BATAM FREE TRADE ZONE AND FREE PORT: A JURIDICAL REVIEW FROM THE ASPECT OF THE MOVEMENT OF IMPORTED GOODS

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ABSTRACT
There are two prominent views concerning the free zone concept. One view defines a free zone as a special area established in a country that is independent from the customs authority supervision on the movement of imported goods, or known as extraterritorial zone, because customs authority is no longer levied import duties on these goods. On the other hand, the free zone is also defined as a special zone under the supervision of the customs authority due to the exemption of the import duties and tax on these imported goods as customs authority must ensure the validity of this exemption. In addition, there are also international instruments providing guidance concerning free zone, namely the WCO International Convention on the Simplification and Harmonization of Customs Procedures (the Revised Kyoto Convention) or the WCO RKC, and the WTO Agreement. This paper will discuss issues concerning the juridical aspects of the free zone concepts internationally and the practices in other countries in comparison to the applicable legal rules and practices related to the movement of imported goods in the Batam Free Trade Zone and Free Port (KPBPB Batam) and the surrounding islands.

Abstrak
Terdapat 2 (dua) pandangan terkait konsep free zone. Satu pandangan mendefinisikan free zone adalah sebagai suatu kawasan khusus yang didirikan disuatu negara dimana daerah tersebut terlepas dari wilayah otoritas Bea dan Cukai atau ‘exterritorial’ area karena tidak ada lagi pengenaan pajak impor oleh otoritas Bea dan Cukai atas impor barang tersebut. Namun dilain pihak, free zone juga didefinisikan sebagai kawasan bebas yang khusus dibawah pengawasan otoritas Bea dan Cukai karena adanya perlakuan pembebasan bea masuk dan pajak tersebut dan otoritas Bea dan Cukai harus memastikan kebenaran pemberian pembebasan pajak impor tersebut. Selain itu, terdapat juga instrumen internasional yang setidaknya memberikan paduan terkait konsep kawasan bebas yaitu Konvensi WCO terkait dengan Simplifikasi dan Harmonisasi Prosedur Kepabeanan (Konvensi Kyoto) dan Perjanjian Internasional WTO. Paper ini akan membahas terkait dengan permasalahan yuridis dari aspek konsep free zone secara internasional dan praktek di negara lain dibandingkan dengan aturan hukum yang berlaku dan praktek pelaksanaannya dalam lalulintas barang di KPBPB Batam dan gugusan pulau sekitarnya.

Keywords: Free Zone, Free Trade Zone, Internasional Trade, Customs Authority, KPBPB Batam, Imported Goods

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A. Introduction

The concept and terminology of free zones used are varied and implemented differently among countries. In terms of countries’ practice, there are two views concerning the free zone concept. One view defines free zone as a special area established in a country that is independent from customs authority’s supervision on the movement of the imported goods because of the exemption of import duties and taxes for these goods; customs authority no longer levies import duties and taxes. On the other hand, free zone is also defined as a special zone under the supervision of customs authority due to the exemption treatment, therefore, the validity of the treatment must be ensured to be carried out in this zone. In addition, customs authority is also mandated to control the movement of prohibited and restricted goods in this zone.

The practice of the former view can be seen in mostly free zones in India. While, the latter view can be exemplified from Hong Kong, where it is a free trade city, a free and special area under the special supervision of customs authority due to the exemption of tax payments for imported goods. In addition, in the United States, free zones are also under the special supervision of customs authority. All goods are allowed to be imported without paying import duties and other import taxes, except for the imported goods that are prohibited and endanger to public health and safety. Some researchers concerning the free zone expressed their arguments, one of them is Chen et al., who argued that:

“Generally speaking, a free trade port zone covers all of the port and its surrounding areas, meaning it is a part of the port city. However, the free trade zone is not necessarily confined to the port and nearby areas but covers a wider region. From the perspective of function, other than the role of special customs to supervise the free trade port zone for goods, the free trade zone now also includes new reformative and innovative tasks in various categories, such as government finance systems, international commercial service, foreign investment, and tax policies.”

“Functions in free trade zones are evolving, from trading goods in the early years to becoming zones where comprehensive service functions (international trade, processing and manufacturing, etc.) can be implemented, with the emphasis laid differently, depending on the different circumstances of individual zones. In the early years, the function of US foreign trade zones mainly focused on transit trade, bonded warehousing, and processing and manufacturing, but later extended to exhibition and sales of merchandise, import and export trade, and so on. In addition to transit trade, free trade zones of Colon in Panama also included functions of bonded warehousing, as well as financial services. Free trade zones of Chile in Iquique had a special feature of the exhibition and retail business within regional’s commercial district.”

