

## Research Article

## Regulations Harmonization of Proposal and Stipulation of Special Economic Zone in Indonesia

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## ABSTRACT

The acceleration of economic development in Indonesia cannot be separated when the government implements a Special Economic Zone (KEK) policy by using legal instruments in it. The purpose of this study is to examine the harmonization of regulations related to the proposal and determination of SEZ in Indonesia. This study uses normative legal research, using primary and secondary legal materials. First analysis, the provisions of business entities as proposers for SEZ need to be reviewed because they have a cumulative meaning. Second, private business entities proposing SEZ need to be limited, especially in important areas relating to the life of the wider community. Third, the determination of SEZ by the government (Article) needs to pay attention to RTRW, protected forest areas, and / or analysis of environmental impacts. Fourth, stipulation without a proposal stage is contrary to the principle of kinship. Fifth, Article 8 of the UU KEK is inconsistent with the PP on the Implementation of SEZ and the 2011 Minister of Coordinating Ministry for Guidelines for SEZ Proposals. Sixth, the SEZ proposal by the Minister of Research, Technology and Higher Education needs to be scrutinized and analyzed in depth in the process of its determination.

Keywords: Harmonization; Proposals and Determining; Special Economic Zones.

## ABSTRAK

Akselerasi pembangunan bidang ekonomi di Indonesia tidak bisa dilepaskan ketika pemerintah menerapkan kebijakan Kawasan Ekonomi Khusus (SEZ) dengan menggunakan instrumen hukum di dalamnya. Tujuan penulisan artikel ini untuk mengkaji harmonisasi pengaturan terkait usulan dan penetapan SEZ di Indonesia. Kajian ini menggunakan penelitian hukum normatif, dengan menggunakan bahan hukum primer dan sekunder. Analisis pertama, ketentuan badan usaha sebagai pengusul SEZ perlu ditinjau kembali karena bermakna kumulatif. Kedua, badan usaha swasta pengusul KEK perlu dibatasi, khususnya bidang penting yang menyangkut hajat hidup masyarakat luas. Ketiga, penetapan KEK oleh pemerintah (Pasal) perlu memperhatikan berkaitan dengan RTRW, kawasan hutan lindung, dan/atau analisis mengenai dampak lingkungan. Keempat, penetapan tanpa tahapan usulan bertentangan dengan asas kekeluargaan. Kelima, Pasal 8 UU KEK tidak selaras dengan PP Penyelenggaraan KEK dan Permenko 2011 tentang Pedoman Pengusulan KEK. Keenam, usulan SEZ oleh Menteri Ristekdikti perlu dicermati dan dianalisis secara mendalam dalam proses penetapannya.

Kata Kunci: Harmonisasi; Usulan dan Penetapan; Kawasan Ekonomi Khusus

## A. INTRODUCTION

One of the purposes of the establishment of the state of Indonesia is to improve public welfare as stated in the Preamble of the 1945 Constitution of The Republic of Indonesia (hereinafter referred to as UUD NRI 1945). Public welfare in this case is identical with welfare state, which refers to the ideal model of development focusing on the improvement of welfare (Harjono, 2007). The concept of welfare in Indonesia refers to the concept of social welfare development, i.e. a series of planned and institutional activities which are aimed at improving the standard and quality of human life and which is achieved through economic development which is very essential for the improvement of the level of people's welfare (Harjono, 2007). In order to improve the welfare, Indonesia as a big country needs to utilize its various potentials (demographic composition, natural resources, geographical location) optimally.

This potential may increase the level of income sustainably, open job opportunities, and attract either local or foreign investment. This is as one form of acceleration of achieving national economic development. Economic development will be relatively difficult to be implemented without employing legal instruments as suggested by a prominent American legal experts, Roscoe Pound who stated that sez is as a tool of social engineering (Fuady, 2013). This also applies in the context of the acceleration of economic development through Special Economic Zone or KEK (hereinafter referred to as SEZ). Sez in this context is defined as set of legislations, particularly related to SEZ. In addition, in

implementing national development which is based on legal instrument, Indonesia must develop its SEZ as a strategy to boost its economic climate and to be able to sez in economic field globally (Sihalolo, & Muna, 2010).

