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ANNUAL OBLIGATORY FEES AND LAND AND BUILDING TAX DOING
OVERLAPPING ON APPLICATION IN THE BATAM ISLAND REGION

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ABSTRACT:

Batam Island which is a free trade area that has the authority of Land Management Rights. It became a big polemic when the authority to manage the land was subject to annual compulsory fees. A lot of turmoil in the community, especially the Batam community. This research was conducted using a normative juridical method with the content analyze approach which was expressed in a descriptive analytical manner.

The results of the analysis show that the application of the Annual Compulsory Payment has caused unrest in the community. The community is burdened by the Annual Obligatory Money and Land and Building Tax, especially in relation to land which, if calculated on a monthly basis, has the same value load. Departing from this, the legality of applying the Annual Compulsory Money in a philosophical juridical manner is important to do, as a basis for thinking which makes it a juridical basis for determining which ones are Lex Specialis.

INTRODUCTION

Implementation of Free Trade Zone (FTZ) in the city of Batam, one of which gives authority to the management of the Free Trade Area, namely the Batam Industrial Development Authority (BP Batam) Right of Management Land (HPL) through Government Regulation of the Republic of Indonesia Number 46 of 2007 concerning Free Trade Zones and Free Ports of Batam which has been amended by Government Regulation Number 5 of 2011 which further gives birth to the

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authority for BP Batam to regulate land management in all administrative areas of Batam City which in this case consists of Batam, Rempang, and Galang Islands.

The development of the PP FTZ implementation has become increasingly counterproductive with the birth of the discourse on the replacement of the Free Trade Zone (FTZ) status with a Special Economic Zone. There are many conflicts over the discourse on changing the status. The peak of the problem arose in 2016 marked by the issuance of the Minister of Finance Regulation No. 148 / PMK.05 / 2016 dated 30 September 2016 concerning the Tariff for Public Service Bodies of the Batam Free Trade Zone and Free Port Management Agency. This problem arose because of an increase in service tariffs which greatly increased in terms of the value of the charges, especially the land lease rate service which was previously known as the Authority's Annual Mandatory Money (UWTO) and is now the Annual Mandatory Money. Especially in Article 3PMK No. 148 / PMK.05 / 2016. The fundamental problem in the community (stakeholders) is the very significant increase in the value of UWT which, if proxied, increases to 400% (four hundred per hundred) more than the price range of Rp. 20,000 (twenty thousand rupiah) to Rp. 80,000 (eighty thousand rupiah)³. This value increased through PMK No. 148 / PMK.05 / 2016 in conjunction with Regulation of the Head of the Batam Area Exploitation Agency (Perka BP Batam Area) Number 19 of 2016) to a range of Rp. 150,000 to Rp. 6,000,000 (Six Million Rupiah). The increase had an impact on the emergence of polemics in the community, including the general public, businessmen, professionals, and others. The polemic was sticking out until there was a report to the President at that time by Batam Mayor Muhammad Rudi who said that "I have reported it to the President, the Minister of Home Affairs, the Coordinating Minister for the Economy and the Coordinating Menko Polhukam"⁴. Due to the polemic that occurred and caused unrest in the community at that time, the Riau Islands Regional Police at that time deployed up to 3600 personnel. The Regional Police Chief at that time (Brigjen Pol Sam Budigusdian) said that "In anticipation we have prepared 3,600 personnel, depending on the escalation of the masses. We are preparing"⁵. Furthermore, Kapolda said that "Until now, he considered Batam to be still in a safe condition, because in fact all people and businessmen want to live in peace. "Only solutions must be found to solve so that there is certainty. Entrepreneurs need certainty".⁶

² Rates Land Allocation and Administration Services as referred to in Article 2 letter a consist of:

- a. Land Allocation Service Rates;
- b. Land Allocation Extension Service Tariff;
- c. Land Allocation Measurement Service Rates;
- d. Service Tariff for Site Designation Image Revision;
- e. Tariff for Recommendation Services for Land Rights;
- f. Document Replacement Service Fee;
- g. Fractional Service Tariff and Combined Land Designation;
- h. Transfer of Rights Permit Service Fares.

³ http://www.bpbatam.go.id/ini/Industry_economy/status_land_use.jsp, accessed on January 9, 2018

⁴ <http://batamtoday.com/batam/read/79808/Wali-Kota-Batam-L-Report-Kisruh-UWTO-ke-Jokowi>, accessed on 10 January 2018.

⁵ <https://kepri.antaraneews.com/berita/39548/polda-kerahan-3600-personel-amanan-demo-uwto>, accessed on 10 January 2018.

⁶ *ibid.*

Apart from the aforementioned matters, the objections felt by the public to the application of the Annual Compulsory Fee from the Zone Concession Agency are that land and building taxes are still being imposed based on Batam City Regional Regulation No.10 of 2011 concerning Rural and Urban Land and Building Tax Batam City PBB Regional Regulation). Article 1 of the Batam City PBB Regional Regulation Number 6 stipulates that what is meant by Land and Building Tax in the Perda is a tax on land and / or buildings owned, controlled, and / or utilized by private persons or entities for the urban sector, except for areas used for business, plantation, forestry and mining activities. If you look at the regional regulation, it appears that residential land in Batam city is subject to the same two objects of levy. Based on these, qualitative analysis is needed to assess the validity of the application of the Annual Compulsory Money in the Batam Free Trade and Free Port area as a problem formulation.

LITERATURE REVIEW

a. State Of The Art

Previous research related to the Annual Compulsory Money applied by the Zone Concession Agency has been carried out, consisting of the following:

- 1). Mirna Gunari, 2017, in "Analysis of Annual Mandatory Payment Procedures for Batam Concession Agency". This research puts forward the procedural aspects of implementing the Annual Compulsory Money. The result of the analysis explains that "..... discusses the procedures for the management of the annual compulsory payment of money at the Batam Concession Agency. The status of land and building ownership in Batam is unique. In contrast to other regions, when buying land or a house it does not directly become a property right, but rather a building use right. Building Use Rights Is the right to construct and own buildings on land that does not belong to him, so that every land applicant is required to pay the Annual Compulsory Money (UWT) to the Batam Concession Agency. Payment of the Annual Compulsory Money is made to extend land rights.
- 2). Seftia Azrianti, 2017, in "Implementation of the Authority's Annual Mandatory Money (UWTO) in Batam City". This study examines more about how the Annual Compulsory Money is applied by the Zone Concession Agency. This can be reviewed through the conclusion conveyed that "The Authority Annual Compulsory Money (UWTO) which can now be referred to as the Annual Compulsory Fee for the Concession Body is an obligation imposed on the people of Batam City, which turns out to be justified in statutory regulations. UWTO occurred in Batam because initially land in Batam City was land that was born and granted with Management Rights granted to BP Batam, as stated in Article 6 of Presidential Decree Number 41 of 1973 and many other regulations that

justify this.