In addition, the focus or the speciality of free zones and the practice of free zone concept in each country are also varied. For example, the Iquique free zone in Chile only applies to the commercial exhibition and retail business purposes. Meanwhile, Colon free zone in Panama focuses on bonded warehousing and financial services. Besides, the management of free zones in each country is varied. The USA and Panama establish a special body to manage free zones. In contrast, in the Philippines, Brazil, Korea, Italy, Switzerland, and

1 Jihong Chen, Zheng Wan, Fangwei Zhang, Nam-kyu Park, Aibing Zheng, and Jun Zhao, ‘Evaluation and Comparison of the Development Performances of Typical Free Trade Port Zones in China’ (2018) Transportation Research Part A 118 506-526
2 Ibid.
3 Ibid. For more details, see DaPonte Jr, J.J., ‘Updated Rules for Foreign Trade Zones Reflect Big Increase in Zone Activity’ (1991) 112(11) Bus. Am. 9-13; Munoz, D., Rivera Varguez, M.L., ‘Development of Panama as a Logistics Hub and the Impact on Latin America’ (2010) Massachusetts Inst. Technol. 58-72
China, the local city governments or port companies together with the customs authorities, supervised by the Ministry of Economic Affairs, manage the free zones.\(^4\)

Furthermore, the name of free zones worldwide can be: special (free) economic zones; bonded zones; free (foreign) trade zones; export processing zones; free port zones; free trade port zones; enterprise zones, etc. While the definition and concept is also differently termed. The International Labour Organization (ILO) characterized the export processing zones (EPZs) as: “industrial zones with special incentives set up to attract foreign investors, in which imported materials undergo some degree of processing before being exported again.” Meanwhile, the World Bank defined special economic zones as “geographically delimited areas administered by a single, offering certain incentives (generally duty-free importing and streamlined customs procedures, for instance) to businesses which physically located within the zone”.\(^5\) Furthermore, free zones are divided into several types, including WA (Wide Area), SA (Small Area), IS (Industry Specific), dan PS (Performance Specific) with its clear physical boundaries. Many developing countries, especially in Central Asia, the Pacific, and Latin America, have adopted free zone practices and implemented them in their countries with different names and concepts. However, they have the common goal: aiming to attract Foreign Direct Investment (FDI); encouraging exports; developing the national economy, tourism, and transportation of the regions; and creating job opportunities. There are approximately 2,300 free zones worldwide, spreading in 119 developing and developed countries.\(^6\)

Some examples include Masan Free Trade Zone (Korea), Shanghai Free Trade Zone, Shenzhen Special Economic Zone, Yangshan Free Trade Port Zone, Yantai Free Trade Port Zone, Xiamen Haicang Free Trade Port Zone, Guangzhou Nansha Free Trade Port Zone, Ningbo Meishan Free Trade Port Zone, and Tianjin Dongjiang Free Trade Port Zone (China), Jebel Ali Free Zone (UAE), Keelung Free Trade Zone, Kaohsiung Port, Taichung Port and Taoyuan Air Cargo Park FTZ (Taiwan), Bangalore IT Special Economic Zone, Cochin Special Economic Zone, and Sricity Multi Product Special Economic Zone (India), Pomeranian Special Economic Zone (Poland), Navoi Free Industrial Economic Zone (Uzbekistan), Colon Free Trade Zone (Panama) and Hamburg Free Trade Zone (German). In China, Free Trade Port Zones are created to accommodate the development of entrepreneurs who expect economic incentives, offer the logistics convenience for international companies, and adapt to international practices. These free zones link ports and industrial zones, provide integrated logistic facilities and ensure its comprehensive supporting facilities and infrastructure for industries, and lastly remain as a special customs areas.\(^7\) The construction of free zones in China was started in the 1990s by emphasizing the existence of special customs zones, namely the bonded zones. In its development, free zones keep increasing year by year and take the form of such as the export-processing zone (2000-2002) and free trade logistics park (2003-2005).\(^8\)

Moreover, among international instruments providing guidance concerning free zone can be found at least in the WCO International Convention on the Simplification and Harmonization of Customs Procedures (the Revised Kyoto Convention), or the WCO RKC, and the WTO Agreement. The WCO RKC emphasizes that a free zone is an area with 'extraterritorial' treatment, while the WTO Agreement does not provide specific guidance related to this issue. In the WCO RKC, the concept of customs warehouses and free zones

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\(^4\) Ibid.

\(^5\) See [http://documents.worldbank.org/curated/en/343901468330977533/Special-economic-zone-performance-lessons-learned-and-implication-for-zone-development](http://documents.worldbank.org/curated/en/343901468330977533/Special-economic-zone-performance-lessons-learned-and-implication-for-zone-development)

\(^6\) Ibid., pp. 18-23

\(^7\) Footnote n.1 Jihong Chen, Zheng Wan, Fangwei Zhang, Nam-kyu Park, Aibing Zheng, and Jun Zhao, ‘Evaluation and Comparison of the Development Performances of Typical Free Trade Port Zones in China’ (2018) Transportation Research Port A 118 506-526

\(^8\) Ibid.
are properly distinguished. Still, both remain in the same cluster in Chapter 2 of Specific Annex D of the WCO RKC. The customs warehouses are defined as follows:

"customs warehousing procedure means Customs procedure which imported goods are stored under customs control in a designated place (a Customs warehouse) without payment of imported duties and taxes."

Meanwhile, free zone is defined as follows:

"free zone means a part of the territory of a Contracting Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory."

Thus, according to the WCO RKC, free zone has two characteristics, including:

"(1) free zones as an integral part of the national territory; and

(2) goods entering the zone as deemed, for some fiscal measures, to be outside the customs territory, i.e. the territory in which national customs law applies."

