

## **Assessing *Mutatis Mutandis*' Authorities of Sabang Free Trade and Free Port Zone within the Indonesian Law on Job Creation**

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### **Abstract**

This paper discusses authorities of Sabang Free Trade and Free Port Zone (KPBPB) and its dilemma post the existence of the Law on Job Creation (UU-Cipta Kerja) and Constitutional Court decision, in terms of 'Mutatis Mutandis' in attracting investment. There is conflict regulation after the government issued UU-Cipta Kerja, including facilities and conveniences in the form of entry and exit of goods, taxation, customs, excise and licence. The application of Online Single Submission (OSS) system has centralized the authority while KPBPB Sabang to become only a beneficiary. Hence the Application of 'Mutatis Mutandis' to necessary changes for attracting Investment opportunities is required. This paper contributes to clarify the authority of KPBPB Sabang in terms of strengthening and repositioning the KPBPB within centralization notion of Job creation law.

**Keywords:** KPBPB Sabang, Law on Job Creation, Mutatis Mutandis, Investment.

### **Abstrak**

Tulisan ini membahas tentang kewenangan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Sabang (KPBPB) dan dilemanya pasca keberadaan Undang-Undang Cipta Kerja (UU-Cipta Kerja) dan putusan Mahkamah Konstitusi, dalam kaitannya dengan 'Mutatis Mutandis' dalam menarik investasi. Terdapat konflik pengaturan setelah pemerintah mengeluarkan UU-Cipta Kerja, termasuk kemudahan dan kemudahan berupa keluar masuknya barang, perpajakan, bea cukai, cukai dan perizinan. Penerapan sistem Online Single Submission (OSS) telah memusatkan kewenangan sedangkan KPBPB Sabang hanya menjadi penerima manfaat saja. Oleh karena itu Penerapan 'Mutatis Mutandis' terhadap perubahan yang diperlukan untuk menarik peluang Investasi diperlukan. Tulisan ini turut memperjelas kewenangan KPBPB Sabang dalam hal penguatan dan reposisi KPBPB dalam pengertian sentralisasi UU Cipta Kerja.

**Kata kunci:** KPBPB Sabang, UU Cipta Kerja, Mutatis Mutandi. Investasi



## INTRODUCTION

**F**ree Trade and Free Port zone (FTZ) is an area where commodities can be imported, manufactured, modified and re-exported without interference from national customs authorities. It is an international trend to globalized free trade area for eliminating trade boundaries in certain area of a state. International trade law has provided several elements to facilitate this opportunities. The items are not subject to customs duties until delivered to end-users within the country where the zone is located. Large seaports, international airports, national borders serve as the focal points of free-trade zones. Britannica (2021) International documents guiding free zones include The World Customs Organization (WCO) Convention on the simplification and Harmonization of Customs Procedures (the Revised Kyoto Convention/ RKC) and The World Trade Organization Agreement. The WCO underlines that a free zone is an area that receives “Extraterritorial Status”, without further explanation. The WCO makes an appropriate distinction between customs warehouses and free zones. (Putra, 2020).

Furthermore, FTZ is a form of enactment of an economic zone in an area, in this case, various meanings due to differences in the viewpoints or weights of the expert review of the FTZ concept. According to Capela and Hatman *The Concept of Economic Zone: "An economic zone is an area designated by a nation to operate under regulations that offer specific investment incentives, including Duty Free status for imports and manufacturing facilities that re-export their goods."*

The concept of free trade is a theoretical concept that presupposes the enactment of an international trading system freed from barriers caused by the country's government's provisions, either generated by the imposition of tariff barriers or non-tariff barriers (Muliono and Heri, 2001). It has an international basis such as under the World Trade Organisation system.

Indonesia has established a free trade zone and a free port or known as (Kawasan Perdagangan Bebas dan Pelabuhan Bebas/KPBPB) in 1970, by The Government law Number 3 of 1970; as a legal foundation for the various areas in Indonesia to be treated as KPBPB for 30 years, supporting the national economy by offering various facilities concerning the flow of goods and documents in trade, simplifying investment and business, creating national economic growth, encouraging international trade activities, creating job opportunities, and increasing foreign domestic tourism and investment. It would be beneficial for Indonesia if these activities could be brought in domestically by offering the same concept and other additional facilities.