- 3). Lendrawati and Gusita, 2014 in the Implementation of the Authority's Annual Compulsory Money Extension to the Extension of Building Use Rights in Batam City (Case Study of Notary Office / PPAT Andreas Timothy, SH, M.Kn.). The following study focuses more on problems that arise in the field when administering the extension of the Annual Compulsory Money in Batam city due to administrative malls and changing procedures.
- 4). Mega H. Andika 2015, also reviewed the Annual Compulsory Money in "The Authority's Annual Obligatory Money Juridical Study of Granting Property Rights over Management Rights in Batam City". This study focuses more on the impact of the imposition of the Annual Compulsory Money as a result of a land tenure application in the Batam Island area.

The author on this occasion emphasizes the study of the overlap of state levies on state objects as the urgency of research. The overlap that is meant in this case is the existence of land and building tax levies on community land and buildings imposed by the Batam City Government and the application of the annual mandatory fees imposed by the Zone Concession Agency on land allocated to the community. Especially when the increase in the Annual Mandatory Money was very significant. This policy caused a big polemic in the midst of society, resulting in an impact on the sluggish economy in the city of Batam. In the context of your research paper the literature review should be a critical synthesis of previous research in the subject field. The evaluation of the literature leads logically to the research question. Who is doing what? Who has done what? Who first did it or published it? Taken from published papers, research monographs, catalogs etc. based on primary sources. Offering a, probably new, structured view of.

b. Principle of Tax Collection

Taxes are levies imposed by the Authorities, in this case the Government, are actions that are considered as justified efforts. Justice in carrying out collections of citizens, most importantly as a reference is the main important study is to reveal **Adam Smith's** in his book **Wealth of Nations**, the **theory of four maxims** explains that the principle of fair tax collection must be based on 4 principles, which is **equality, certainty, convience of payment and efficiency**. Definition of each principle are 1). **Equality** means tax collection must be based on a balance with the ability that the tax collection must be fair in accordance with the ability and income of the taxpayer, without being impartial and discriminatory. This means that the imposition of taxes must be based on the ability of taxpayers, and must be transparent in a fair regulation, where everyone in the same condition must be taxed equally and impartially.

Fair means that every taxpayer contributes money for government expenditures in proportion to his interests and the benefits requested.

In generally, many tax regulations impose on taxpayers, while taxpayers themselves have not been able to produce or make money, such as levies on location permits, what is the basis for this burden on taxpayers, while taxpayers have not benefit at all from the permit, because the location permit is part of the license for investment and land use, justice like this should receive attention from the drafting of legislation before compiling statutory regulations.

2). **certainty**, is a collection where there is no doubt in paying taxes. The imposition of taxes must be clear about the structure of the tax, where the tax must be based on clear and transparent rules. In tax theory, we know that there is an understanding of tax where the taxpayer does not know what the tax money is paid for is up to the state, then it is also known as retribution, where the taxpayer will benefit directly from state facilities used by the taxpayer for the benefit of the taxpayer. From this understanding it is very clear that what is called a tax and what is called a levy, this clarity is very important for taxpayers because it concerns the rights and responsibilities of taxpayers and state managers, for example parking fees, not parking taxes even though the context is still state levies. In its people. Contribution of parking fees is a levy on the use of state facilities as a vehicle parking area that is enjoyed directly by taxpayers. Thus, the state must provide land to be used and utilized directly by taxpayers and for that the state must make regulations on parking fees that involve collection procedures and facilities provided by the state to taxpayers, this principle becomes a juridical basis in collecting taxpayers and obligations. State in providing parking facilities.

3). **convience of payment**, in the principle of taxation, means that collecting tax money must be at the right time, meaning that taxes should not be imposed when people do not have a loose source of payment. Taxes must be collected when people have money, or are having production running well. Here the importance of this principle is that taxes basically should not be burdensome to investment or the entry of people for investment, taxes must be collected when people are already producing or when people are already producing profits, from that profit taxes are collected, not from capital activities. This collection system is called **Pay as You Earn**. With this principle many laws and regulations are imposed when people start a business or activity, this creates high costs and makes financial costs expensive, for example having to pay location permit taxes, taxes collected where people do not get any economic value at all. and this is the state's obligation to regulate investment spatial planning and acquisition of land rights, the solution is that the imposition of taxes can be imposed when the right application has now become a regional tax.

4). **efficiency**, this principle confirms that the cost of collecting taxes should not be greater than the value of the taxes collected. In many cases regulations are costly, but cannot attract a tax value worth the cost. Efficiency is needed so that tax revenue as a source of co-living financing can be used optimally, not to finance the operational costs of its collection.

Based on the principles of tax collection as mentioned above, there are also theories as a justification for the State in collecting taxes for its citizens. Besides the Adam Smith principle to be more open about the legitimacy of collecting taxes, we can further observe the tax theory why the state can collect money from the people with the following theories:

- a. **Insurance theory**, according to the theory of insurance as a tax collection theory, in carrying out its duties, a country also includes its duty to protect body and soul and individual property. Therefore, the state is likened to an insurance company. So the safety and security of his soul is protected by the state. In insurance that must be paid is a premium, while in a country what must be paid by each individual is a tax. This insurance theory as a tax collection theory is no longer used, if the premium is defined as tax. Inaccurate, because the premium in this theory should be the same as a levy whose counter-performance can be felt directly by the premium provider, while taxes, the counter-performance cannot be felt directly, as is the meaning of the tax itself.
- b. **Interest Theory**, according to this theory, taxes have a relationship with individual interests, which are obtained from state jobs. The more individuals earn or enjoy services from government work, the greater the tax. Although this theory still applies to levies, it is difficult to maintain, because someone who is poor and unemployed gets a lot of help from the government and enjoys a lot of services from state jobs. in fact, they are reluctant to pay taxes.
- c. **Carrying Power Theory**, according to this theory that everyone in tax imposition must be the same weight, meaning that taxes must be paid according to the carrying capacity of each individual. The definition of carrying power varies, but the substance is the same, according to Prof. W. J de Langen, which is the size of one's strength to be able to achieve the highest fulfillment of needs, after deducting the absolute primary needs (very basic living costs). According to Mr. A.J. The Cohan Stuart is that the carrying power is like a bridge, which must first be able to carry its own weight before trying to be burdened with other weights. In this case, to measure the carrying capacity used two approaches, namely the objective element, namely by looking at the amount of income or wealth owned by a person and the subjective element, namely by paying attention to the amount of material needs that must be met.
- d. **Absolute Obligation Theory or Service Theory**, this theory is based on the understanding of the State organization (*organische staatsleer*) which teaches that the State as an organization has a duty to carry out the public interest. The state must take the necessary actions or decisions, including decisions in the field of taxation. According to this characteristic, the State has the absolute right to collect taxes and the people must pay taxes as a token of their dedication.
- e. **Purchasing Power Theory**, this theory emphasizes that tax payments made to the state are intended to maintain the people of the country concerned. According to Wirawan B. Ilyas and Richard Burton, this theory is universal and applies throughout the world. Because collecting taxes means attracting