Besides, Chapter 2 of Specific Annex D of the WCO RKC also stipulates 17 standards and four recommended practices concerning the concept of the free zone. Shadikhodjaev argued that the free zone concept in the WCO RKC is extraterritorial that can be defined as an area in a country with special treatment compared to other regions, and at least having three following main features. He explains:

"First, goods shipped from a free zone into the rest of the country's territory or vice-versa are considered as if they were respectively imported to or exported from the national customs territory. Second, goods in free zones are normally subject to flexible customs control measures applied by the customs authorities to ensure compliance with national customs law-usually limited to general checks of goods only. Third, goods entering free zones normally enjoy exclusive tax and customs benefits."

Whereas in the WTO Agreement (the Marrakesh Agreement Establishing the World Trade Organization) and the WTO Covered Agreements, free zones are not specifically regulated. Based on the data of the World Economic Processing Zone Association, as of June 1, 2010, at least 102 out of 153 (now 164) WTO members countries implemented the concept of free zones in their countries. Article XXIV of the GATT 1994 provides clear guidance concerning the establishment of customs unions and free trade areas among each member of the WTO. Article II:2 of the Marrakesh Agreement establishes that all WTO Agreements bind on their member countries, including the territory of a member country, and the free zones within the territory of the country. Hence, in WTO Law, there is no special territorial separation or special treatment for an area in a WTO member country. However, a newly joined WTO member countries will usually explain it in the WTO accession document and elaborate their commitment to implementing the free zone. The example of the standard information provided it as follows:

"The representative of [X] stated that [X] would administer free zones or special economic areas established in its territory in compliance with WTO provisions, including those addressing subsidies, TRIMs and TRIPS, and that goods produced within the zones under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes would be subject to normal customs formalities."

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9 The WCO RKC, Chapter 2, General Annex.
10 Sherzod Shadikhodjaev, 'International Regulation of Free Zones: An Analysis of Multilateral Customs and Trade Rules' (2011) 10(2) World Trade Review 189-216
11 Ibid.
when entering the rest of [X], including the application of tariffs and any taxes and charges.”

B. Method

This paper discusses the issues concerning the juridical aspects of the free zone concept and its practice in the movement of goods in the Batam free zone and surrounding islands, particularly the movement of imported goods. Batam and the surrounding islands were chosen as the object of juridical analysis due to Batam being the largest free zone in Indonesia. The method used in this study was normative juridical, namely the research employing primary data sources from the applicable regulations, the application of principles, and the international and national legal norms. The research question was to what extent the rules and practices of Batam free zone has fulfilled the applicable international and domestic regulations based on the aspect of the movement of exported and imported goods?

C. Discussion

The objective of the establishment of an area as a free zone or free trade zone and free port in Indonesia (or known as KPBPB-Kawasan Perdagangan Bebas dan Pelabuhan Bebas) is purposely to support the national economy by offering various facilities to reduce the obstacles concerning the flow of goods and documents in the field of trade and to offer simplification in investment and business, which in turn creating national economic growth and encouraging international trade activities that bring in foreign exchange to the country, creating job opportunities, and increasing both foreign and domestic tourism and investment. The Government, through Law Number 3 of the Year 1970 concerning the Basic Provisions for KPBPB, has established the legal foundation for an area or region to be treated as KPBPB in Indonesia with the utilization term of 30 years. The main reason for the establishment of this Law was that at that time many activities in trade, industry, shipping and other economic activities were conducted overseas in the free zones of Indonesia’s neighboring countries. Because of this concern, it would be beneficial for Indonesia if these activities could be brought in domestically by offering the same concept and other additional facilities. Thus, it is expected that activities in the economic sector, such as in trade, maritime, industry, transportation and banking, with efforts of stockpiling and upgrading the quality of trade goods and industries in the field of shipping, transit trade and others, that are usually undertaken overseas, could be done in Indonesia.

By the time, as the utilization term of 30 years of KPBPB is about to end soon, the Government issued Perppu (peraturan pemerintah pengganti undang-undang - Government Regulation to replace the laws) Number 1 of the Year 2000 and stipulated the new utilization term of KPBPB, which is about 70 years. Next, the Government and the House of Representatives established Law Number 36 of the Year 2000 concerning the establishment of the Perppu into Law. However, according to Article 2 and 3 of Law Number 36 of the Year 2000, the land and water boundaries of KPBPB and the economic activities should be stipulated in the Law and this matter has not been realized by that time as the enactment of the Law needs both approval between the Government and the House of Representatives and this takes time to realize it. Regarding this issue, the Government considered that the delay of establishing the KPBPB has led to economic emergencies and other matters of concern, and therefore Perppu Number 1/2007 was established. It was

12 Ibid.
13 See point c in consideration of Law Number 36 of the Year 2000 concerning the establishment of government regulation to replace the Law Number 1 of the Year 2000 concerning free trade zones and free ports to be the Law, later amended to Law Number 44 of the Year 2007.
14 Article 3 Law Number 3 of the Year 1970.
15 Consideration of point c. UU Number 3 of the Year 1970.
16 Consideration of point c. Perppu Number 1 of the Year 2007.
stipulated that the land and water boundaries of KPBPB and its economic activities were sufficiently determined by the Government Regulation instead of the Law. Furthermore, the Government and the House of Representatives agreed that Perppu Number 1 of the Year 2007 was amended to Law Number 44 of the Year 2007.