KPBPB Sabang, established by the Indonesian government to develop the accessible business and free port zone which includes Sabang, Pulo Aceh district, and other small islands around it. The strategic and unique location of Sabang shows that it can serve as a gateway for, Trade, goods, Investment and products. The Sabang Area and surrounding islands may potentially function as global ship traffic service center in South Asia. The government delegated the authorities for DKS (Sabang Area Council) through Government

Regulation/GR 83 of 2010 concerning the Delegation of Government Authority to DKS. For carry out its delegation for the development of the Sabang Area, DKS formed another agency called the Sabang Free trade and Free Port Zone (Badan Pengusahaan Kawasan Sabang/BPKS).

BPKS Sabang authorities to provide incentives for the business in the Sabang zone, including commerce and services; industry; mining and energy; transportation; marines; fishing; posts; banking; insurance; tourism. Under the Omnibus Law (*UU Cipta Kerja/UU-CK*) several provisions were revoked and revised to encourage investment, ease in doing business, and create jobs provisions regarding BPKS Sabang,

This word 'omnibus' comes from a Latin word that means "for all." In the Merriam-Webster legal dictionary, this law comes from the omnibus bill, namely laws covering numerous issues or themes. Through the Omnibus law, policymakers can revise and combine many rules in a single direction (Putra, 2020). The term UU-CK, whose has function is to revise and rewrite new law or remove many rules. This Law constructing from common law legal system countries such as the United Kingdom, France, and the United States of America. Omnibus Law concept provides options to the cause problem. There are many regulations and rules which is overlap (Putra, 2020). In 2018 Indonesia National Development Planning (*Badan Perencanaan Pembangunan Nasional/BAPPENAS*) stated that: Indonesia has hyper-regulation, conflicting, overlapping, multi interpretation, inconsistency, infective, unnecessary burden, making the high-cost economy and sectoral-ego in Ministry level (Rahmayadi, 2017).

The UU-CK which consists of 186 articles, was legally approved by the Indonesia DPR and signed by The President on November 2, 2020. This Law summarizes 82 laws and 1.994 articles, divided into 11 clusters; this law aims to create for the ease of doing business and improving the investment ecosystem and business activities Hukum Online (2021). The investment must be part of the national implementation to increase economic development sustainability, increase national technological capacity and capability, promote economic development, and realize society's welfare in a competitive financial system (Kristianti, 2020).

During Jokowi's second term as president, the government wants to create a friendly investment climate and eliminate lengthy administrative processes. Significant revisions to the 79 Laws are required to enhance the investment climate because existing sectoral arrangements would not meet the legal criteria for increased job creation. Changes in laws that implement have not supported the realization of synchronization in ensuring the acceleration of UU-CK, necessitating the development of legal breakthroughs that can combine the solutions to multiple problems found in several laws; into a single comprehensive law. The UU-CK adjust multiple aspects of the regulation related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented to the national interest (Sutrisno and Poerana, 2020).

Almost all special arrangements related to improving the investment ecosystem and business activities in UU-CK are realized by changing, deleting, or stipulating new

interpretations of several provisions regulated in sectoral laws. For further regulation of all these matters, it is left to the Government Regulation to control them. Therefore, after enacting UU-CK, the provisions deemed to hinder investment and business activities regulated in the sectoral law are null and void by law. New provisions based on UU-CK have replaced these provisions, making it more attractive to investors, including foreign investors and other business actors and current stockholders. However, there are more straightforward and less bureaucratic operating procedures, and still wait for numerous government regulations and MK Decision concerning UU-CK.