the purchasing power of people's households for the country. In other words, the welfare of a society will be guaranteed by paying taxes based on this buying style theory. f. The State Sovereignty Theory, this theory is also a reaction of the people's sovereignty, but carries out the theory of the king's sovereignty in an atmosphere of people's sovereignty. According to this understanding, the state is the source within the state. Therefore, the state (in the sense of government = government) is considered to have unlimited rights to the life, liberty and property of its citizens. Citizens together with their property rights can be deployed in the interests of the greatness of the country. They obey the law not because of an agreement but because it is the will of the state. g. Agreement Theory, according to this theory, a covenant is an event where a person promises to another person or where two people promise each other to carry out something. Through an agreement, an engagement or legal relationship is created that gives rise to rights and obligations to each party making the agreement. In other words, the parties are concerned to comply with the agreement they have made. This function of the agreement is the same as legislation, but only applies specifically to the makers. By law, the agreement can be enforced through the courts. The law provides for sanctions for perpetrators of breach of agreement or for breaking promises (defaults).

c. Double Tax Theory

Understanding Double Taxation there are several experts who are the authors of the adaptation (Rohmat Sumitro, 1986: 66), which consists of the following:

1. **Spitaler** "Double taxation is a conflict of rules which exist when different taxing authorities of various sovereign fiscal territories impose upon the same taxable object in the hands of the same legal or in the hand of both, a legal and economic taxable subject, on the same grounds, the same or similar taxes, the writer translates freely so that it concludes that the elements contained in the definition above are:
 - 1). there are several countries with tax
 - 2). there are conflicting norms
 - 3). there is the same object
 - 4). on the same basis
 - 5). Subject to the same or similar tax.

So here the subject subject to tax does not need to be the same.

2. **Herbert Dorn and Hensel** "Double taxation exists when several independent fiscal powers (in particular several independent states) concurrently impose assimiliar tax on the same taxpayer on account of the same subject." Herbert Dorn's opinion above turns out to be similar to the opinion expressed by
3. **Hensel**, namely: "Internationale doppelbesteuerung (mehrere besteuern) liegt vor, wenn mehrere selbständige steuerhoheitsträger (besteuerungsberechtigte), insbesondere mehrere selbständige staaten, denselben steuerpflichtige einer gegen desselben gegenzeendes geeich The author freely translates that the two experts above express the same opinion

- on double taxation with the broad sense that "those who are subject to tax are the same subject at the same time."
4. **Ehrenzweigh and Koch**, these experts provide a double tax definition that "Double taxation occurs when a legal system or several legal jurisdictions impose on one tax object with two or more taxes which basically have the same nature and impact. Here double taxation can be distinguished between:
 - a) National double tax, namely: if the tax is imposed by the same country,
 - b) International double tax, namely: if the tax collector is a different country.
 5. **Ottmar Buhler and Teichner** expressed their opinion regarding double taxation by distinguishing in a broad and narrow sense. It is said that there is double taxation in a broad sense if the same tatbestand, at the same time by several countries is subject to the same tax or of the same nature. Meanwhile, double tax is in a narrow sense if the tax concerned is imposed on the same subject. Teichner's opinion also has similarities in dividing the notion of double taxation into two definitions, namely in the narrow sense and in the broad sense, namely that in the broad sense it does not matter about the subject as long as there is the same object which several countries are subject to taxation. Whereas in a narrow sense, tax is imposed on the same subject, there is double taxation.
 6. **Reuvers** said that double tax occurs if:
 - a. The same tax subject is subject to the same tax in more than one country, because the subject is considered to have domicile in several countries (dual domicile) or because the subject has the nationality of several countries (dual citizenship) or also because he is in one country or another country is subject to it. tax due to having the nationality of that country (clash between domicile and citizenship)
 - b. One tax object, for example an opinion or a transaction, is subject to the same tax or of the same nature in more than one country. A subject to the same tax in the country of domicile of the taxpayer is subject to tax on the basis of "world wide income" while in the country of the site (the country where the income is earned or the wealth is located) is subject to objective tax on the share of income derived from sources in or assets located in that country or has a close connection point with the country