To date, this Law acts as the legal basis for the implementation of the KPBPB in several regions in Indonesia and the largest one is Batam Island and the surrounding islands, such as Pulau Tonton, Setokok Island, Nipah Island, Rempang Island, Galang Island, Galang Baru Island, and Janda Berias Island and their groups. The KPBPB also includes some parts of Bintan district and Tanjung Pinang city in Bintan island as well as some areas in Karimun island and all parts of little Karimun island. Meanwhile, specifically for the establishment of the KPBPB in Sabang (Weh Island, Klah Island, Rubiah Island, Seulako Island, Rondo Island), Breuh Island, Nasi Island and Teunom Island as well as the surrounding small islands are determined by Law Number 37 of the Year 2000 concerning the establishment of Perppu Number 2 of the Year 2000 concerning Sabang KPBPB becoming the Law.

In the implementation of the KPBPB, an Establishment Agency (BP) was established by the Dewan Kawasan dan Badan Pengusahaan – KPBPB Council Board and BP was in charged and had the authority to manage, develop, and speed up the construction of the KPBPB in line with the functions of the KPBPB. Therefore, each KPBPB has different BP. The authority of each BP, for example BP Sabang, Bintan, Karimun and Batam, is powerfully independent to regulate their KPBPB. Thus, even though the KPBPB Batam and its nearby KPBPB, Bintan and Karimun, is locally near but they do not work closely to develop their KPBPB and to get international benefit, for example on how to gain potential advantage from Indonesia-Malaysia-Thailand economic growth triangle. This is because they are likely to confine themselves in the jurisdiction of their KPBPB. In the future, each BP should closely work together to maximise the international benefit from this cooperation. As mentioned above, the KPBPB functions as an area to develop businesses in the field of trade, services, industry, mining and energy, transportation, logistics, maritime and fisheries, post and telecommunications, banking, insurance, tourism and others. Therefore, if they work hand in hand, all KPBPB in Batam, Bintan, and Karimun can be expected to significantly fostering in those fields and gaining international benefits.

In Batam, previously, there was separation between Chairman of BP and Mayor of Batam. The Chairman of BP acted as KPBPB authority while the Mayor acted as the city administration. This separation brought jurisdictional dispute on the matter of leadership, who should lead Batam Island, since some part of the work were being disputed whether it should be done by the Mayor or the Chairman for example like land and port management. The issue was quite unresolved for some time because position of the Chairman and the Mayor were regulated by the same legal foundation: the Law. The Mayor is regulated by Region Law, while the Chairman of BP is regulated by KPBPB Law. With the enactment of PP (Government Regulation) Number 62 of the Year 2019 concerning the second amendment of PP Number 46 of the Year 2007, concerning the Batam KPBPB, the Chairman of BP Batam is held by the Mayor of Batam who is acting as the ex-officio of BP Batam. Mainly, focus of the BP Batam is to regulate and issue quota on imported goods. If

17 Government Regulation (PP) Number 46 of the Year 2007 concerning KPBPB Batam.
18 Government Regulation (PP) Number 47 of the Year 2007 concerning KPBPB Bintan.
19 Government Regulation (PP) Number 48 of the Year 2007 concerning KPBPB Karimun.
20 Article 7 and 8 of Law Number 36 of the Year 2000 concerning the establishment of Government Regulation replacing the Law Number 1 of the Year 2000, concerning Free Trade Zones and Free Ports to Law, later amended to Law Number 44 of the Year 2007.
21 Article 9 paragraph (1) of Law Number 36 of Year 2000, concerning the establishment of Government Regulation replacing the Law Number 1 of the Year 2000, concerning Free Trade Zones and Free Ports to Law, later amended to Law Number 44 of the Year 2007.
importers obtain the quota, they are allowed to receive exemption of import duties and tax (PDRI) on their goods.

Since the establishment of Law Number 3 of the Year 1970, concerning the Basic Provisions for KPBPB, the practice of the Batam KPBPB has not been fully implemented within its concepts. By Presidential Decree Number 74 of the Year 1971, Batam Island was first established as an industrial area having the status of a private entrepreneur. Furthermore, PP Number 20 of the Year 1972 stipulated the area as a Bonded Warehouse business area. Next, Presidential Decree Number 33 of the Year 1974 regulated three regions designated as Bonded Warehouse business areas, namely: the eastern part of Batam Island, the Batu Ampar area and the Sekupang area as well as the western part of Batam Island. In line with the enactment of Presidential Decree Number 41 of the Year 1978 and Presidential Decree Number 56 of the Year 1984, the expansion of Bonded Warehouse business areas was undertaken in six islands, including Batam Island, Janda Berhias Island, Tanjung Sauh Island, Ngenang Island, Kasem Island, and Island Momoi

As the establishment of Bonded Warehouses in Batam were significantly rising in numbers, PP Number 22 of the Year 1986 was introduced, and later amended to PP Number 14 of Year 1990, that established Batam Island as a designated bonded zone. Since Presidential Instruction Number 4 of the Year 1985 decided to take over the customs authority and handed it over to SGS, a Surveyor company from the Switzerland, for inspecting the imported goods, practically customs authority had no authority to supervise the movement of exported and imported goods including in Batam Island. Later, when the Government stopped using SGS and Law Number 10 of the Year 1995 was enacted, customs authority regained its authority to inspect the imported and exported goods. The decree of the Minister of Finance (known as KMK) Number 95/KMK.05/2000 stipulated that the same customs procedures concerning import in other regions in Indonesia applies to the entry of goods from outside the customs territory or overseas (known as LDP) to the Batam island industrial area. The procedures are stipulated in the KMK Number 25/ KMK.05/1997 concerning general rules of customs procedures.