The role of government is needed as a forum to make the sez or rule of the game and as a referee which interprets and enforce the rule of the game established. Therefore, in this case, government must collaborate with other parties in constructing and developing SEZ through legal instrument (Panjaitan, 2013). The regulation of SEZ is stated in Sez Number 39 Year 2009 concerning Special Economic Zone (hereinafter referred to as UU SEZ). Article 1 number 1 mentions that SEZ is "an area with certain border in legal sez of unitary state of The Republic of Indonesia which is determined to perform economic function and to obtain certain facilities". Foreign term for KEK stated by Suryani and Febriani is Special Economic Zone (SEZ) which is defined as a certain area where special provisions in terms of customs, taxes, permits, immigration and manpower are applied (Suryani, & Febriani, 2019). The purpose of the establishment of SEZ as mentioned by Suyono Dikun in Nirhayati has a positive value as follows (Nirhayati, 2008): (1) the increase of investment; (2) maximizing the absorption of man power; (3) increase the utility of local resources as well as improving sez excellence of export products; (4) accelerating regional development; and (5) promoting the improvement of quality of human resources through the transfer of technology.

Potential of SEZ development brings about the following benefits such as opening opportunity for the increase of investment by providing a Sez which has potential and is ready to accommodate industry and export-import activities as well as economic activities which is highly profitable (Suryani, & Febriani, 2019). SEZ in Indonesia is intentionally designed after witnessing the success of some countries in implementing similar economic policies. Those countries have been successful in increasing investment, accommodating industry and export import activities, and other economic activities which have high economic value and are able to sez internationally. Not only in the field of economy, SEZ also concerns with tourism field as well. However, in economic field, the utilization of SEZ is meant as an attempt to boost both domestic and foreign investment, thus this will suggest that Indonesia is friendly zone for investment (Sibuea, 2019)

The establishment of KEK is implemented through proposing, establishing, constructing, and operating. After a decade of the implementation of UU SEZ, Indonesia has had 12 established SEZ: SEZ Sei Mangkei, SEZ Palu, SEZ Tanjung Lesung, SEZ Mandalika, SEZ Arun Lhokseumawe, SEZ Galang Batang, SEZ Tanjung Kelayang, SEZ Morotai, SEZ Bitung, SEZ Maloy Batuta Trans Kalimantan (MBTK), SEZ Sorong and SEZ Tanjung Api-Api.

In the stages of proposing, based on 2018 Annual Report of SEZ National Council, there have been 73 proposers that have shown their interest to form SEZ either in the location which becomes the

target of 2015-2019 RPJMN (National Medium Term Development Plan) or in the location outside the target. Of the 73 proposals of SEZ, 20 have been in further stages, and 7 have even gained special attention. Most SEZ proposers come from Business Entity such as State Owned Enterprises, Sezal Government Owned Enterprises, private companies, and some of them are also from Ministries/institutions or local government. (Dewan Nasional Kawasan Ekonomi Khusus Republik Indonesia, 2019). Stages of proposing and establishing SEZ have become crucial considering that those stages determine whether a SEZ can be built and operated. All of those proposals need to be reexamined in depth through several aspects particularly, in this article, from legal aspect (the sez) in order to determine the feasibility and readiness of SEZ proposed.

Article 5 UU SEZ clearly states that the proposal of SEZ to National Council can be proposed by Business entity, district/municipal government, or provincial government. This means that the provision of Article 5 clearly states that only those three proposers that are allowed to propose. On the other side, provision of Article 8 UU SEZ negates the provision of Article 5 by stating that "in certain cases, Government allows to determine a sez as SEZ without going through proposing stage as mentioned in Article 5)".

Article 2 Government Ordinance (hereinafter referred to as PP) Number 2 Year 2011 concerning The Implementation of Special Economic Zone (hereinafter referred to as PP SEZ Implementation)

as the implementation regulation has provided the same rules (1) in certain cases, Government may determine an area as SEZ. The establishment as intended in section (1) is done based on the proposal ministry/ non-ministerial government agencies (LPNK).

The establishment of SEZ based on proposal of ministries/LPNK referring to Article 2 (2) PP SEZ Implementation can be interpreted that there are three or only three proposers of SEZ as definitively regulated, namely Business Entity, Provincial Government, or District/Municipal Government. The proposal then will be directly determined as SEZ. However, Article 8 allows Government to determine SEZ without going through proposing stage. The implication of both regulations is definitely different, if what is meant is entities/agencies, there will four proposers In this case, proposal from ministries or non-ministerial government agencies is also included. This means that provision of Article 4 and 6 UU SEZ also applies. On the other side, if what is meant is only three entities/institutions, provision of Article 4 and 6 cannot be applied because the process will go straight to the establishment stage.