UU-CK provision concerning KPBPB are essential components for the government for attracting investors, both of which play a crucial part in developing the Indonesian economy. The FTZ area regulate through GR 41 of 2021 for all KPBPB. These areas within Indonesia jurisdiction, separated from the customs area. It is free from import duty, value added tax (PPN), Sales tax on luxury goods (PPnBm), and excise. This policy helps reduce or eliminate trade barriers where goods can be landed, entered, handled, produced, resold, and re-exported in KPBPB (Article 1 Government Regulation No. 41 of 2021).

However, since UU-CK has derivative of GR 41 of 2021. There are several authorities has changed including facilities and conveniences in the form of entry and exit of goods, taxation, customs, excise and licence. Even more, when the Constitutional Court (*Mahkamah Konstitusi/MK*) decision that UU-CK is “*Unconstitutional Conditional*” has been the issue more complicated. Therefore, this paper, explores dilemma of authorities of KPBPB Sabang after UU-CK and MK Decision. (Yahya, Syahbandir and Melisa, 2019), (Lestari, Djusfi and Tariq, 2019).

The paper used a normative method i.e., research conducted on legal principle, legal methods in the sense of value (norm), concrete legal regulations, and legal systems related to the material studied (Mertokusumo, 2004). The approach used is a statute approach by reviewing all laws and regulations relevant to the case and using a conceptual system that is ‘*Mutatis Mutandis*’ that provides a viewpoint of problem-solving analysis in legal research (Ibrahim, 2006).

## DISCUSSION

### The KPBPB Sabang status Within Law on Job Creation

#### 1. Law on Job Creation (UU Cipta Kerja/UU-CK)

The main objectives of this law for encouraging investment, accelerate economic transformation, harmonize central-regional policies, provide ease of doing business, and overcome overlapping regulatory problems. In the current state of Recovery economy global economy, without exception, has contracted to the point of recession. This condition has an impact on increasing the unemployment rate in Indonesia. OSS (2020).

The Passed of UU-CK encourages investment with a simple licensing system. The business activity licensing process has now been changed from permit-based to

risk-based. This risk-based licensing technique is obtained online through the OSS-RBA. Risk-based licensing is a licensing system based on business activity risk. The risk level is low, medium-low, medium-high, and high. In addition, several other factors are also considered, such as the rating of the scale of business activities and land area as stated in the attachment to the government regulation regarding the implementation of Risk-Based Business Licensing. OSS-RBA (2021).

An easier and faster licensing system will undoubtedly help improve the country's economy. An excellent licensing system will make potential investors more interested in investing in Indonesia. Due to this concern government has been issued GR 41 of 2021 concerning the Implementation of KPBPB, this area expected as of main focus government for attracting Investors. Thorough this Law government has been taking into account the provisions of Article 115 A 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 Third Amendment Law Number 8 of 1983 concerning PPN and Services Sales Tax of Luxury Goods, the provisions of Article 152 and Article 185 letter b of UU-CK.

In particular, KPBPB is used to state areas where import duties and other types of indirect taxes are applied. Import duties are only paid if an item or product moves from KPBPB to a place subject to standard customs. FTZ is different from Free Trade Area. The Free Trade Area is a reciprocal agreement between countries (bilateral or multilateral) neither prohibiting nor limiting import duties only for its members. Meanwhile, the FTZ or KPBPB is a zone that allows fewer customs formalities. Pajakku (2021).

As one of the Free Trade Areas and Ports in Indonesia, KPBPB Sabang has several impact through GR 41 of 2021, The position and authorities of this agency regulated in Article 77 regarding facilities and conveniences in the form of entry and exit of goods, customs taxation, excise as referred to in Article 27 (1) letter a, letter b, letter c, letter d, and the sanctions as referred to in Article 68, Article 69, Article 70, Article 71, and Article 72 apply *Mutatis Mutandis* to KPBPB Sabang. This concept of *Mutatis Mutandis* requires more interpretation to repositioning KPBPB Sabang among other KPBPB.

## 2. The Meaning of *Mutatis Mutandis* under Indonesia legislation

The *Mutatis Mutandis* explained in Black law to Black's Law Dictionary 9th edition: "*All necessary changes having been made; with the necessary changes, what was said regarding the first contract applies mutatis mutandis to all the later ones*". It can be understood that: 'the necessary changes have been made; with the necessary changes apply to the provisions in the article Hukum Online (2021).