Since the establishment of KPBPB Law Number 36 of the Year 2000, later amended to Law Number 44 of the Year 2007, the Indonesian government, in the practice of the Batam KPBPB, adopted the perspective that free zone is a special zone under the supervision of customs authority. This practice is to ensure the validity of the exemption of import duty and PDRI facility, and at the same time to control the movement of prohibited or restricted goods entering to or exiting from the Batam KPBPB. The Indonesian government does not adopt the view of the free zone as a special area established in a country, which is outside the customs authority or ‘extraterritorial area’, as stipulated in the guidance of the WCO RKC. However, the term ‘extraterritorial’ is viewed differently by some legal scholars, even some customs officer themself. The term can be found in the KPBPB regulations especially in the Batam KPBPB and interpreted differently.\(^\text{22}\) This is at least indicated in article 1 point 1 of Perppu Number 1 of Year 2000 concerning KPBPB in conjunction with Law Number 36 of Year 2000 concerning the establishment of Perppu Number 1 of Year 2000 into Law and article 1 point 5 of PP Number 10 of Year 2010, which states that:

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\text{"KPBPB are areas in the territory of the Republic of Indonesia, that are outside the customs territory so that they are free from import duties, value-added tax, sales tax on luxury goods, and excise."}
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Furthermore, Article 1 point 2 UU No. 10/1995 about Customs, later amended to UU Number 17 of the Year 2006, explains that:

\(^{22}\) See the preface of Prof. Dr Yusril Ihza Mahendra, S.H., M.Sc. in Sutardi, S.H., M.A., Catatan dan Komentar Terhadap Undang-Undang Kepabeanan, (2016) Mimbar Publishing, Halaman 27-33
“Customs territory is the territory of the Republic of Indonesia, including the land, water and air space above it, as well as particular places in the Exclusive Economic Zone (EEZ) and the continental shelf where this Law applies.”

In addition, Article 2 paragraph 1 of Law Number 10 of the Year 1995, concerning Customs Law, later amended to Law Number 17 of the Year 2006, stated that:

"(1) Goods imported into the customs territory are treated as imported goods and subject to import duty."

Therefore, the author argued that based on Article 1 point 2, and Article 2 paragraph 2 of Customs Law, it can be interpreted that customs territory, based on the interpretative text, consists of at least three elements, namely: (1) the territory of the Republic of Indonesia; (2) Customs Law applies, and (3) [every] imported goods are subject to import duty. Hence, customs territory must be comprehended substantively, i.e., the whole territory of the Republic of Indonesia where each imported goods coming into the customs territory is subject to import duties and other taxes related to import (PDRI), and thus, Customs Law applies. This means that the customs territory is the jurisdiction of the Republic of Indonesia for which every imported item is subject to all import duties and PDRI of each imported goods, except for the goods granting a deferral or an exemption from import duties and PDRI.

If any imported goods entering into the territory of the Republic of Indonesia are not subjected to import duties and PDRI, and even obtain the exemption or deferral facility, substantively, the names must be distinguished from customs territory. Therefore, the clause "outside the customs territory" in Article 1 point 1 of Perppu Number 1 of Year 2000 concerning KPBPB in conjunction with Law Number 36 of Year 2000 concerning the establishment of Perppu Number 1 of Year 2000 into Law, and Article 1 point 5 of PP Number 10 of Year 2010, must not be perceived in the sense of being physically and territorially separated from all areas of the customs authority over the movement of goods, entering and exiting the KPBPB area, as juridically, Batam Island and its surrounding area are in fact the jurisdictions of the Republic of Indonesia. The phrase used in the clause is only to distinguish it from the fiscal characteristics of the customs territory previously mentioned, that every imported goods are subject to import duty and PDRI, and substantively, must pay for import duties and import taxes or PDRI. Thus, it means that the clause "outside the customs territory" is that every imported goods into a jurisdiction in Indonesia are exempted from the import duties and PDRI, in this case, the Batam KPBPB. This argument is also based on the initial definition of the KPBPB stated in Article 1 paragraph (1) revoked Law Number 3 of the Year 1970, which stated:

“KPBPB are outside from other areas that are known as Customs Territory, that, based on its laws of establishment, are closed areas excluded from the Customs and Foreign Exchange regulations; while regarding the trade, shipping and other sectors, general rules and special regulations depending on the need apply.”

And in Article 3 of revoked Law Number 3 of the Year 1970, which stated that:

“KPBPB remain part of the Indonesian economic unity and the jurisdiction of the Republic of Indonesia.”