In fact, based on 2018 Annual Report of SEZ National Council, Minister of Research, Technology, and Higher Education (now merged with The ministry of Education and Culture) has officially proposed SEZ with Higher Education as the main activity in Tangerang District Banten Province. Referring to this proposal, it is indicated that entities/ agencies which have the authority to propose SEZ are 4 (four), not 3 (three), because the proposal submitted by Minister

of Research, Technology and Higher Education is not immediately realized, also considering that the proposed main activity is higher education. It is interesting to be examined considering that SEZ consists of one or several zones which cover: export processing, sezs, industry, technology development, tourism, energy, and/or other economic activities.

Researches concerning SEZ are quite common. One of them is a study by Harris Y.P. Sibuea which focuses on a study on the aspect of land procurement for the construction of SEZ (Sibuea, 2019). Another research is by Poltak Ub Panjaitan who analyzed SEZ in relation with facilities for investors in SEZ referring to UU Number 25 Year 2007 concerning Capital Investment B (Panjaitan, 2013). Ikhsan Gunawan, & Hamdi Sari Maryoni also conducted a research on SEZ focusing on the study of dynamics the establishment of special economic zone in affecting village sezal policies (Gunawan, & Maryoni, 2017). Another SEZ study is by Nurafni Irma Suryani, & Ratu Eva Febriani. This study focuses on the study of economy in relation to Sezal Economic Development (Suryani, & Febriani, 2019). Miller, an international advocate and also a public policy consultant, also conducted a research on SEZ focusing on the legal aspect and public policy concerning special economic zone for migrant citizens (Castle-Miller, 2018). A study by Eric Yong-Joong Lee also contributes in the study of SEZ. His study focuses on an examination of international sez concerning special economic zone and economic reformation in North Korea (Joong Lee, 2003)

This article analyses juridical aspect associated with disharmony of regulations concerning SEZ recommendation proposal and establishment, thus, it is expected that the result or recommendation offered by this study will be beneficial in theory and in practice. Theoretical aspect in this study is that the legislation is in accordance with the existing principles, the formulation must be clear (not

ambiguous) and/or is not against the sez vertically and horizontally. In practical aspect, it is expected that this study will bring beneficial consideration to stakeholders to make decision concerning SEZ proposal and establishment. To put it simple the aforementioned problems is presented in Table.1 below

Table 1. Regulation Inventory related to Proposal and Establishment of Special Economic Zones and Its Problems

No.	Regulation	Proposal and Establishment	Remark
1.	Sez No 39 Year 2009 concerning Special Economic Zones	Chapter III Formation of SEZ covers the following: 1. Proposing 2. Establishment 3. Construction and Operation	1. 12 SEZ have been established and 6 of them has been in operation 2. 73 Proposers of SEZ, one of them is proposal from Minister of Research, Technology, and higher Education on SEZ in Tangerang District Banten Province
		PROPOSING Article 5 section (1) The Establishment of SEZ is proposed to National Board by National Council by: a. Business entity; b. District/Municipal government; or c. Provincial Government.	1. General provision of Article 1 number 6 stated that Business entity is legal company in the form of State Owned Enterprise, Sezal Government Owned Enterprise, cooperative, private company and joint venture to manage SEZ business activities. 2. Proposal from The Minister of Research, Technology, and Higher Education does not include in the proposal of provincial or district/municipality government.
		Article 8 In certain cases, Government may determine an area as SEZ without proposal process as intended in Article 5	1. According to Article 8, it is indicated that this provision can negate Article 5. 2. If negating Article 5, does it mean that provision in Article 4 and 6 UU KEK does also not apply in the establishment of SEZ?
		What is meant with "in certain cases" is any matter related to national interest	