The definition *mutatis mutandis* based on Article 1 number 11 of the Regulation of the Head of the National Archives Number 11 of 2016 concerning the Establishment of Legal Products in the National Archives of the Republic of Indonesia, which reads: “*Mutatis Mutandis is a principle that states that it follows the procedures contained in the provisions of this Head Regulation but has the authority to make changes to policies on things that are needed or necessary according to urgent conditions. From the description above, mutatis mutandis can be interpreted as required or essential changes*”. That means *mutatis mutandis* can be interpreted as essential for changes.

In terms of the KPBPB Sabang, the provisions in Article 77 stipulate that:

“*The position and authority of KPBPB Sabang are regulated in Government Regulation regarding facilities and conveniences in the form of entry, and exit of goods, customs taxation, excise as referred to Article 27 (1) letter a, letter b, letter c, letter d, the sanctions as referred in Article 68, Article 69, Article 70, Article 71, Article 72 applies to the position of the Sabang area with necessary or essential changes.*”

### 3. Legal scholar's Opinion

According to Prof. Faisal A. Rani, firstly, we have to look at the goals of UU-CK is to solve licensing issues and ease of doing business, which impacts job creation. Therefore, through this Law, it is hoped that it will be able to solve these problems to attract investors to invest in several areas that are the Government's priority in increasing economic growth. Through GR 41 of 2021, the Government has determined that the KPBPB area is one of the areas that are the focus of the Government in attracting investment. Therefore, the Government Regulation facilitates and simplifies all licensing processes through the Government Regulation. (Interview, 2021).

There is a dilemma regarding applying article 77 of GR 41 of 2021 which apply *Mutatis Mutandis*. The Government sees several considerations underlie why only a few pieces use KPBPB Sabang. First, KPBPB Sabang has its Law, namely Law no. 37 of 2000, and is also regulated in Law no. 11 of 2006. Therefore, through this Government Regulation, article 27 (1), 68, 69, 70, 71, 72, which applied *Mutatis Mutandis*; only some articles mentioned in Article 77 of the GR 41 of 2021 that are needed to make changes in terms of customs and licensing to simplify all licensing processes ease of doing business in this area. If this regulation has been changed, it will significantly impact terms of law because all regulations concerning excise will be the same as a whole in KPBPB, easy to be implemented, and more straightforward than the previous provisions. Therefore, it is regulated in a *Mutatis Mutandis* manner for KPBPB Sabang.

According to the book *Legal Terminology* by IPM Ranuhandoko, *mutatis mutandis* means *the changes that are needed*. The Writer examine in more depth, these necessary changes are urgently required for KPBPB Sabang because the rules

regulated in the Government Regulation are binding and apply to all KPBPB in Indonesia to attract investors. In addition, it is also essential to implement the Government's initial goal to issue this Law and GR 41 of 2021 to improve the economic sector.

#### 4. MK Decision Related to UU-CK

The Constitutional Court (Mahkamah Konstitusi/MK) partially granted the request for a formal review. MK affirmed that Law Number 11 of 2020 concerning UU-CK is formally flawed. The Court Decision Number 91/PUU-XVIII/2020 stated that: *“Declaring the establishment of UU-CK is contrary to Constitution and does not have legally binding as long as it is not interpreted no repairs have been made within two years since this decision pronounced.”*

However, MK stating that UU-CK is still in effect and the Government has legal basis for UU-CK. MK also suspended all strategic and broad-impact policies and was not allowed for issue new implementing regulations related to UU-CK (MK Decision (2021). Prof. Jimmy Assihidique confirmed that the decision of MK is a formal submission whose object of study is the formation of UU-CK; in this decision, the MK still recognizes the entire UU-CK for two years; but if no revision were made, then the previous Laws would re-applie again (Webinar, 2021).