Therefore, it is argued that KPBPB must be included as customs territory. Elucidation of PP Number 10 of Year 2010 stated similar language like Article 3 of revoked Law Number 3 of the Year 1970, which highlighted:

“KPBPB remain part of the Indonesian economic unity and the jurisdiction of the Republic of Indonesia which is outside from the customs territory insofar as import duties, excise, and taxes on goods are concerned, is treated similarly like imported goods coming abroad….”
In addition, the terminology of *Tempat Lain Dalam Daerah Pabean* – other places in customs territory (TLDDP) was created to refer to places in customs territory where goods to and from the KPBPB were entered or exited. The term also distinguishes them from customs territory that did not obtain the facility of import duties and PDRI exemption for each imported goods. This terminology originally appeared when an area received the deferral of import duties and PDRI facility, such as Bonded Zone, Bonded Warehouse, and now Bonded Logistics Center. Previously, this term was known as *Daerah Pabean Indonesia Lainnya* - other Indonesian customs territory (DPIL). However, in term of language, it was perceived as inadequate because there is only one customs territory and no other customs territory in Indonesia.

Based on previous explanation, in discussing a juridical review from the aspect of the movement of goods to and from the Batam KPBPB in this paper, the author also argued that, first, as an exemption facility applies to each imported goods entering into the Batam KPBPB, it is necessary to establish legal norms regulating the supervision of imported and exported goods to and from the Batam KPBPB to other customs territory in Indonesia, or TLDDP, with the supervision conducted by the customs authority at TLDDP. The power of customs authority at the Batam KPBPB to supervise the movement of goods entering and exiting the Batam KPBPB is also in accordance with the legal norms of Article 115A paragraph (2) of the Customs Law Number 10 of the Year 1995, later amended to Law Number 17 of the Year 2006, which is the legal basis for implementing regulations, namely PP Number 10 of Year 2010. The norms states:

"(1) Goods that are imported to or from, and are in the area designated as a free trade zone and/or free port can be supervised by customs authority."

"(2) The provisions, as referred in paragraph (1) shall be further stipulated by or based on the government regulations."

The Article 115A paragraph (1) explains that:

"The provisions of this paragraph aim to avoid the misuse of free trade zones and free ports facility for the entry and/or exit of the prohibited and restricted goods, such as drugs, firearms, explosives."

The norm in Article 115A paragraph (2) also mandates to develop the implementing regulations of the movement of "goods imported to and from, and located in a free trade area and/or free port". Based on this norm, Government Regulation Number 10 of the Year 2010 was established, and also the technical guideline for its implementation, namely PMK Number 47/PMK.04/2012, later amended to PMK Number 84/PMK.04/2019, regulating the entry to and exit from free zones with the supervision by customs authority at KPBPB, in this case, at the Batam KPBPB. This implementing regulations are the legal basis for customs authority in conducting its functions at the Batam KPBPB, which can be broadly taken into two major functions: collecting import duties and PDRI when imported goods exited to TLDDP and supervising any prohibited and restricted goods circulated and exited to TLDDP.

Furthermore, the existence of the customs authority at the Batam KPBPB to serve and control the movement of goods in the Batam KPBPB is also strengthened in the norm of Article 11 paragraph (4), Perppu Number 1 of Year 2000, concerning KPBPB, in conjunction with Law Number 36 of Year 2000, concerning the establishment of Perppu Number 1 of Year 2000 to Law, which states:

"Importing and exporting goods to and from the KPBPB through the designated ports and airports under the customs supervision are exempted from import duty, value-added tax, sales tax on luxury goods, and excise."

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Meanwhile, the norm for regulating the import and export of goods to and from the KPBPB Batam to TLDDP with the supervision by customs authority at TLDDP has not been established. The phrase “the supervision by customs authority at TLDDP” means that customs authority at TLDDP is authorized to supervise the movement of goods exiting the Batam KPBPB and entering the TLDDP or vice versa. There should have been certain customs procedures and authority that can be done by customs authority at TLDDP (for example the Customs authority at Tanjung Priok Port or Soekarno Hatta Airport) for supervising on the movement of the imported and exported goods to and from the Batam KPBPB to TLDDP.

The norm governing the customs authority at TLDDP concerning the movement of goods entering or exiting the Batam KPBPB has been established in Article 11 paragraph (5) of Perppu Number 1 of Year 2000, concerning KPBPB in conjunction with Law Number 36 of Year 2000, concerning the establishment of Perppu Number 1 of Year 2000 to Law. However, this norm is not included in Law Number 10 of the Year 1995, concerning Customs Law, which later amended to Law Number 17 of the Year 2006. Therefore, in the absence of that norm, customs authority at TLDDP has no authority to supervise the movement of goods entering and exiting to and from the Batam KPBPB to the TLDDP, especially for the goods suspected of being smuggled through the Batam KPBPB as the KPBPB law is not a legal basis for the customs authority at TLDDP to uphold the KPBPB regulations. The norm in the said article states that:

“Imported and exported goods to and from the KPBPB to customs territory (TLDDP) are subject to customs procedures concerning the import and export, and the excise provisions.”

Similar norms can also be found in Article 15 paragraph (1) of Law Number 3 of the Year 1970, concerning the revoked KPBPB, stating that:

“Transportation of goods from the KPBPB to the customs territory, and from the customs territory to the KPBPB is done similarly according to the regulations applicable to imports and exports from and to overseas.”