	which is strategic for the development of national economy and for maintaining the balance of development of a certain area.	3. How is the provision related to the principle of economic democracy of SEZ? 4. How is the provision related to the principle of kinship Sez Number 12 Year 2011 concerning The Making of Legislation?
2. Government Ordinance No 2 Year 2011 Concerning The Implementation of SEZ	Article 2 The implementation of SEZ covers the following: a. Proposing of SEZ; b. Establishment of SEZ; c. Construction of SEZ; d. Management of SEZ; and e. Management Evaluation of SEZ	In general, the provision of proposing and establishment is in accordance with the provision of SEZ Sez.
	Article 4 section (1) The establishment of SEZ is proposed to National Council by: a. Business entity; b. District/municipal Government; or c. Provincial Government.	In general, the provision of proposing and establishment of SEZ is in accordance with provision of Sez of SEZ
	Article 5 (1) In certain case, Government may determine a sez as KEK. (2) The establishment of KEK as intended in section (1) is conducted based on the proposal of Ministry/ non ministerial government Institutions.	Proposal as intended in the Article will automatically be determined? or is it necessary to consider Article 4 and 6 of UU KEK?
3. Ministerial Regulation of Coordinating Ministry for Economic Affairs No 07/M.Ekon/10/2011 Concerning Guidelines of Proposing The Determination of Special Economic Zones (Ministerial Regulation of Coordinating Ministry for Economic Affairs 2011 concerning Proposing Guidelines)	Article 2 Guidelines of Proposing The Determination of Special Economic Zones as intended in Article 1 is a reference for: a. Business entity; b. District/Municipal Government; c. Provincial Government; or d. Ministry/Non-Ministerial Government Institutions (LPNK); In proposing the establishment of Special Economic Zones	The provision of Article 2 is quite interesting because either UU KEK or Government Ordinance concerning the Implementation of KE does not mention Ministry/ Non-Ministerial Government institutions (LPNK) separately. It goes directly to the establishment stage.

Source: The Author

## B. RESEARCH METHOD

Method used in this study was normative legal research, a process to find legal regulation, legal principle, and legal doctrine in certain case (Marzuki, 2010). According to Rony Hanintijo, normative legal research is categorized into several forms (Soemitro, 1990) : (1) A research on inventory of positive sez, (2) A research on legal principles, (3) A research to find in concreto sez, (4) A research on legal systematics , and (5) A research on vertical and horizontal synchronization level . Aligned with the aforementioned legal experts, Sonata in his article stated that normative legal research is a research which is dogmatic and related to legal rules and the knowledge of basic definition in sez along with its theoretical-rational characteristics and uses deductive reasoning model (Sonata, 2014). This article includes the inventory of positive sez, legal principle, and vertical and horizontal synchronization level (in this article, the author uses the term "harmony"). Legal sources used were primary legal sources, secondary legal sources, and non-legal sources. The approaches used were statute approach, case approach and conceptual approach. This study applied prescriptive analysis, an analysis which formulizes, proposes guidelines and rules that must be obeyed by legal practice and dogma.

## C. RESULT AND DISCUSSION

Indonesia as a developing country is continuing to make various efforts to realize development in various fields, particularly in the field of economy. Because economic development has not been optimal, the government of Indonesia needs to design long term strategy to perform acceleration, so

that economic development in all Indonesian sezs will not only focus in Java Island. The ultimate goal of the state of Indonesia is to improve public welfare. This has become a consensus among the founding fathers as stipulated in the Preamble of UUD NRI 1945.

The acceleration performed, which is related to economy demand an increase in investment through the set-up of SEZ which has geo-economics and geostrategic advantages. The sez is prepared to maximize industrial activities, export, import, and other economic activities which have high economic value.

Concrete step of the acceleration was followed up on 25<sup>th</sup> June 2006 by the signing of Framework Agreement on Economic Cooperation in the Establishment of SEZ by President Susilo Bambang Yudoyono together with Singapore Prime Minister Lee Hsien Loong in Turi Beach Resort. This means that the beginning of the idea of SEZ had been initiated by the government of the Republic of Indonesia together with the government of Singapore (Gunawan, & Maryoni, 2017). In certain case, Article 8 can be interpreted that establishment without proposing stage may be performed with regard to national interest for economic development and to maintain the balance of development of a SEZ. Some countries that had applied similar policy were United States, China, Singapore, India, Malaysia, and some other countries. Tatang Suheri in his study stated that SEZ in Indonesia was designed on purpose after seeing the success of its implementation to attract both local and foreign investment. Besides attracting

investment, SEZ is also designed in order to minimize development gap between west and east sez (Suheri, & Aulia, 2017).

The success of SEZ implementation needs to be supported by legal instrument considering that Indonesia is a legal state. This means that all regulations in Indonesia have to be based on sez. Soenaryati Hartono stated that sez is "a bridge". In this case, it means that sez is a medium or a link to realize the purpose of the nation which is stipulated in UUD NRI 1945.

Legal instrument can give legal certainty or security in implementing economic development. In this context, it is SEZ which is expected to be able to accelerate sezal development in the field of industry, tourism, and trading so that it will create employment opportunity.

