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REDESIGN OF LICENSING IMPLEMENTATION TRYING TO IMPROVE THE REGIONAL INVESTMENT ECOSYSTEM

Okta Ainita¹

Abstract

In the current practice in Indonesia, the government places licensing as a form of obligation that must be fulfilled by business actors to be able to carry out business activities legally (license approach). The complicated problem of doing business in Indonesia is caused by so many regulations (over-regulated) in the licensing sector whose substance is not harmonious, overlaps, and even contradicts one another. Such regulations create a long and complicated licensing system that results in the investment climate in Indonesia becoming ineffective, inefficient, and not providing legal certainty. The working mechanism of business services in Indonesia is considered to take a long time, is not transparent, is not informative, has limited service facilities and infrastructure so that which requires high costs. The urgency of licensing redesign is motivated by the weak investment competitiveness and growth of the private sector in Indonesia. The big agenda of building a productive investment-based economy is threatened to run aground or move slowly if all the blockages in the administrative and policy spheres are not carried out by reconstruction. Policy improvements to simplify business licensing, which are carried out in a relatively short time, uncomplicated procedures, and low costs for establishing, operating, and developing businesses are expected conditions. By implementing risk-based regulations as a reference for determining the type of business licensing accompanied by the implementation of inspections for effective control, will simplify the business licensing mechanism and will ultimately provide economic, social, and environmental benefits.

Keywords: *Licensing Implementation; Business Licensing, Investment Ecosystem, and Business Activities*

I. INTRODUCTION

To improve the investment ecosystem and business activities, the Job Creation Law has updated several provisions in Law Number 23 of 2014 concerning Regional Government. This is intended to strengthen the role and commitment of regional governments in the implementation of Business Licensing in the Regions by the provisions of the legislation regarding the implementation of Risk-Based Business Licensing. Strengthening the role of Regional Governments in the Job Creation Law, among others, regulates the obligations of

¹ Lecturer of Law Faculty, Universitas Bandar Lampung, okta.anita@ubl.ac.id

governors/regents/mayors to provide Business Licensing services under the provisions of laws and regulations regarding the implementation of Risk-Based Business Licensing, Business Licensing services in regions carried out by the Investment Office, and One-Stop Integrated Services (DPMPTSP) must use the Online Single Submission System (OSS) managed by the Central Government, and provide opportunities for Regional Governments to develop a support system for the implementation of the OSS System under the norms, standards, procedures, and criteria set by the Central Government.

The complexity of investing and Indonesia's low competitiveness certainly underscores the need for improvement in various sectors to support the realization of ease of doing business in Indonesia. Policy improvements for simplification of procedures including simplification of licensing requirements, acceleration of time, and reduction of costs to establish, operate, and develop businesses have been carried out by the government since 2015 through the One-Stop Service (PTSP) policy. PTSP is an activity of organizing a licensing and non-licensing based on the delegation or delegation of authority from an institution or agency that has licensing and non-licensing authority whose management process starts from the application stage to the stage of issuance of documents which is carried out in 1 (one) place. This system can reduce the processing time of several permits, making it more efficient and effective. The presence of PTSP has a positive impact in terms of permit management.

Problems that are still the cause of the low level of ease of doing business are caused by several indicators such as the complexity of licensing in starting a business, rigid land acquisition, difficulty in getting access to finance, and the complexity of bankruptcy settlement. On the other hand, the efficiency of the bureaucracy in Indonesia also still needs to be improved. In fact, the regulations issued by the government turned out to be a burden. Whereas bureaucratic efficiency is the main capital to increase foreign confidence in investing in Indonesia. To implement the Business Licensing policy in the regions to be more optimal, the government has set up related provisions through PP Number 6 of 2021 concerning the Implementation of Business Licensing in the Regions. This Government Regulation regulates, among others, the authority to administer business licensing in the regions, the implementation of business licensing in the regions, Regional Regulations and Regional Regulations regarding business licensing, reporting on the implementation of business licensing in the regions, guidance and supervision as well as funding. This Government Regulation also emphasizes the provisions regarding the provision of administrative sanctions to governors/regents/mayors who do not provide Business Licensing services or do not use the OSS System following the provisions of laws and regulations regarding the implementation of risk-based business licensing.

Licensing services are required to use an electronically integrated licensing system managed by the Central Government. Regional heads can develop systems to support the implementation of an electronically integrated licensing system according to standards set by the Central Government. The support system is a system to assist the process of completing the licensing and supervision. Concerning these problems, this paper intends to briefly analyze the arrangement of government authorities related to the implementation of business licensing in the regions, how to strengthen the role and commitment of local governments, and discuss the redesign carried out by the government in the administration of business licensing in the regions as an effort to improve the investment ecosystem system and business activities in the area.