Indonesia Constitutional expert, Bivitri Susanti, said that what the Constitutional Court called in this decision was only the process, while the UU-CK remained constitutional and remained in effect. It iss just that the government cannot make new implementing regulations of UU-CK. Kata Data (2021). Moreover, UU-CK that has been ratified and not cancelled indicates that UU-CK still has validity and binding power. If we take a look at Article 87 Law Number 12 of 2011:

*“Peraturan Perundang-undangan mulai berlaku dan mempunyai kekuatan mengikat pada tanggal diundangkan, kecuali ditentukan lain di dalam Peraturan Perundang-undangan yang bersangkutan.”* “Legislations come into force and have binding force on the date of promulgation, unless otherwise stipulated in the relevant Legislation”.

Thus, a law remains in force, or its validity is not affected by the presence or absence of implementing regulations. This condition has contributed to the lack of effective implementation of the law in the community. The government can implement UU-CK along with the derivative rules that have been issued. On the other hand, the government will still make improvements following the decision of MK if some provisions of the Implementing Regulations of the UU-CK remain in effect for two years Hukum Online (2022).

Unfortunately, the Government, through the Instruction of the Minister of Home Affairs Number 68 of 2021 concerning Follow-up to the Decisions of MK, instructs that the Government, both central and regional, continue to guide and

implement UU-CK along with its implementing regulations. It is against the MK decision, as the Instruction indirectly instructs to all stakeholders in the region to form Regional Regulations and Regional Head Regulations by simplifying regulations on all rules issued. In this case UU-CK is still valid and both central government and regional government can implement this law. Indeed the MK decision is not respected by government for pragmatic investment purposes.

The Government and House of Representative (*Dewan Perwakilan Rakyat/DPR*) as legislators should revise and improve this UU-CK because, if the Government does not change UU-CK within two years, it is declared unconstitutional. If this happens, it will be a problem for UU-CK and its derivative rules that the government has made; then, the government must re-create all the regulations that have been declared no longer valid. The government and DPR must pay attention to the procedures for forming laws and regulations regulated in Law number 12 of 2011. This Law is the legal basis for the guidelines for constructing Law in Indonesia.

##### 5. Challenges for Application of *Mutatis Mutandis* for KPBPB Sabang

Application of *Mutatis Mutandis* only applies to certain articles that are specifically regulated. Based on the previous rule, KPBPB Sabang already has a legal basis for running the institution. In this case, KPBPB Sabang already has a fairly strong legal basis, which is regulated in Law number 37 of 2000 and then strengthened authorities through Law no. 11 of 2006 in articles 167 to 170 and in operational implementation is carried out following GR no. 83 of 2010 concerning Delegation of Government Authority to the DKS. According to LOGA article 167 KPBPB Sabang is an area outside the customs area. All goods are entering and leaving the Sabang area, including goods regulated by the free trade system without permission from the ministry.

This is a dilemma for KPBPB Sabang; it already has a fairly strong legal basis. However, in its implementation, all the rules that the Government has made through GR 41 of 2021 cannot be applied in their entirety. As is the case with the DK provisions concerning DK as general policies foster, supervise, and coordinate the activities of the Free Trade Zone and Free Port Concession Agency. In GR 41 of 2021 DK is chaired by the minister who coordinates government affairs in the economic sector and consists of ministers, heads of institutions, governors, regents/majors, and the chairman of the relevant regional people's representative councils DK has the task and control to establish general policies that foster, supervise, and coordinate the management of KPBPB. Regarding the position of the DK, the members are different for each KPBPB Region; Batam KPBPB Region has regulated in Presidential Decree Number 8 of 2016 that Batam Regional Council Chair is concurrently Member: Coordinating Minister for Economic Affairs



Members: Minister of Home Affairs, Minister of Law and Human Rights, Minister of Finance Minister Trade, Minister of National Development Planning/Head of National Development Planning Agency, Commander of the Indonesian National Armed Forces, Head of the Indonesian National Police, Cabinet Secretary, Governor of the Riau Islands, Chairman of the Riau Archipelago House of Representative Council (*Dewan Perwakilan Rakyat Daerah/DPRD*) and Mayor of Batam as Head of the Regional Concession Agency. Meanwhile, DK Sabang consists of the Governor as Chair, the Regent of Aceh Besar, and the Mayor of Sabang. In this case, regulated the Government delegates the authorities in the field of licensing and other references to DKS to facilitate the activities of developing the function of the Sabang area. For smooth implementation in Licensing, Trade, and Investment, the Government shall stipulate policies, norms, standards, and procedures for implementing the authorities delegated to DKS.