RESEARCH METHODOLOGY

a. Method and Data

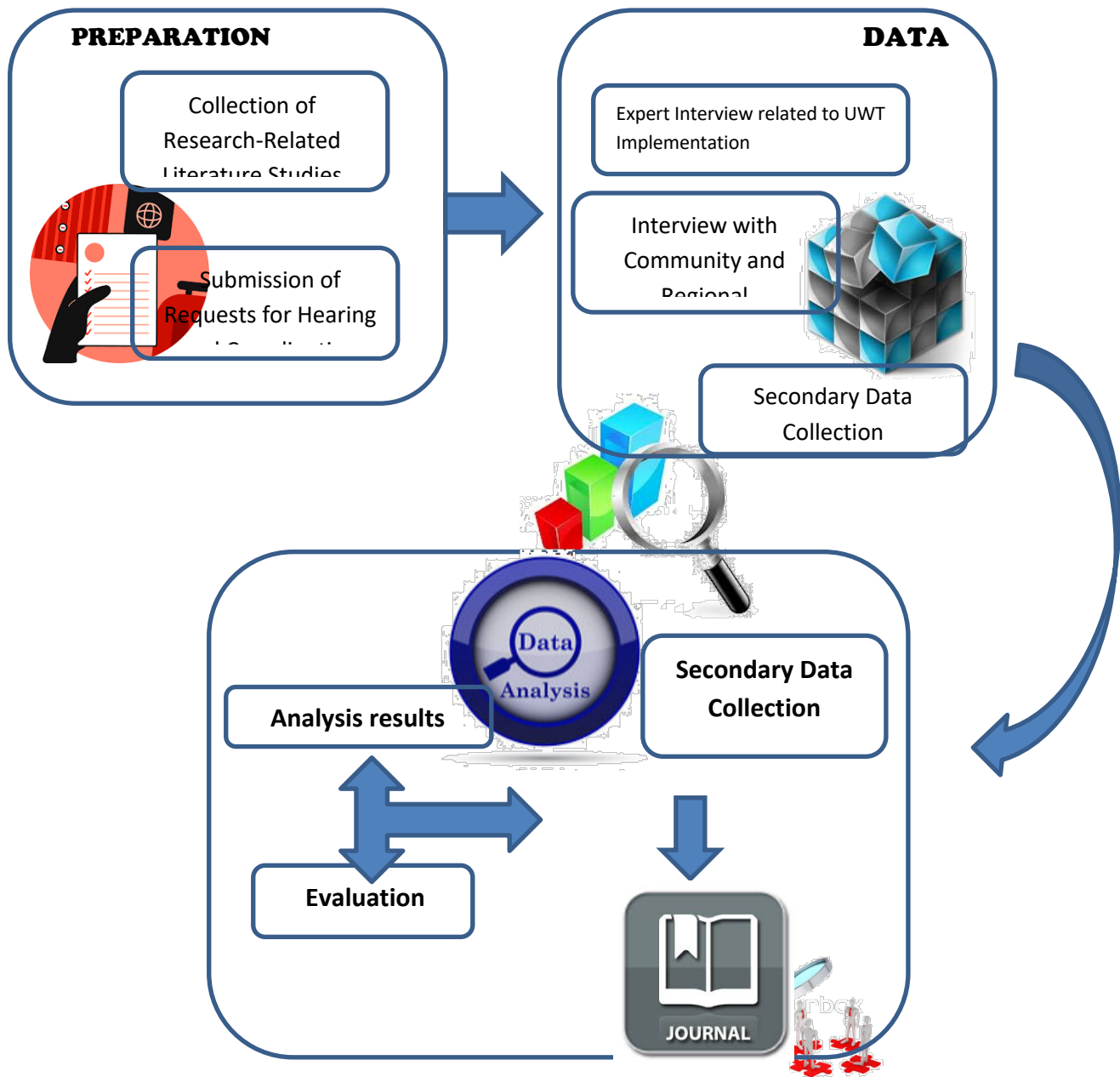
Research that is being carried out is a juridical normative research, research which is a legal research with the object of research on legal issues. This research will focus on the author and focus on studying the application of the rules or norms in positive law.⁷

Based on the point of view of social research methods, Normative Juridical Research is included in social research through qualitative methods. In accordance with the understanding given by Peter Mahmud that Normative

⁷ Sudarto, *Philosophy Research Methodology*, (Jakarta: Raja Grafindo Persada, 1995), p. 62

Juridical Research puts forward the study of norms and rules in positive law, which are related to dogmatic analysis.

b. Research Flow



c. Case Studies

Until now, the discussion on Double Taxation has been carried out on the same tax collected by different countries. Almost many double tax reviews that have been analyzed by several authors discuss double taxation that occurs between two countries. Several reviews of scientific papers related to Regional Taxes that have existed in several countries.

d. Research Results

Batam located on the divide of international sea shipping or about 20 km from Singapore, about 40 years ago it only had a population of 6000 people. In 1978, Batam developed rapidly, not only in infrastructure development and economic mobility, Batam within 5 years experienced a very sharp population increase to more than 31,000 and 12 years later to more than 90,000 people and 2015 the population has reached more than one million. In 2016, the total population of Batam was almost 1.5 million people. According to various studies, the population growth has increased sharply due to the promising economic attractiveness of Batam. Batam management has started since 1970 based on Presidential Decree No. 65 of 1970.

Batam development started in the 1970s where Batam was made a special area in the economic sector starting from its status as a *Bonded Warehouse* (Presidential Decree Number 33 of 1974), becoming a *Bonded Zone* (Presidential Decree Number 28 of 1992), and then developing into a Bonded Zone Plus (Ministerial Decree). Finance Number 60 of 2005). This status was followed by the application of the *Special Economic Zone* (SEZ) which is based on a Memorandum of Understanding (MoU) or a Memorandum of Understanding between the Indonesian and Singaporean Governments, and finally Batam's status in 2007 as a *Free Trade Zone* based on Law Number 44 of 2007.

As the realization of the free trade area in Batam City, the Indonesian Government has issued Government Regulation Number 46 of 2007 concerning Batam Free Trade and Free Port Zones which is based on Law Number 36 of 2000 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2000 concerning Free Trade Area and Free Port Becomes Law, which has been amended into Law Number 44 of 2007 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2007 concerning Amendments to Law Number 36 of 2000 concerning Stipulation of Government Regulations in Lieu of Law - Law Number 1 of 2000 concerning Free Trade Zone and Free Port Becomes Law. Law Number 44 of 2007 is the legal basis for implementing the Free Trade Zone in Batam City.

The implementation of FTZ in Batam city, one of which gives authority to the management of the Free Trade Area, in this case the Batam Industrial Development Authority (BP Batam Area) **Land Management Rights** (HPL) through Government Regulation of the Republic of Indonesia Number 46 of 2007 concerning Free Trade Zones and Batam Free Port which has been amended by Government Regulation Number 5 of 2011 which further gives birth to the authority for BP Batam to regulate land management in all administrative areas of Batam City, which in this case consists of Batam, Rempang, and Galang Islands. Batam as a Free Trade Area in accordance with current developments has experienced many prolonged conflicts that have not been resolved. Since the problem of overlapping between the authorities of the Regional Government as the holder of the Regional Autonomy mandate through the issuance of Law no. 22/1999 concerning Regional Government which resulted in the issuance of Law no. 53/1999 concerning the Establishment of Batam City, which indirectly gave Batam the authority to become an autonomous region, then

the Batam Authority through Presidential Decree No. 41 of 1973 with articles 4 and 6 which essentially states that the Batam Authority has the authority of Management Rights in all aspects both land and sea including licensing and traffic of goods which in its development was replaced by Government Regulation Number 46 of 2007 concerning Free Trade Zones and Ports Free Batam (PP FTZ). 22/1999 concerning Regional Government which resulted in the issuance of Law no. 53/1999 concerning the Establishment of Batam City, which indirectly gave Batam the authority to become an autonomous region, then the Batam Authority through Presidential Decree No. 41 of 1973 with articles 4 and 6 which essentially states that the Batam Authority has the authority of Management Rights in all aspects both land and sea including in terms of licensing and traffic of goods which in its development was replaced by Government Regulation Number 46 of 2007 concerning Free Trade Zones and Ports Free Batam (PP FTZ). 22/1999 concerning Regional Government which resulted in the issuance of Law no. 53/1999 concerning the Establishment of Batam City, which indirectly gave Batam the authority to become an autonomous region, then the Batam Authority through Presidential Decree No. 41 of 1973 with articles 4 and 6 which essentially states that the Batam Authority has the authority of Management Rights in all aspects both land and sea including licensing and traffic of goods which in its development was replaced by Government Regulation Number 46 of 2007 concerning Free Trade Zones and Ports Free Batam (PP FTZ).