Chapter III of UU SEZ stipulates guidelines of the making of SEZ in three main stages consisting of proposing, establishing, and construction and operation. Juridical issue arises in proposing and establishing stage will be discussed in the next sub chapter:

#### 1. The Concept of Legal Harmonization

The word harmonization etymologically is derived from the word harmony which in Indonesia language means the statement of feeling, action, idea, and interest: compatibility, harmony. Harmonization in English is "harmonize" while in French it is "harmonie", and in Greek it is "harmonia". (Suhartono, 2011)

The problems of a legal state is the potential of regulation disharmony which causes what is called

hyper regulations which is then popular to be called as "legal obesity" (Chandranegara, 2019). On one side, the making of regulation will increase the role of court in determining the validity of each regulation and state policy. However, the making of regulation which is not well structured and not systematic but massive is like a time bomb wait to explode for the practitioners of democratic legal state (Chandranegara, 2019).

Regulation disharmony according to Syhabuddin consists of 6 factors, namely (1) the making of the regulation is performed by different agency and frequently done in different period of time, (2) the officers which authorize to make the legislations always change either because of the term of serving, mutation, or replacement, (3) sectorial approach in the making of the legislation is stronger than the systematic approach (4) weak coordination in the process of legislation making which involves various agencies and legal disciplines, and (5) limited access for public to participate in the process of legislation making ; (6) the method is not well established, meaning that it is not definitive and not standard, thus it cannot bind all agencies which has authority to make the legislation (Syihabudin, 2008).

Legislation in a country is an integral part or subsystem of a legal system of the state. This also applies here in Indonesia. As an integral part or subsystem in a legal system of a state, legislation cannot stand alone, or be independent from the system of a legal state (Nugroho, 2009). In order to realize a harmonic system of legislation, it is



necessary to harmonize one regulation with another. This process is usually called harmonization.

Harmonization in legal context covers adjustment or alignment of legislations, government decree, judge decision, legal system, and legal principle in order to improve legal unity, legal security, justice and equality, utility, and legal clarity, without obscuring and sacrificing legal pluralism if needed. Meanwhile, according to National Sez Development Center in a book written by Moh. Hasan Wargakusumah et.al, legal harmonization is a scientific activity leading to written harmonization process which refers to philosophical, sociological, economic, and juridical values (Suhartono, 2011). This is in accordance with a statement by Bayu Dwi Anggono who defined legislation harmonization as an effort to harmonize legislations which are related to a certain field so that the contents can be mutual and dependent of each other in order to achieve a whole harmony (Anggono, 2010).

According to Sapto Budoyo, legal harmonization is a process of adjusting legal principles and systems in order to create legal simplicity, legal security, and justice. Legal harmonization as a process of legislation making overcomes any contradictive issues and irregularities of legal norms in legislations so that a harmonic national legislation will be made. A harmonic legislation means that the legislation is aligned, compatible, integrated, and consistent, as well as obeying the principles. (Budoyo, 2014). Therefore, legal harmonization can be defined as an effort or process of adjustment between legal principles and

systems in order to provide legal security, legal utility, and justice.

Legal harmonization aims to harmonize rules contained in legislation. In other words, it prevents and overcomes potential legal disharmonization. Legal harmonization also prevents potential overlap of authorities and/or conflict of interest. Overlap occurring between one content of the legislation and the other, chaos will result in chaos in sez enforcement.

According to Wacipto Setiadi, at least there are three functions of legal harmonization, namely: (1) harmonization is performed in order to maintain harmony, steadiness, and the firmness of legislation conception as a system so that the legislation may run effectively, (2) legal harmonization also acts as a prevention action to prevent the submission of judicial review of the legislation to Constitutional Court or to Supreme Court, (3) legal harmonization aims to guarantee that the process of legislation making follows under legal principles for the interest of sez and legal security (Setiadi, 2007).

Legal harmonization approach, according to Kusnu Goesniadhie, consists of four types, namely (1) legal harmonization referring to legislations, (2) legal harmonization referring to scope, (3) legal harmonization referring to institutional integration, and (4) legal harmonization referring to codification and unification(Goesniadhie, 2010).

According to Malau, issuance of legislation in Indonesia is still relatively unplanned. If the problem of regulation issuance is not immediately solved, it will be counterproductive with the effort to improve

economic mobility and development, particularly SEZ (Malau, 2014). This is because the regulation is in "obesity". To the worst case, Indonesia even fell to the 6<sup>th</sup> position in terms of investment friendliness in ASEAN (Hartono, & Hardiwinoto, 2018). This is worsened by the fact that this problem has been unsolved for years, and resulting in the accumulation of problems with numerous number of cases although during the history of regulation structuring policy, what is meant with achieving welfare goal has often been done.