BPKS functions as an agency that helps accelerate the growth of the Sabang Free Trade Zone with unique authorities in the field of business, ease of investment, and port authorities as regulated in GR 83 of 2010 concerning the delegation of governmental power to DKS.

Furthermore, Mr. Mawardi Ismail's opinions concerning the challenges faced by KPBPB Sabang in terms of NSPK issues (Norma, Standards, Procedures, and Criteria). If we want to accelerate investment entry in the Sabang area, we must make the entire NSPK. Currently, the NSPK owned by KPBPB Sabang is only in Investment, Trade, and Port. In this case, KPBPB Sabang must make NSPK regarding several aspects such as mining, fisheries, and ports. This case aims to attract investors to get instructions that follow the NSPK before investing in KPBP Sabang (Interview with member of DKS, 2021).

### **Authorities of KPBPB Sabang within Article 77 GR 41 of 2021**

Application of *mutatis mutandis*; within article 77 of GR 41 of 2021 in this case raises a dilemma regarding the authorities of KPBPB Sabang in GR 41 of 2021. Because it only applies to a few articles that are regulated *mutatis mutandis* in article 27 (1), 68, 69, 70, 71, 72, as for KPBPB Batam, KPBPB Bintan, KPBPB Karimun, all the rules held in this law apply a whole. In terms of the KPBPB Sabang within UU-CK, the provisions in Article 77 stipulate that:

*"Ketentuan mengenai fasilitas dan kemudahan berupa pemasukan dan pengeluaran barang, perpajakan, kepabeanan, dan cukai yang diatur didalam Pasal 27 (1) huruf a, huruf b, huruf c, huruf d dan sanksi sebagaimana dimaksud didalam pasal Pasal 68, Pasal 69, Pasal 70, Pasal 71 dan Pasal 72 berlaku mutatis mutandis terhadap KPBPB Sabang"*.

This article stated that business actors who will invest in the KPBPB area will get convenience in the form of entry and exit of goods, customs and excise which are applied *Mutatis Mutandis* for KPBPB Sabang. In terms of other convenience facilities

such as other facilities and conveniences also apply *mutatis mutandis* to KPBPB Sabang which is regulated in article 68, article 69 which is the legal basis for KPBPB Sabang to implement the OSS-RBA system as well as Article 70 and Article 71 which regulate goods that can enter for KPBPB. Also in Article 72 stipulates that provisions regarding customs, taxation and excise still to apply as stipulated in the Law no 37 of 2000.

More ever, within GR 41 of 2021 Article 68 paragraph (1) of this GR, the entry and exit of goods to and from KPBPB can only be carried out by entrepreneurs who have obtain a business license from the business entity. The business licensing referred to is further mentioned in Article 31 paragraph (2), namely in the form Importation of consumption goods for the needs of the population or Importation and/or release of goods, other than consumption goods for the population's needs.

In addition, it is also stated in Article 31 paragraph (3) that goods entered into KPBPB are only those related to their business activities. The control over suitability of the quantity and type of consumer goods that the entrepreneur has imported is carried out by the business entity following the business license as referred to in Article 31 paragraph (2) letter a.