The development of the PP FTZ implementation has become increasingly counterproductive with the birth of the discourse on the replacement of the Free Trade Zone (FTZ) status with a Special Economic Zone. There are many conflicts over the discourse on changing the status. The problem of managing the FTZ area is getting worse with the issuance of PMK No. 148 / PMK.05 / 2016 dated 30 September 2016 concerning the Tariff for Public Service Bodies of the Batam Free Trade Zone and Free Port Management Agency. This problem arose because of a significant increase in service rates, especially land rental services, which were previously known as the Authority's Annual Compulsory Money (UWTO), which is now the Annual Deposit which is specifically regulated in Article 3.⁸PMK No. 148 / PMK.05 / 2016. The Annual Mandatory Money (UWT) cannot be categorized as a service fee as specified in Article 2 PMK No. 153 / PMK.05 / 2012.⁹

⁸ Rates Land Allocation and Administration Services as referred to in Article 2 letter a consist of:

- a. Land Allocation Service Rates;
- b. Land Allocation Extension Service Tariff;
- c. Land Allocation Measurement Service Rates;
- d. Service Tariff for Site Designation Image Revision;
- e. Tariff for Recommendation Services for Land Rights;
- f. Document Replacement Service Fee;
- g. Fractional Service Tariff and Combined Land Designation;
- h. Ij Service Tariff in Transfer of Rights.

⁹ Service rates as referred to in article 1, consist of:

- a. Sea Port Tariffs;

Batam experienced a big turmoil when the UWT value increase was rolled out in 2016, the increase was very significant, which if proxied increased to 400% (four hundred per seratur) more than the price range of Rp. 20,000 (twenty thousand rupiah) to Rp. 80,000 (eighty thousand rupiah)¹⁰rose through PMK No. 148 / PMK.05 / 2016 in conjunction with Regulation of the Head of the Batam Area Exploitation Agency (Perka BP Batam Area) Number 19 of 2016 to a range of Rp. 150,000 to Rp. 6,000,000 (Six Million Rupiah). Such increases have an impact on the emergence of polemics in society, including the general public, entrepreneurs, professionals, and others. Based on this, a qualitative analysis is needed to be able to assess the socio-economic impact on the implementation of Batam Free Trade and Free Port as a problem formulation

DISCUSSION

Batam Island is a free trade area and babas port, based on Law Number 36 of 2000 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2000 concerning Free Trade Zones and Free Ports into Law as amended by Law Number 44 In 2007. Batam was formerly an industrial area managed by an agency called the Batam Island Industrial Area Development Authority (Otorita Batam), Batam Authority based on Presidential Decree No. 41 of 1973 concerning Batam Island Industrial Area Article 6 paragraph 2 is granted management rights over all land in Batam Island.

Management rights are rights to land which in the UUPA of 1960 are referred to as the right to control land by the state, Article 2 of the UUPA and the explanation states that the definition of "controlled" by the State does not mean "owned", but rather the right that gives the State authority to control, rights. Control the State as formulated in Article 2 of the UUPA which is an authentic interpretation of the meaning of being controlled by the State in Article 33 paragraph (3) of the 1945 Constitution, "the earth and water and natural resources contained in the earth are the main points of the people's welfare so that they must be controlled. By the State and used for the greatest prosperity of the people". State control over land throughout the territory of the Republic of Indonesia is rooted in the rights of the Indonesian people which include the State's authority in Article 2 paragraph (2) of the UUPA, namely:

- a. Regulate and administer the designation, use, supply and maintenance of earth, water and space.

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- b. Environmental and Agribusiness Settlement Rates;
 - c. Hospital Rates;
 - d. Infrastructure rates;
 - e. Airport Fare;
 - f. Clean Water Tariff.

¹⁰ http://www.bpbatam.go.id/ini/Industry_economy/status_land_use.jsp

- b. Determine and regulate the legal relationships between people and earth, water and space.
- c. Determine and regulate legal relationships between people and legal actions concerning the earth, water, and space

The right to control the state is in no way comparable to ordinary civil rights (privaatrechtelijk) such as ownership rights. Furthermore, the word management right actually comes from a translation of the Dutch language which comes from the word "beheersrecht", but the meaning of "beheersrecht" is the right of control. Juridical control rights are then regulated in Government Regulation Number. 8 of 1953 concerning State Land Ownership Rights, the right to control over State land is then based on the Minister of Agrarian Regulation No. 9 of 1965 concerning the Implementation of Converting Ownership of State Land, converted into Management Rights. Management rights contain the definition of the right to control of the State whose implementing authority is partially delegated to the holder.

Furthermore, in 2007 the government issued PerPpu Number 1 of 2007 concerning Amendments to Law Number 36 of 2000 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2000 concerning Free Trade Zones and Free Ports into Law. This Perpu was later passed and stipulated as the Law of the Republic of Indonesia Number 44 of 2007 on November 1, 2007. Law no. 44 of 2007 then made Batam a Free Trade Area and Free Port, Article 1 of Perppu No.1 of 2000 regulates that Free Trade and Free Port Zone is an area located in the jurisdiction of the Unitary State of the Republic of Indonesia which is separated from the customs area so that it is free from imposition of import duties, value added tax, sales tax on luxury goods, and excise. Article 6 paragraph (1) Perppu No.1 of 2000 regulates that "*The President establishes the Zone Council for Free Trade and Free Port in the region, hereinafter referred to as the Zone Council*", And Article 7 paragraph (1) set that "*The Zone Council shall establish the Free Trade and Free Port Zone Exploitation Agency, hereinafter referred to as the Concession Agency.*", meaning that BP Batam is hierarchically under the Zone Council, BP Batam is then formed with Government Regulation of the Republic of Indonesia Number 46 of 2007 concerning the Free Trade Zone and Free Port of Batam.