II. DISCUSSION

Structuring Government Authorities in the Implementation of Business Licensing in the Regions

Based on the 1945 Constitutions of Republic of Indonesia, the highest executive authority rests with the President. This is confirmed in Article 4 paragraph (1) of the 1945 Constitutions of Republic of Indonesia, namely "The President of the Republic of Indonesia holds the power of the government according to the Constitutions of Republic of Indonesia". Article 4 paragraph (1) of the 1945 Constitutions of Republic of Indonesia states that the President of Indonesia as the holder of the highest government power exercises several powers based on the mandate of the 1945 Constitutions of Republic of Indonesia. Phillipus M Hadjon is of the view that there are three powers possessed by the President based on 1945 Constitutions of Republic of Indonesia, namely the power in the field of government (executive), power in the field of legislation, and power in the field of judicial power. One form of the President's authority as the competent authority in government administration is the authority in the field of regulation to deal with individual and concrete matters in the form of licensing.²

Government affairs are part of the administration of government and development in Indonesia. If there are no government affairs, then there is nothing the regions can do, even though they are given the authority. For regions, government affairs are both a right and an obligation to actualize regional autonomy to protect, serve, empower, and prosper the community by the mandate of Article 18, Article 18A and 18B of the 1945 Constitution which is described in Law no. 23 of 2014 concerning Regional Government. Article 9 paragraph (1) of the Regional Government Law affirms, "Government affairs consist of absolute government affairs, concurrent government affairs, and general government affairs". Then paragraph (2), "Absolute government affairs are Government Affairs which are fully

² Phillipus M. Hadjon, [et.al.], 2005, *Pengantar Hukum Administrasi Indonesia*, Gadjah Mada University Press. p. 85-89.

under the authority of the Central Government. Furthermore, paragraphs (3), (4) that concurrent government affairs are government affairs that are divided between the central and provincial governments and regional/municipal regions which are handed over to the regions as the basis for the implementation of regional autonomy.

Regarding the division of concurrent affairs, Law Number 1 of 2020 concerning Job Creation explains that "The division of concurrent government affairs between the Central and Provincial Governments and City Regency Regions as stated in the Attachment of Law Number 23 of 2014 concerning Regional Government as last amended with Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government must be read and interpreted under the provisions stipulated in the Law on Job Creation. Based on this provision, the appendix on the division of government affairs in the Regional Government Law has also been amended and adjusted to all provisions of the Job Creation Law, including the regional business licensing system which is currently regulated through PP. 6 of 2021 concerning the Implementation of Regional Business Licensing (PP-PPBD). The scope of the regulation on the implementation of business licensing in the regions is the authority to administer business licensing in the regions, the implementation of business licensing in the regions, regional regulations and regional regulations regarding business licensing, reporting on the implementation of business licensing in the regions, guidance and supervision, funding, and administrative sanctions.

The field of government affairs as the object of regional authority in business licensing in the region under the amendments to the Regional Government Law in the Job Creation Law, of course including changes to amended sectoral provisions. This means that the main reference for authority in government affairs in the regions is no longer fully referring to the attachment to the Regional Government Law, but is also based on changes to sectoral provisions in the Job Creation Law. However, the principle of concurrent distribution of government affairs is still used. This is following Article 3 of the PP-PPBD, which states that "The implementation of Business Licensing in the Regions is carried out by the Central Government, provincial Regional Governments, and Regency and City Regional Governments under their authorities based on the provisions of laws and regulations". It was further emphasized that the sectors (sectors) of business licensing held in the regions consisted of sectors; a. marine and fisheries; b. Agriculture; c. environmental and forestry; d. energy and Mineral Resources; e. nuclear power; f. industry; g. trading; h. public works and public housing; i. transportation; j. health, medicine, and food; k. education and culture; l. tourism; m. religious; n. postal, telecommunications, broadcasting, and electronic systems and transactions; o. defense and security; and p. employment. This provision in Article 26 of the Job Creation Law is stated as a business licensing sector which can be interpreted that

the 14 (fourteen) sectors are also the scope of business which is the authority of the central level based on the division of concurrent affairs.