Hereinafter some sanctions are as for the goods imported from outside the customs area do not meet the provisions stipulated in GR 41 of 2021 Article 28 paragraph (1), Article 31 paragraph (1) and paragraph (3), and Article 32 paragraph (1), then there are applicable sanctions, namely:

1. Re-issued (re-export) from KPBPB
2. Granted or
3. Destroyed.

In terms of encourage investment by facilitating business licensing for investors the government has made OSS-RBA to simplify the overlapping licensing system. So far, the issue of overlapping trade licensing between the Central and Regional authorities and Ministries/Institutions has made the licensing process difficult for investors. Not only does it take a long time, but potential investors also have to go through a protracted process. Investors need certainty, speed, convenience, and transparency in this case. This need will be fulfilled by the existence of the UU-CK, which would follow up with the creation of NSPK (Norma, Standards, Procedures, and Criteria) in the context of simplifying the business licensing bureaucracy. In addition, the Government has implemented an OSS-RBA system, which is managed by Central one Stop Service of Investment (*Dinas Penanaman Modal Terpadu Satu Pintu/DPSTP*) at Indonesia Investment Coordinating Board (*Badan Koordinasi Penanaman Modal/BKPM*). All permits would integrate through this OSS-RBA system to avoid overlap between the center and the regions. To simplify matters in the Licensing sector, the Government is implementing OSS-RBA through the OSS System, which implements of GR 5 of 2021 derived rules from UU-CK OSS-RBA (2022).

KPBPB Sabang, as one of main focus government for attracting Investment this agency determines 4 priority sectors to be developed, namely:

1. Port Sector

The Sabang area is also supported by the Kra Canal in Thailand, which can position Sabang as a Buffer Zone for Container Ships through the Malacca Strait Region and the Indian Ocean. Sabang is also a traffic lane that connects east and west trade. In addition, it can save 20% cost If it is diverted through Sabang. It has much potential to be developed as an international port service center (international hub-port) in the Indian Ocean in the future. (Aceh Jurnal Network 2022).

KPBPB Sabang is strategically located at the world's busiest shipping lane entrance, namely the Malacca Strait. Around 400-500 ships pass daily, making it the best location for your business to access the global market due to its proximity to 38 countries bordering the Indian Ocean, ASEAN, and the Middle East. Maritime connectivity in Sabang FTZ is supported by a deep natural seaport with a depth of 22 meters, which is suitable for large cargo ships and cruise ships. (Bea Cukai Sabang, 2022).

BPKS sees this opportunities for attracting investment flows to enter the Sabang Region; BPKS functions to help accelerate the growth of Sabang FTZ, with the special authorities prime in the field investment and port authorities which is stipulated in article 77 GR no. 41 of 2021. With maritime connectivity in Sabang, the FTZ is supported by a deep natural seaport with a depth of up to 22 meters (without dredging), which is suitable for anchoring large cargo ships and cruise ships that it complies with international port standards. Teluk Sabang Port will be developed as an "International Hub" port that can serve container ships with 10,000 TEUs (twenty-foot equivalent units) to become the entry point for logistics flows to the West Indonesia region. (Harian Kompas.com 11 November, 2022).

2. Industrial and Trading Sector

With the project scope:

- a. Infrastructure & superstructure investment for a large multipurpose terminal.
- b. Development of industrial estates to support port business services.
- c. Strategic partners between BPKS and the private sector.

This area is also developed as a regional economic growth center, emphasizing the main port (hub) that functions as an import-export port (international) and a national transshipment.

- a. Container terminal.
- b. Multipurpose Terminal.
- c. Bunker service.

BPKS has signed a cooperation agreement with PT Krakatau to develop investment opportunities in Sabang. Krakatau Bandar Samudera (KBS) is a

subsidiary of Krakatau Steel for port management. The signing of this collaboration is in the form of port management integration to realize global supply chain connectivity in Indonesia, hoping that the Sabang Free Port can immediately boost the economy, especially in Sabang, and the regional and national economy (BPKS, 2022).

### 3. Fishery Sector

The Sabang area has potential fish commodities that can be prioritized in terms of fishery resources, including tuna, skipjack, grouper, red snapper, small pelagic fish, anchovies, and ornamental fish shrimp. As a puffing area, the waters of Sabang also can be developed as a location for aquaculture.