Article 3 Paragraph (1) Government Regulation Number 46 Year 2007 regulates that "All assets of the Batam Island Industrial Area Development Authority are transferred to become assets of the Batam Free Trade Zone and Free Port Concession Agency, except for assets that have been submitted to the Batam City Government, in accordance with statutory regulations. . ." and in Article 4 Paragraph (1) states "Management Rights over land which is the authority of the Batam Island Industrial Area Development Authority and Management Rights over land which is the authority of the Batam City Government located in the Batam Free Trade Zone and Free Port as referred to in Article 1 Paragraph (2)

transfer to the Batam Free Trade Zone and Free Port Exploitation Agency in accordance with statutory regulations. ",

As the holder of management rights, BP Batam has authority over land in Batam, this authority is then regulated in Article 6 Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency No. 9 of 1965, namely:

- a. Planning the allocation and use of the land;
- b. Using the land for the purposes of carrying out his duties;
- c. Submit parts of the land to a third party with usage rights for a period of 6 (*six*) year;
- d. Receive income / compensation and / or mandatory annual money.

Grounded Regulation of the Minister of Home Affairs Number 1 of 1977 concerning Procedures for Application and Settlement of Granting Rights to Parts of Land for Management Rights and Registration, Article 1 stipulates that what is meant by "Management Rights" is management rights, which contain the authority to:

- a. planning the allocation and use of the land concerned;
- b. use the land for the purposes of conducting his business;
- c. surrender parts of the land to a third party according to the conditions determined by the company holding the rights, which includes allotment, usage, period and financial aspects, provided that the granting of rights to the land to the third party concerned is carried out by the official-authorized official, in accordance with applicable laws and regulations.

Next by looking at the provisions of Government Regulation Number 5 of 2011 concerning Amendments to Government Regulation Number 46 of 2007 concerning Free Trade Zones and Free Ports, Article 2C paragraph (1) regulates that "Assets of the Batam Free Trade Zone and Free Port Exploitation Agency are state assets. which is managed by the Batam Free Trade Zone and Free Port Exploitation Agency "and paragraph (2)" State assets as referred to in paragraph (1) are stipulated as State Property in the Batam Free Trade Zone and Free Port Exploitation Agency by the Minister of Finance ", juxtaposing this matter with conditions which is contained in the Minister of Agrarian Regulation No. 9 of 1965 concerning the Implementation of Converting Ownership of State Land in conjunction with Government Regulation Number. 8 of 1953 concerning State Land Tenure Rights in conjunction with the UUPA, it is clear that the land in the Batam Free Trade Zone and Free Port area is not classified as state-owned property or assets of BP Batam, BP Batam as the holder of management rights over land in the Batam area has the authority, plans the allocation and use of land in the Batam area, uses the land in the Batam area for the purposes of carrying out its duties, hands over parts of the land in the Batam area to a third party and receives income / compensation and / or mandatory money annual.

Regarding the authority to receive income / compensation and / or compulsory annual money for land, BP Batam as the holder of management rights must refer to the Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency Number. 6 of 1998 concerning Amendments to the Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency Number. 6 of 1998 concerning Guidelines for Determining Income Money in Granting Rights to State Land, Article 1 point 4 stipulates that the base price is the amount of money that is used as the basis for calculating income, namely:

- a. in the case of granting Property Rights, Building Use Rights or Use Rights: Tax Object Selling Value (NJOP) of the land concerned, provided that if the NJOP has not been determined for the land concerned, then the land market price is determined by the Head of the Land Office with due observance of NJOP. land that has been determined around the location and the opinion of the Head of the local UN Service Office;
- b. in granting Business Use Rights:
 - 1) For land located in Java and Sumatra, Rp. 150,000, - (one hundred and fifty thousand rupiah) per hectare;
 - 2) For land located in other areas Rp. 100,000, - (one hundred thousand rupiah) per hectare.

About Minister of Finance Regulation No. 148 / PMK.05 / 2016 dated 30 September 2016 concerning Tariff for Public Service Agency Services for Free Trade Zone Exploitation and Management AgencyPortFree Batam, Article 2 letter a PMK No. 148 / PMK.05 / 2016 dated September 30, 2016 contains the tariff for land allocation and administration services, the service tariff as referred to in PMK No. 148 / PMK.05 / 2016 are things that are different from the authority of BP Batam Region as the holder of management rights to receive income / compensation and / or mandatory annual money as referred to in Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency No. 9 of 1965. Land located in the Batam area is State Land not State Owned land / State Property and also not State Assets or BP Batam Wealth, so that in exercising authority as the holder of management rights over land in the Batam area, service rates cannot be determined as PMK No. 148 / PMK.05 / 2016, the service tariff can only be applied to the goods / services provided, meaning that the service rate can only be allocated to all BP Batam assets as stipulated in Article 3 PP No. 46 of 2007 and Article 2 C PP No. 5 of 2012 on Amendment to Government Regulation Number 46 of 2007 concerning Free Trade Zones and Free Ports which states that BP Batam assets are state assets, state assets are assigned the status of State Property in BP Batam by the Minister of Finance, while as previously described, land in the Batam area is State land which is not land / property belonging to the State, which means the action of the Minister of Finance in issuing PMK No. 148 / PMK.05 / 2016 dated 30 September 2016 as far as the tariff for land allocation and administration

services is concerned is a form of abuse of authority or "Detournement de pouvoir".

That again, talking about the hierarchy of positions between the Zone Council and BP Batam Region, as regulated in Law No. 36 of 2000 concerning the stipulation of Perppu No. 1 of 2000 regarding Free Zones and Free Ports into Law, as amended by Law No. 44 of 2007 concerning Stipulation of Perppu No. 1 of 2007 concerning Amendments to Law No. 36 of 2000 concerning Stipulation of Perpu Number 1 of 2000, BP Batam is a body formed by the Zone Council, meaning that BP Batam is under the Zone Council, where the Zone Council based on the provisions of Article 8 has the duty and authority "to determine public policy, develop, supervise and coordinate activities of the Concession Agency ", while the Concession Board has the task and authority" to carry out management, development and development of free trade areas and free ports in accordance with the functions of free trade areas and free ports ". Zone Council based on Presidential Decree No. 8 of 2016 stipulates the formation of the Zone Council chaired by the Coordinating Minister for Economic Affairs (concurrently as member) with members:

- Minister of Home Affairs,
- Minister of Law and Human Rights,
- Minister of Finance,
- Minister of Trade,
- Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency,
- Commander of the Indonesian National Army,
- Chief of the Indonesian National Police,
- Cabinet Secretary,
- Governor of Riau Islands,
- Mayor of Batam, and
- Chairman of the Riau Islands Provincial DPRD

Based on the duties and powers possessed by the Zone Council, the regulation on general policies that will be enforced for BP Batam Area becomes the domain of the Zone Council no longer the domain of the respective Ministry of Home Affairs, Ministry of Law and Human Rights, Ministry of Finance, Ministry Trade, and the Ministry of Agrarian Affairs and Spatial Planning / Head of the National Land Agency, moreover as Keppres No. 8 of 2016 the Ministry of Home Affairs, the Ministry of Law and Human Rights, the Ministry of Finance, the Ministry of Trade, and the Ministry of Agrarian Affairs and Spatial Planning / Head of the National Land Agency are appointed as members of the Zone Council. Thus the Minister of Finance in issuing PMK No. 148 / PMK.05 / 2016 concerning The tariff for the Public Service Agency for the Batam Free Trade Zone and Free Port Exploitation Zone is clearly against the mandate Law No. 36 of 2000 concerning Stipulation of Perpu No. 1 of 2000 concerning Free Zones and Free Seaports into Law, as amended by Law No. 44 of 2007 concerning Stipulation of Perpu No. 1 of 2007 concerning Amendments to Law No. 36 of 2000 concerning Stipulation of Perpu Number 1 of 2000, because the Central

Government based on this Law has given a delegation to the Zone Council to determine general policies that will apply to BP Batam, meaning that it is no longer under the authority of the Ministry of Finance.

Furthermore, since 2011 through PP. 6 of 2011 concerning Financial Management at the Zone Concession Agency Trading Free and Free Port Batam has established the Public Service Agency as the financial pattern of BP Batam, the definition of this Public Service Agency (BLU) is an agency within the government that is formed to provide services to the community in the form of providing goods and / or services that are sold without prioritizing seeking profit and in carrying out its activities based on the principles of efficiency and productivity Article 1 PMK Number 100 / PMK.05 / 2016 concerning General Guidelines for Preparation of Service Rates for Public Service Bodies in conjunction with Article 1 point 1 Government Regulation Number 23 of 2005 concerning Financial Management of Public Service Bodies in conjunction with Article 1 number 23 of Law no. 1 of 2004 concerning the State Treasury.

Observing the definition of the Public Service Agency (BLU) above, services carried out by agencies within the government are services to the community regarding the provision of goods and / or services that are sold, while the management rights of BP Batam Area over land in the Batam area are not the right to sell but the right to plan, manage and regulate allotment, meaning that the management rights held by BP Batam over land do not include the scope of goods and / or services as referred to in the definition of Public Service Agency / BLU, thus PMK No. 148 / PMK.05 / 2016 concerning The Tariff for the Public Service Batam Industrial Development Authority, specifically regarding The tariff for land allocation and administration services legally contradicts PP No. 23/2005 concerning Financial Management for Public Service Bodies Jo Law No. 1 of 2004 concerning the State Treasury.

Besides, the Minister of Finance based on Law no. 12 of 2004 concerning State Treasury, Article 7 confirms that the Minister of Finance is the State treasurer where as State treasurer the Minister of Finance has the authority, namely:

- a. establish policies and guidelines for implementing the state budget;
- b. ratify the budget implementation document;
- c. to control the implementation of the state budget;
- d. establish the system of state cash receipts and disbursements;
- e. appointing banks and / or other financial institutions in the framework of implementing state budget revenues and expenditures;
- f. seek and regulate the funds needed in the implementation of the state budget;
- g. save state money;
- h. placing state money and managing / administering investment;
- i. make payments based on requests from Budget User officials at the expense of the state general cash account;
- j. make loans and provide guarantees on behalf of the government;
- k. provide loans on behalf of the government;
- l. manage state debts and receivables;

- m. submit draft government regulations regarding government accounting standards;
- n. collect state receivables;
- o. establish a state financial accounting and reporting system;
- p. presents state financial information;
- q. establish policies and guidelines for the management and elimination of state property;
- r. determine the exchange rate of foreign currency against rupiah in the framework of paying taxes;
- s. Appoint an official of the Proxy of the State General Treasurer.

Authority one of which is owned by the Minister of Finance, one of which is to determine policies and guidelines as well as the elimination of State property, thus returning to the Management Rights of BP Batam for land in the Batam area, the Minister of Finance does not have the basic authority to establish policies and guidelines for land management in the Batam area, either specifically or in general, because the land in the Batam area is state land, not state-owned land. Thus, as described above, the authority over the establishment of policies and guidelines for land management in the Batam area, including guidelines regarding the annual mandatory money, is the authority of the Zone Council, not the authority of the Minister of Finance.

CONCLUSION AND RECOMMENDATION

CONCLUSION

Based on the results of the data and the results of the discussion, the next writer concludes that the validity of the application of the annual mandatory money in the free trade area and free port of Batam Island is "That State Land is not State Owned land / State Property and is also not State Assets or BP Batam Wealth, so that in exercising authority as the holder of management rights over land in the Batam area the service rate cannot be set as PMK No. 148 / PMK.05 / 2016, the service tariff can only be applied to the goods / services provided, meaning that the service rate can only be allocated to all BP Batam assets as stipulated in Article 3 PP No. 46 of 2007 and Article 2 C PP No. 5 of 2012 on Amendment to Government Regulation Number 46 of 2007 concerning Free Trade Zones and Free Ports which states that BP Batam assets are state assets, state assets are assigned the status of State Property in BP Batam by the Minister of Finance, while as previously described, land in the Batam area is State land which is not land / property belonging to the State, which means the action of the Minister of Finance in issuing PMK No. 148 / PMK.05 / 2016 dated 30 September 2016 as far as the tariff for land allocation and administration services is concerned is a form of abuse of authority or "Detournement de pouvoir". Based on this, the Land and Building Tax becomes a specialist because of its position as regional management. Whether the implementation of profit sharing is carried out as a matter of land management, then this can be discussed as is the case with the implementation of the double tax that has been running, namely based on the results of deliberations between interested institutions.

RECOMMENDATION

Based on the conclusion, this suggestion aimed the Batam Industrial Development Authority (BIDA) should be mediation with the local city government. BIDA should implement these provisions, whether the authority to collect taxes / levies in the Batam Island area which is the administrative area of the Batam City Government is carried out by the Batam Island Zone Exploitation Agency as a function of income indirectly or still refers to the Land and Building Tax or even between the Batam City Government and the Zone Concession Agency to share revenue against taxes on land and buildings as mentioned above.

