADE AND FREE PORT ZONES

In response to the expansion of benefits in SEZs, the Indonesian government has also expanded facilities in (1) Free Trade and Free Port Zones (under Law No. 36 of 2000 on The Issuance of a Government Regulation as a Substitute for Law No. 1 of 2000 on Free Trades and Free Port Zones to be Law (“**Free Trade Zone Law**”), as amended by Law No. 44 of 2007 on The Issuance of a Government Regulation to Substitute for Law No. 1 of 2007 on Amendments to the Free Trade Zone Law) and (2) the Free Trade and Free Port Zone in Sabang (under Law No. 37 of 2000 on The Issuance of a Government Regulation to Substitute for Law No. 2 of 2000 on Free Trade and Free Port Zones to be Law).

Under the Job Creation Law, in addition to exemptions from Import Duties, Value Added Tax, and Sales Tax on Luxury Goods, Free Trade and Free Port Zones and the Free Trade and Free Port Zone in Sabang can also benefit from an exemption from levies under the laws and regulations on levies.

MAKARIM & TAIRA S.
COUNSELLORS AT LAW

MORE INFORMATION



Katherine Dethan

Associate

katherine.dethan@makarim.com



Maharanny Hadrianto

Associate

maharanny.hadrianto@makarim.com



Frederick Simanjuntak

Partner

frederick.simanjuntak@makarim.com



Yohanes Masengi

Partner

yohanes.masengi@makarim.com