Aquaculture is directed at exclusive fish consumption such as lobster, grouper, shrimp, and shellfish. Locations suitable to be developed as a place for marine aquaculture include Weh Island which are the jurisdiction of BPKS. In terms of developing the fisheries sector, it is an opportunity for investors to invest in Sabang. (BPKS, 2021).

### 4. Tourism Sector

The Sabang area as an island area, Sabang has a strategic position to be developed, especially with the Indonesian Zero Kilometer icon. The tourism potential of this area is expected to be able to attract investors; this is in line with the policies implemented by the Government of Indonesia through the Ministry of Tourism, which has set 13 provinces to be used as sharia tourism developments in Indonesia. (BKPM, 2021).

It is quite opportunities for Sabang to attract investors to develop the Sabang area as tourism destination in Indonesia. With an area of 700 hectare, Sabang has five main islands, namely Weh, Klah, Rubiah, Seulako, and Rondo, with many promising opportunities to continue to be developed to make this area one of the investors' goals to invest in Sabang.

Therefore, UU-CK primary purpose is to attract investors with all the facilities provided for in the Act through several clusters. To accelerate the implementation of investment in areas that are the government's main focus to support economic growth, the government issued a derivative rule from UU-CK for KPBPB; now, it impacts KPBPB Sabang, which has an impact is regulated in article 77. In this case, KPBPB Sabang strives to bring Investors who are profitable to invest in the area.

Currently, KPBPB Sabang opens the amplest opportunity for investors to invest. BPKS, as the executive, is preparing supporting instruments to open investment opportunities, such as opening cooperation with several parties, including PT Krakatau Steel, related to port management integration (Kumparan, 27 May 2022). As a non-structural government institution, the development of the Port and Pulo Aceh, in collaboration between BPKS and PT KBS, is expected to

create a Sabang Free Port that can boost the economy, especially in Sabang, and the national economy.

BPKS has also strengthened cooperation with the Coordinating Ministry for Maritime Affairs and Investment in carrying out a Joint Working Group Meeting (JWG) between the Government of Indonesia and the Government of India (Indonesia-India) at the Office of the Sabang Free Port and Area Concession Agency (BPKS) in this case as part of the development of maritime connectivity and investment between Indonesia and India. The result of this JWG activity is that a team from India will work directly from Sabang with a team from BPKS to prepare the FS/Detailed Project Report for the development of the Sabang Port and other infrastructure around Sabang (MBS NEWS, 16 March, 2022).

## CONCLUSION

The UU-CK is expected to encourage the entry of quality investment to impact employment and increase economic growth in Indonesia. One of the main focuses of efforts for government is to make several changes in the KPBPB Area, including KPBPB Sabang, the authorities in GR 41 of 2021 Article 77, applies *Mutatis Mutandis* to KPBPB. The MK Decision Number 91/PUU-XVIII/2020 concerning UU-CK all regulations that have been issued, including Government Regulations, Presidential Instructions, Ministry Regulation it remain effective In UU-CK, including its derivative rules; for GR number 41 of 2021 relating to KPBPB will remain in effect and cannot be revoked because the court's decision stipulates the rules. The decision also stipulates that the existing implementing regulations remain in effect. The Government is not allowed to make new implementing regulations of UU-CK. MK decision is strengthened by Instruction from ministerial regulation of the Minister of Home Affairs number 68 concerning Follow-up to the MK Decisions, instructs that the Government, both central and provincial, to continue to guide and to implement UU-CK along with its implementing regulations. The authorities of KPBPB Sabang is inline with GR no. 41 of 2021, that are provisions regarding facilities and conveniences in the form of entry and exit of goods, taxation, customs, and excise. Regarding sanctions if the import of goods from outside the region that does not meet the provisions of Article 28 paragraph (1), Article 31 paragraph (1) and paragraph (3), and Article 32 paragraph (1) then there are applicable sanctions, namely: Re-issued (re-export) from KPBPB Granted or would be destroyed. This is quite different before, where customs provisions as a free port area can regulate themselves. In the case of previous permits, it is the territory of DK to issue permits; and after the existence of UU-CK, all licenses are regulated using OSS-RBA.

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