## 2. Regulation Harmonization in Relation With Proposal and The Establishment of SEZ

In English, harmonization is to harmonize while in French it is "harmonie", and in Greek, it is "harmonia" (Suhartono, 2011). Harmonization in legal

context is necessary in terms of legislation harmonization. Legal harmonization in SEZ regulation in Indonesia has been necessary in order to avoid legal disharmonization (as the opposite of the word harmony), so that authority overlapping and/or conflict of interest in SEZ proposing and establishing can be minimized.

Proposal of SEZ refers to Article 5 UU SEZ can be submitted by Business Entity, provincial government, or district/municipal government. According to data obtained, 12 SEZs have been established, 6 of them have been in operation. The 12 SEZs were proposed by Business Entity, provincial government, or district/municipal government as described in table 2 below.

Table 2. SEZ and The Proposers

No.	SEZ	Proposers
1.	Sei Mangkei SEZ	PT. Perkebunan Nusantara Persero
2.	Palu SEZ	The Mayor of The City of Palu
3.	Tanjung Lesung SEZ	PT. Banten West Java Tourism Development (BWJ)
4.	Mandalika SEZ	PT. ITDC (Persero)
5.	Arun Lhokseumawe SEZ	Consortium of Business Entity (PT. Pertamina, PT. Pelindo I, PT. Pupuk Iskandar Muda, and Perusahaan Daerah Pembangunan Aceh)
6.	Galang Batang SEZ	PT. Bintan Alumnia Indonesia
7.	Tanjung Kelayang SEZ	PT. Belitung Pantai Intan as The Representative of Belitung Maritime Consortium
8.	Morotai SEZ	PT. Jababeka Morotai
9.	Bitung SEZ	The Governor of North Sulawesi
10.	Maloy Batuta Trans Kalimantan (MTBK) SEZ	PT. Maloy Batuta Trans Kalimantan
11.	Tanjung Api-Api SEZ	Governor of South Sumatera
12.	Sorong SEZ	The Regent of Sorong

Source: sez.go.id

In table 2, it is clear that SEZ proposers are business entity. It is interesting to know that the definition of entity as stipulated in Article 1 number 6 include State Owned Enterprise, Sezal Government Owned Enterprise, cooperative, private company and joint venture to manage SEZ business activities.

The use of the word "and" in the article has wider range of meaning. The word "and" indicates that business entity as mentioned in the article has to be cumulatively fulfilled. In table 2, it is obvious that it did not fulfill the provision of business entity required because only one business entity which was fulfilled. This will give different implication if the word "or" is used as an alternative instead. This will mean that only one of all the business entities can submit SEZ proposal, without requiring all the other business entities to do so. Legal harmonization as stated by Suhartono is the clarity of formulation, and it seems that the regulation of UU SEZ tends to implicate alternative rather than accumulation because it will

be difficult to fulfill the cumulative requirement of business entity.

Another interesting fact in the analysis of harmonization aspect is that private company may submit SEZ proposal. Private companies which proposed SEZ based on table 2 are, Tanjung Lesung SEZ by PT Banten West Java Tourism Development (BWJ), Galang Batang SEZ by PT Bintan Alumina Indonesia, Tanjung Kelayang SEZ by PT Belitung Pantai Intan as Consortium Representative of Belitung Maritime, Morotai SEZ by PT Jababeka Morotai, and MBTK SEZ by PT Maloy Batuta Trans Kalimantan. Can private company propose SEZ freely although the main activity they run involving the life of many people? Was there no conflict of interest?

Table 3. PT (Inc.) as Business Entities Proposers of SEZ and Main line Operated

No.	Proposer	Main line
1.	PT Banten West Java Tourism Development (BWJ)	1. Development and Management of Tourism Area 2. Tourism 3. Supply of Area Infrastructure
2.	PT Bintan Alumina Indonesia	1. Development and area Management 2. Industry of bauxite processing 3. Sezs 4. Supply of Regional infrastructure
3.	PT Belitung Pantai Intan as Consortium Representative of Belitung Maritime	1. Development and Region Management 2. Tourism 3. Supply of Regional Infrastructure
4.	PT Jababeka Morotai	1. Development and Region Management 2. Fish Processing Industry 3. Tourism 4. Sezs