Exceptions to the above provisions are first, forestry, marine, and energy and mineral resources (ESDM) which are the authority of the central and provincial governments. Meanwhile, regencies and cities only have authority over forest parks and the ESDM sector in terms of direct utilization of geothermal energy in the district/city area. Second, oil and gas are under the authority of the central government, while provinces, regencies, and cities do not have this authority. Fourth, the nuclear, religious, and defense and security sectors are the authority of the Central Government whose licensing process is integrated with business licensing services in the regions. In terms of the business licensing authority, the optional matters, especially forestry, marine, ESDM, oil, and gas are the authority of the central government. Licensing authority is meant here, namely issuing business licenses that are concrete, individual and final and cause legal consequences for the names of individuals or legal entities referred to in the said permit decree. In accordance with its meaning, "a business license is a legality granted to business actors to start and run their businesses and or activities". This legality is issued in the form of a decree (Beschikking), without legality or a permit decree, business activities cannot be started and carried out. According to N.M. Spelt and J.B.J.M ten Berge, permission is an agreement from the authorities based on laws or government regulations to in certain circumstances deviate from the provisions of the statutory prohibition (permission in the narrow sense).³

Based on this explanation, it can be concluded that a party cannot do something unless it is permitted. With a permit, the Government can control and control community activities. The President also certainly has the authority to regulate governance in various aspects of business licensing and government administration in general. Furthermore, Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing (PP-PBBR) contains rules regarding the division of government affairs as the authority of the central, provincial, district/city based on the principle of concurrent.

This PP regulates the division of regional authority in government affairs for business licensing in the regions, also determines the legality of permits issued by each authority holder as in PP-PBBR. "Business activities are determined based on the results of risk analysis by the central government on the identification of business activities, assessment of hazard level, assessment of potential hazards, determination of risk level, business rating and determination of the type of Business Licensing, then business activities are classified into: a. business activities with low-Risk level; b. business activities with medium risk level; and c. business activities with a high level of risk. For businesses with a low-risk level, it is enough

³ N.M. Spelt dan J.B.J.M ten berge, ed. Philipus M. Hadjon, 1993, Pengantar Hukum Perizinan. Surabaya. Yuridika. p. 2-3.

for Business actors to register in the OSS System to get a Business Identification Number (NIB). For medium risk level, the business license is NIB and Standard Certificate, while for business activities with high risk, the Business License is NIB and Permit. To complete the license, especially in certain business activities and with a high level of risk, it is also possible to add a standard certificate to the business license.

Redesign of the Implementation of Business Licensing in the Regions

The government's hard work to encourage ease of doing business does not only stop at the establishment of PTSP. Improvements continue to be made to improve the investment climate in Indonesia, as well as to open up space for everyone who wants to try to be able to compete healthily. Regulatory reform is placed as an important strategy in increasing competitiveness. The government is aggressively cutting regulations that are considered to hinder investment through the Economic Policy Package (PKE). This is carried out with the pattern of bringing up new regulations formulated in the context of accelerating investment, which has an impact on the repeal of several related regulations as outlined in Presidential Regulation Number 91 of 2017 concerning Acceleration of Business Implementation (Perpres 91/2017).⁴ In Perpres 91/2017, the Government seeks simplification in terms of business licensing through:⁵

1. Forms of service, end-to-end, and active role in resolving obstacles to business implementation through the establishment of task forces at the national, ministry/institutional, provincial, and district/city levels, to support the acceleration of the establishment of a favorable investment climate.
2. Form of the fulfillment of requirements (checklist), in the context of accelerating the implementation of business in special economic zones, free trade areas and free ports, industrial areas, and/or tourism areas.
3. Regulatory reforms are needed to carry out business activities, in which further simplification needs to be regulated and re-established service standards at ministries/agencies, provincial areas, and district/city areas, with the aim that they are aligned and do not overlap.
4. Electronically Integrated Business Licensing System (PBTSE/Online Single Submission). The use of information technology needs to be applied to accelerate and facilitate services for conducting business activities.

This Government commitment is implemented by the President by stipulating Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services (PP 24/2018) or known as Online Single Submission (OSS). OSS is a business license issued by the OSS Institution for and on

⁴ Bagian Menimbang, Peraturan Presiden Nomor 91 Tahun 2017 tentang Percepatan Pelaksanaan Berusaha.

⁵ Ibid.

behalf of the minister, head of the institution, governor, or regent/mayor to Business Actor through an integrated electronic system. Through this regulation, the government has reduced the number of permits which originally amounted to 537 (five hundred and thirty-seven) permits to 237 (two hundred and thirty-seven) permits, and 362 (three hundred and sixty-two) non-permits to 215 (two hundred and fifteen) non-permits.⁶

In reality, the various efforts made by the Government as described above have not yielded significant results and have not been as expected. This can be seen from the low world investment in Indonesia, which is 1.97 percent of the annual average of USD 1,417.8 billion (2012-2016), and the achievement of the investment ratio target of 32.7 percent (2012-2016). which is below the target of the National Medium-Term Development Plan (RPJMN) of 38.9 percent in 2019.⁷ The existence of PP 24/2018 to improve the performance of investment realization that has not yet reached the target is faced with normative problems, namely the occurrence of a "collision" of norms with various norms permits regulated in various laws. Under the principle of level norms¹⁰ or the hierarchy of laws and regulations as regulated in Article 7 paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Legislations (Law 12/2011) which stipulates that "The legal power of with the hierarchy as referred to in paragraph (1)", referring to Article 7 paragraph (1) placing Government Regulations under the law. The consequence of this is that the norms contained in PP 24/2018 have legal force under the law, so PP 24/2018 cannot override the licensing norms that are scattered in various laws.