REFERENCE

BOOK

- Andika, Mega H. 2015, *Kajian Yuridis Uang Wajib Tahunan Otorita Atas Pemberian Hak Milik Diatas Hak Pengelolaan Di Kota Batam*,
- Arinanto, Satya, 2011, *Hak Asasi Manusia dalam Transisi Politik di Indonesia*, Pusat Studi Hukum Tata Negara Law Faculty of Indonesia University (Third Edition), Jakarta
- Assiddiqie, Jimmly, 2008, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*, Jakarta, Bhuana Ilmu Populer.
- , 2016, *Prinsip-Prinsip Negara Hukum*, dalam “Beberapa Aspek Hukum Tata Negara, Hukum Pidana dan Hukum Islam, Menyambut 73 Tahun Prof. Dr. H. Muhammad Tahir Azhary”
- , 2010, *Konstitusi Ekonomi*, Jakarta, PT. Kompas Media Nusantara.
- Azhary, 1995, *Negara Hukum Indonesia Analisis Yuridis Normatif Tentang Unsur-Unsurnya*, Jakarta, UI Press.
- Azrianti, Seftia, 2017, *Penerapan Uang Wajib Tahunan Otorita (UWTO) di Kota Batam*,
- Damin, Sudaman, 2005, *Pengantar Studi Penelitian Kebijakan*, Jakarta: Bina Aksara.
- Gunari, Mirna, 2017, *Analisis Prosedur Pembayaran Uang Wajib Tahunan Pada Badan Pengusahaan Batam*
- Huijbers, Theo, 1982, *Filsafat Hukum Dalam Lintasan Sejarah*, Yogyakarta, Kanisius.
- Kaelan, H., 2013, *Negara Kebangsaan Pancasila, Kultural, Historis, Filosofis, Yuridis dan Aktualisasinya*, Yogyakarta, Paradigma,
- Lendrawati dan Gusita, 2014, *Pelaksanaan Perpanjangan Uang Wajib Tahunan Otorita Sampai Dengan Perpanjangan Hak Guna Bangunan Di Kota Batam (Studi Kasus Kantor Notaris/PPAT Andreas Timothy, S.H., M.Kn.)*,
- Marzuki, Peter Mahmud, 2010, *Penelitian Hukum*, Jakarta, Kencana.

Notonagoro, 1975, Pancasila Secara Ilmiah Populer, Jakarta, Pantjuran Tujuh.

Sanapiah, Faisal. 1999. Format Penelitian Sosial. Bandung: Raja Grafindo.

Sudarto, 1995, Metodologi Penelitian Filsafat, Jakarta, Raja Grafindo Persada

Journal

Taufiqurrohman Syahuri, Politik Hukum Perekonomian Berdasarkan Pasal 33 UUD 1945, Jurnal Konstitusi Vol. 9 No. 2, Juni 2012, hlm. 251

Regulation

Indonesian Constitution of 1945

Article Number 1 Years 2000 about Kawasan Perdagangan Bebas dan Pelabuhan

Undang-Undang Nomor 34 Tahun 2000 Tentang Perubahan atas Undang-Undang Nomor 18 Tahun 1997 Tentang Pajak Daerah Dan Retribusi Daerah

Article Number 36 Years 2000 about Penetapan Peraturan Pemerintah Pengganti Bebas Menjadi Undang-undang, yang telah diubah menjadi Undang-undang Nomor 44 tahun 2007 tentang Penetapan Peraturan Pemerintah Penganti Undang-undang Nomor 1 tahun 2007 tentang Perubahan Atas Undang-undang Nomor 36 tahun 2000 tentang Penetapan Peraturan Pemerintah Pengganti Undang-undang Nomor 1 tahun 2000 tentang Kawasan Perdagangan Bebas dan Pelabuhan Bebas Menjadi Undang-undang Undang Undang Nomor 22 Tahun 1999 tentang Pemerintahan Daerah

Article Number 53 Years 1999 about Pembentukan Kota Batam

Article Number 1 Years 1960 about Undang Undang Pokok Agraria

Government Regulation number 46 years 2007 about Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam

Government Regulation number 8 years 1953 about Hak Penguasaan Tanah-Tanah Negara

Government Regulation number 5 years 2011 about Perubahan Atas Peraturan Pemerintah Nomor 46 Tahun 2007 about Kawasan Perdagangan Bebas Dan Pelabuhan Bebas Batam

Presidential Decision Number 33 Years 1974 about Penetapan dan Penunjukan Beberapa Wilayah Usaha Bounded Warehouse di Daerah Industri Pulau Batam

Presidential Decision Number 28 Years 1992 tentang Kawasan Berikat

Presidential Decision Number 33 Years 1973 about Daerah Industri Pulau Batam

Keputusan Menteri Keuangan Nomor 60 tahun 2005

Minister of Finance Regulation Number 148/PMK.05/2016 Tentang Tarif Layanan Badan Layanan Umum Badan Pengusahaan Kawasan Perdagangan Bebas Dan Pelabuhan Bebas Batam

Minister of Finance Regulation Number 153/PMK.05/2012 Tentang Tarif Layanan Badan Layanan Umum Badan Pengusahaan Kawasan Perdagangan Bebas Dan Pelabuhan Bebas Batam

Minister of Land Regulation/Head of National Land Agency Number Nomor. 6 Years 1998 about Perubahan Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor. 6 Tahun 1998 Tentang Pedoman Penetapan Uang Pemasukan Dalam Pemberian Hak atas Tanah Negara

Minister of Land Regulation/Head of National Land Agency Number Nomor. 9 Years 1965 Tentang Pelaksanaan Konversi Hak Penguasaan atas Tanah Negara

Domestic Minister Number 1 Years 1977 about Tata Cara Permohonan dan Penyelesaian Pemberian Hak Atas Bagian-Bagian Tanah Hak Pengelolaan Serta Pendaftarannya

Major of Batam Regulation Nomor 10 Tahun 2011 tentang Pajak Bumi dan Bangunan Pedesaan dan Perkotaan

Head of the Batam Industrial Development Authority (Perka BP Kawasan Batam) Regulation Number 19 Years 2016

Internet

BPS Kota Batam, Batam Dalam Angka 2016, dari

<https://batamkota.bps.go.id/dynamic/table/2017/10/03/23/penduduk-kota-batam-menurut-kecamatan-dan-jenis-kelamin-2011-2016.html>