	5. Supply of Region Infrastructure
5. PT Maloy Batuta Trans Kalimantan	1. Development and Region Management 2. Palm Oil Processing Industry 3. Wood Processing Industry 4. Energy Industry 5. Sezs 6. Supply of Region Infrastructure

Sources: The Author from various sources

In table 3, in the author's opinion, there are fields that should be managed by government to be utilized optimally for the prosperity of the people (energy industry) as mandated by Article 33 UUD NRI 1945 specifically in section (2) and (3). The provision states that SEZ is open to all private companies (including foreign investors) should be restricted for the reason that private companies which are more profit oriented can potentially trigger conflict of interest with its monopoly and massive exploitation regardless public interest. Do not let Indonesia as a country with rich natural resources be exploited by certain groups of people, or in this case, only the investors or foreign investors who can gain the benefit. Indonesia people must also be able to gain the benefit of the management of the resources.

The freedom of private companies to propose SEZ also needs to take into account Article 6 letter j Sez Number 12 Year 2011 concerning The Making of Legislation (hereinafter referred to as UU PUU) stipulating that the content material of the regulation must mention the principle of balance, harmony, and compatibility. This means that each content of the regulation must reflect balance, harmony, and compatibility between individual interest, people's interest, and the state's interest. Harmonization in this case means to restrict private companies'

flexibility, and if there is any field of business which involves the life of many people, it is suggested for the field to be proposed directly by provincial/district/municipal government or by State Owned Enterprise or Regional Government Owned Enterprise. Foreign investors who invest in Indonesia must form joint venture. By doing this, it is expected that there will be transfer of technology.

Another legal aspect related to the proposal and establishment of SEZ is provision of Article 8 which negates or makes an exception for provision of Article 5 stipulating that "In certain case, Government may determine a region as SEZ without going through proposing stage as stipulated in Article 5". There are several points that can be analyzed regarding this matter:

First, the use of systematical interpretation in understanding Article 5 must fulfill provision in Article 4 and ^ concerning the criteria and requirements of SEZ proposal. Article 8, which negates Article 5 because it is stated that the process without going through proposing stage, can dismiss Article 4 and 6. Article 4 stipulated that the criteria of SEZ proposal that must be fulfilled are as follows (a) in accordance with Regional Spatial Plan and has no potential to disturb conservation zone;(b) the provincial/district/municipality government support

SEZ, (c) located closed with international trading lines or near with international shipping line in Indonesia or located in area has prime resources, (d) has clear boundaries.

Article 6 regarding the requirements must at least be fulfilled when submitting SEZ proposal are: (a) location map of development and the proposed area that is separated from citizen residential, (b) spatial plan of SEZ that is attached with zoning regulation, (c) financing plan and sources, (d) environmental impact assessment appropriate with provisions of regulation, (e) feasibility study result in economics and financial, and (f) period of SEZ and the strategic plans.

It is mandatory to follow the criteria and fulfill the requirement of SEZ particularly in the aspect "in accordance with Regional Spatial Plan and has no potential to disturb conservation zone and analysis of environmental impact". The establishment of SEZ without going through proposing stage is basically against the principle of kinship as stipulated in Article 6 letter e UU PUU which is indicated that each content of the regulations must reflect deliberation in order to reach agreement and every decision making. Indonesia, a democracy country which has Pancasila as The Ideology, should practice deliberation to reach agreement in making decision.

The second, it is necessary to pay attention to SEZ regulation in Article 5 section (2) PP the Implementation of SEZ. This Article stipulates that the establishment of SEZ by government is based on proposal of ministry/ non ministerial government agencies. Another regulation Article 2 Permenko

2011 concerning Guidelines of SEZ proposal stipulates that

" Guidelines of SEZ Establishment Proposal is a reference for: (a) Business Entity, (b) District/Municipal Government, (c) Provincial Government, or (d) Ministry/ Non Ministerial Government Agencies in proposing the establishment of Special Economic Zone."

By referring to both regulations of UU SEZ, it is seen that the establishment as intended in Article 8 UU KEK still has to go through proposing stage as the proposal submitted by business entity, provincial government, or district/municipal government. The establishment made by only government is potential to be misused only for the interest of certain groups of people without taking into account the life of many people.