It can be interpreted in principle that the exiting of goods from the Batam KPBPB and its entry to the TLDDP are treated equally to importing foreign goods into customs territory, and must be considered as imported goods that are subject to import duty and PDRI, thus must be paid all customs duties and import taxes, except the owner of the goods can prove that all import duties of these goods have been paid to the state treasury through the customs authority at the Batam KPBPB. Referring to a self-assessment system in the customs law, the owner of the goods must calculate the payment of import duties and all import taxes as well as providing the proof of payment. Nevertheless, unfortunately, PMK Number 47/PMK.04/2012, later amended to PMK Number 84/PMK.04/2019, regulates that the collection of deferral import duties and all import taxes is done by customs authority at the Batam KPBPB and therefore, there is no need for customs authority at TLDDP to supervise or double cross-checked the collection. This PMK is of course in conflict with the regulated norms above.

The absence of further legal basis for customs authority at TLDDP to implement this norms has led to potential misusing tax exemption facilities at the Batam KPBPB. In other words, the smuggling of imported goods without documents to both avoid paying taxes on the goods through the Batam KPBPB to TLDDP is regularly happened because of lack of double cross-checked by customs authority at TLDDP. Although customs authority at the Batam KPBPB has conducted optimum supervision on the entry to and exit from the Batam KPBPB to TLDDP, the smuggling of imported goods often occurs to TLDDP with the misusing of these exemption facilities due to the absence of legal norms to regulate the
resolution mechanism. If the smuggled goods are founded by customs authority at TLDDP, they do not have any ruled mechanism to settle down this findings. What they did is that they only informed the findings to customs authority at the Batam KPBPB and the smuggler is asked to pay all the deferral import duties and PDRI. Yet, there is no sanctions or punishment for the smugglers for their illegal actions. This problem can be legally overcome if the legal norms in Article 11 paragraph (5) of Perpu Number 1 of Year 2000 concerning KPBPB in conjunction with Law Number 36 of Year 2000 concerning the establishment of Perpu Number 1 of the Year 2000 to the Law are inserted into Customs Law and the supervision is regulated further. Thus, it will allow customs authority at TLDDP to supervise the entry and exit of goods to and from the Batam KPBPB to TLDDP.

Secondly, the author of this article also argued that it is necessary to clarify the definition of the clause 'exemption from the import duties, value-added tax, sales tax on luxury goods, and excise' in KPBPB Law and its practice in the KPBPB, in this case, the Batam KPBPB. According to Customs Law, there are six concepts concerning the treatment of imported goods related to the import duties and PDRI, namely: (1) paid import duties and PDRI (Article 2 paragraph (1)); (2) no levied on import duties and PDRI (Article 24); (3) exemption from import duties and PDRI (Article 25); (4) reduction of import duties and PDRI (Article 26); (5) restitution of the import duties and PDRI (Article 27); and (6) deferral of import duties and PDRI (Article 44).

In the practice of the KPBPB, there has been confusion concerning the concepts of 'exemption from import duties and PDRI' and 'deferral of import duties and PDRI'. Conceptually, exemption of import duties and PDRI means no obligation for the payment of import duties and PDRI for any imported goods entering the customs territory. In addition, it applies until the economical use of the goods expires, and there is no opportunity to pay import duties and PDRI in the future. On the other hand, the concept of deferral of import duties and PDRI can be interpreted as that the payment of import duties and PDRI for imported goods entering the customs territory are delayed for a certain period of time by obtaining permit from relevant government institutions. But, if the permit is already expired or not granted anymore, it is mandatory to pay the delayed import duties and PDRI. In the Batam KPBPB, the payment of import duties and PDRI for every imported goods into Batam is waived based on the quotas determined by BP Batam. However, if the goods are removed from the Batam KPBPB to TLDDP, all payment obligation for the delayed import duties and PDRI for these goods must be settled unless they are returned to the LDP or overseas.

Therefore, the concept of 'exemption from import duty and PDRI' in the Law concerning KPBPB is not in line with the practice in Batam KPBPB, where the concept applied is 'deferral of import duties and PDRI' and this concept is the same as in the Bonded Zone Area. If the concept of 'exemption from import duty and PDRI' is conducted consistently, the imported goods entered into the Batam KPBPB must be economically used in Batam and not permitted to leave the KPBPB Batam except to return to the LDP. Although all imported goods entering into the Batam KPBPB are legally exempt from import duties and PDRI payments, yet, these goods can only be imported according to a quota system issued by BP Batam as the manager of the KPBPB.

Nevertheless, this system complicates the supervision of the movement of goods by the customs authority at the Batam KPBPB due to several reasons. First, the goods import quota issued by BP Batam is based on an inaccurate database, especially for the quota of consumer goods needs in Batam. Ideally, a KPBPB is a special area for industrial purposes and is therefore not developed for residential area. Thus, goods that are eligible for the import duty exemption quotas and PDRI must be all imported goods for production and manufacturing and should not include consumer goods for people. Second, considering that the KPBPB is granted for several islands and the islands have no clear physical
boundaries, imported goods coming from LDP are prone to be smuggled, especially consumer goods, by misusing the exemption facility and bringing it to TLDDP. Moreover, the existence of unregistered and traditional ports along side the islands brings unresolved problem in the supervision by customs authority at the Batam KPBPB. The absence of legal norms for customs authority to double cross-check the imported goods exiting from the Batam KPBPB is also an issue. Although in the government regulation (PP) of each KPBPB establishment, the satellite coordinates of an area included in the area of the KPBPB has been attached, however in practice, it is difficult to be monitored optimally by customs authority at the Batam KPBPB.

Hence, the author proposes two solutions. First, the improved concept of the KPBPB in KPBPB Law. By looking at the practice of customs authority at the Batam KPBPB is also collecting import duties and PDRI when imported goods are removed from the Batam KPBPB to TLDDP, what should have been developed was that the concept of ‘deferral of import duties and PDRI’ instead of ‘exemption from duties and PDRI’. In particular, if the permits were still allowed for consumer goods whose import duties and PDRI of these goods can be paid to customs authority at the Batam KPBPB when exiting to TLDDP. Second, If the concept of ‘exemption from import duty and PDRI’ remains adopted in KPBPB law, then limitation must apply to imported goods that are allowed to obtain a quota for import duty and PDRI exemptions and raw materials and supporting goods for industrial production must be the top priority. Other goods, such as consumer goods for the needs of the people, that can be supplied from TLDDP, should not obtain a quota for import duty exemptions and PDRI. In addition, collection of import duties and PDRI for imported goods removed from the Batam KPBPB to TLDDP should have been done by customs authority at TLDDP instead of customs authority at the Batam KPBPB.

In addition, the Corruption Eradication Commission (KPK), via its letter number B-1744 / LIT.05 / 01-16 / 02/2019 dated February 15, 2019, to the President of Indonesia, recommended the improvement of the implementation policy of the KPBPB. The KPK highlighted the potential leakage of the state revenue in the KPBPB because of: (1) the high number of consumer goods smuggling from the Batam KPBPB to the TLDDP; (2) the inaccurate grant of waiving facilities for taxable goods from tobacco and beverages containing ethyl alcohol (MMEA) to the Batam KPBPB; and (3) unlawful import practices of restricted goods through the Batam KPBPB to TLDDP. However, unfortunately, the government only realized the recommendations to stop the waiving facilities given to taxable goods from tobacco and beverages containing ethyl alcohol (MMEA), that are imported to the Batam KPBPB.

As it has been discussed in the introduction, the characteristic of free zones is a special industrial zone with the simplification and other facilities for industry, including taxation with the priority of exempting import duty and PDRI given for goods of production purposes instead of residential purposes, and these conveniences are not found in other customs areas. For example, the beginning of the Batam KPBPB was initially established for developing the Shipyard industry.

D. Conclusion
Conclusively, under the WTO WCO and the WTO, and states' practice, there are two views concerning the free zone concept. One view defines a free zone as a special area established in a country that is independent of the authority of the customs authority because the import duty and tax for imported goods are exempted, or known as extraterritorial zone. On the other hand, the free zone is also defined as a special free zone under the control of the Customs authority due to reason of the exemption of the import duty and tax facility itself in order to supervise the misusing of the facility.
A juridical review of the movement of imported goods at the Batam KPBPB revealed that the discrepancy between the concepts in the applicable KPBPB regulations and the real practice led to the potential loss of import duties and PDRI of the goods imported when removed from the Batam KPBPB to TLDDP. This circumstance is due to the potential misuse of the import duty and PDRI exemption facility because of the absence of legal norms that regulates the power of customs authority at TLDDP to supervise the entry and exit of goods to and from the KPBPB Batam to other customs territory in Indonesia. Besides, there is also a misconception of the application of the clause ‘exemption from the import duties, value-added tax, sales tax on luxury goods, and excise’ in the KPBPB Law and its practice in the KPBPB, in this case, the Batam KPBPB.

This paper recommends that legal norms should be immediately established in the Customs Law to regulate the power of customs authority at TLDDP to supervise the movement of goods from the Batam KPBPB to TLDDP or vice versa. If the concept of ‘exemption from import duties and PDRI’ is consistently practiced, and it is in line with the KPBPB Law and other KPBPB regulations, then the power for collecting all import duties and PDRI on imported goods when removed from the Batam KPBPB to TLDDP should be authorised to customs authority at TLDDP. This is because the applicable rules highlighted the similar treatment for imported goods coming either from KPBPB or overseas (LDP) to TLDDP. If customs authority at the Batam KPBPB has the power to collect import duties and PDRI when removed from the Batam KPBPB to TLDDP, then the concept should have been ‘the deferral of import duties and PDRI’. Nevertheless, it is also necessary to conduct further comprehensive study and refinement of the concept of ‘exemption from import duty and PDRI’ in KPBPB Law and compared it to the practice, particularly by focusing on the movement of imported goods entering or exiting the Batam KPBPB to TLDDP or vice versa. At this point, customs authority at TLDDP can be authorised to implement the norms or double cross-check the movement of goods entering or exiting to or from the KPBPB Batam as KPBPB Law and its implementing regulations stipulated it in Article 11 paragraph (5) of Perpu Number 1 of Year 2000 concerning KPBPB in conjunction with Law Number 36 of Year 2000 concerning the establishment of Perpu Number 1 of the Year 2000 to the Law, and thus the norms are inserted into Customs Law. Importantly, the ease of taxation facilities should be prioritized for goods of production and industrial purposes. Meanwhile, the import duty and PDRI exemption facilities for consumer goods in the KPBPB, especially in the Batam KPBPB, should be stopped or at least reviewed, due to the difficulty in supervising the movement of goods. In addition, BP Batam has unclear database and projection to determine the allocation of quota for these consumer goods in the Batam KPBPB.