### 3. Analysis of SEZ Proposal of Minister of Research, Technology, and higher Education in Tangerang District Banten Province

The purpose of SEZ establishment as stated by Suyono Dikun in Nirhayati has positive values as follows (Nirhayati, 2008): (1) increasing investment; (2) maximizing the absorption of manpower; (3) increasing the utilization of local resources as well as improving sez excellence of export products; (4) accelerating region development; and (5) promoting the improvement of the quality of human resources through the transfer of technology. In relation to that matter, the establishment or proposing of SEZ has relatively experienced improvement, particularly proposal in the field of education in The Ministry of Research, Technology, and Higher Education.

Minister of Research, Technology, and Higher education (after the forming of new cabinet Jokowi-

Maruf Amin, The Ministry of Research, Technology, and Higher Education currently merges with The Ministry of Education and Culture) has officially proposed SEZ in Tangerang District Banten Province with Higher Education as the main activity. How is the proposal of SEZ proposed by Minister of Research, Technology, and Higher Education? Based on the search conducted, the proposal is the only proposal coming from government (ministry/ non ministerial government institutions). This supports the argumentation saying that the establishment of SEZ without proposing as regulated in Article 8 UU SEZ is difficult to be applied. In fact, Government does not determine SEZ immediately. The determination of SEZ still has to go through proposing stage as applied with the other three proposers.

First, the proposal of Minister of Research, Technology, and Higher Education, if based on UU SEZ, is not eligible because SEZ proposal can only be submitted by business entity, provincial government, and district/municipal government. The exception regulated in Article 8 UU SEZ is that the process can go directly to the establishment stage, without going through proposing stage first as what Minister of Technology, Research, and Higher Education did. If government indeed intends to consistently accommodate the idea that government can propose SEZ, consequently it is necessary to realize legal harmonization through the amendment of Article 5 UU SEZ with PP of SEZ Implementation Permenko 2011 concerning Guidelines of Proposing SEZ.

The second, as stated in The Report of SEZ National Council, definitively the main activity that will be operated in the proposal is Higher Education. The decision to choose Higher Education as its main activity, in the author's opinion, has not met the criteria mentioned in the definition of SEZ which is an area with certain borders in legal region of The Republic of Indonesia prepared to accommodate economic function and provided with certain facilities. Higher Education is educational function which is different from economical function.

Another aspect which also contributes in the difficulty of SEZ establishment is the provision of Article 3 UU SEZ which stipulates that SEZ consists of one or some zones: (a) export processing, (b) sezs, (c) industry, (d) technology development, (e) tourism, (f) energy, and/or (g) other economic activities.

Educational function as proposed by Minister of Research, Technology, and Higher Education has not met the criteria in zone (a) to (g), even in zone (g), which is still not specified, it is stated that the other economic activities mentioned are creative industry and sport zone. Therefore, proposal from Minister of Research, Technology, and Higher Education needs to be examined in depth, not only from economic aspect, but also from legal aspect as the realization of Indonesia as a legal state.

#### D. CONCLUSION

Based on the result of the analysis and discussion, it can be concluded that first, the provisions of business entity as proposers of SEZ

needs to be reviewed because the words have cumulative meaning (all requirement must be fulfilled). The second, the field that private business entity proposes in SEZ needs to be limited to particularly field which is related to the life of wider community in order to anticipate conflict of interest in private business entity, besides the fact that it is also against the principle of balance, compatibility, and harmony with UU PUU.

The third, the establishment of SEZ by government which negates the provision of Article 5 UU KEKE (in this case, systematical interpretation also dismisses Article 4 and 6) especially in relation with RTRW, Protection Forest Area, and/or the analysis of environmental impact. The fourth, the establishment by government without going through proposing stage is against the principle of kinship stated in Article 6 UU PUU and also The Ideology of Pancasila which applies deliberation to agree and make decision. The fifth, the provision of Article 8 UU KEK is not aligned with Government Ordinance concerning The Implementation of SEZ and Permenko 2011 concerning The Guideline of Proposing SEZ in terms of SEZ proposal.

The sixth, from legal aspect, the proposal of SEZ by Minister of Research, Technology, and Higher Education needs to be examined and analyzed in depth particularly in the process of establishment. Higher Education as planning action is not compatible with the definition of SEZ and zone that can be developed. Based on the results of this study, here are the recommendations offered: First, the definition of business entity using the word "and"

should be replaced with the word "or" which means alternative. Second, the provision of Article 8 should be eliminated, Article 5 should be added which then will allow government to propose SEZ. Third, the proposal of SEZ by Minister of Research, Technology, and Higher Education should be analyzed in depth.

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