The various descriptions, explanations, and data above finally come to a point of the problem, namely the complicated problem of doing business in Indonesia due to so many regulations (over-regulated) in the licensing sector whose substance is not harmonious, overlaps and even contradicts one another. . Such regulations create a long and complicated licensing system that results in the investment climate in Indonesia becoming ineffective, inefficient and not providing legal certainty. In the end, this will affect the decline in foreign investors' interest in investing in Indonesia. Efforts to improve the ease of doing business through the formation of Presidential Regulation 91/2017 and PP 24/2018 apparently cannot fix the entire licensing system because the normative problems faced are more complex, which intersect with various laws that have licensing dimensions of approximately 80 (eighty).) Constitution.

In the current practice in Indonesia, the Government places licensing as a form of obligation that must be fulfilled by business actors to be able to carry out business activities legally (license approach). Business actors are faced with so

⁶ Peraturan Pemerintah Nomor 24 Tahun 2018 tentang Pelayanan Perizinan Berusaha Terintegrasi Secara Elektronik.

⁷ Pradany Hayyu, 2018, "Sinyal Baik dalam Kemudahan Berusaha", *Mediakeuangan*. Vol. XIII / No. 128 / Mei, p. 17.

many numbers or types of required business licenses that it burdens business activities and results in ineffective and inefficient business processes. The government uses regulation (regulation) to control overall risks that have an impact on the economy, society, and the environment. The regulatory system is spread out and applies to various business activities, therefore affecting almost all aspects of business activities.

Improperly designed and enforced regulations have the following impacts: (a) burdening businesses and consumers, for example, duplication of requirements at various levels of government which leads to increased costs of implementing these regulations, targeting regulatory initiatives, and disproportionate implementation of the size of the business, the risk of regulatory outcomes and the nature of non-compliance; (b) reduce the performance of regulators by allocating limited resources to initiatives that do not achieve commensurate risk reduction. Business licenses that are increasingly complex, overlapping, regulatory dualism, disharmony, and complicated procedures are urging the government to create massive and progressive steps, namely redesigning business licenses in Indonesia.

The main problems faced by business actors in starting a business in Indonesia are the difficulty of obtaining permits to do business, business actors are faced with convoluted business licensing procedures, the many types and number of permits that must be owned take a long time to process permits and costs. to start and run a business in Indonesia. This condition is exacerbated by the low quality and consistency of regulations as well as rampant corruption which results in high costs for obtaining business licenses. The urgency of licensing redesign is motivated by the weak investment competitiveness and growth of the private sector in Indonesia. The big agenda of building a productive investment-based economy is threatened to run aground or move slowly if all the blockages in the administrative and policy spheres are not carried out by reconstruction.

The OSS system still faces many obstacles in its implementation, crucial problems in the implementation of the OSS system include the many regulations that are overlapping, the OSS system has not been fully integrated with the Ministry/Agency and Regional systems as well as the constraints that are still various licensing management arrangements (business processes) regulated in the NSPK of the Ministry/Agency. This problem has resulted in the existence of the OSS system in the business licensing process in Indonesia not being able to realize the ideal business licensing mechanism. The expected condition is by simplifying business licensing, where business licensing is carried out in a relatively short time, with uncomplicated procedures, and low costs. By implementing risk-based regulations as a reference for determining the type of business licensing accompanied by the implementation of inspections for effective control, will simplify the business licensing mechanism and will ultimately provide economic, social, and environmental benefits.

III. CONCLUSION

The complexity of obtaining business licenses in Indonesia is caused by the obesity of licensing regulations, which in turn triggers overlapping regulations between central regulations and implementing regulations at the regional level. This overlapping problem is a factor causing investment delays in Indonesia due to the high authority of licensing officials and sectoral egos of each ministry/institution/region (K/L/D). Disharmony of regulatory material (contrary to one another). Oftentimes, there are different arrangements between the regional government and the central government in determining the requirements that must be met to obtain a business activity permit. This causes a conflict of license requirements and difficulties for prospective business actors in Indonesia. Convoluted business licensing procedures. The working mechanism of business services in Indonesia is considered to take a long time, is not transparent, is not informative, has limited service facilities and infrastructure so that which requires high costs. This reality becomes a consideration for the urgency of integrating the sectoral laws and regulations to create order, as well as to ensure legal certainty and protection.

The expected condition is simplifying business licensing, where business licensing is carried out in a relatively short time, uncomplicated procedures, and has low costs. By implementing risk-based regulations as a reference for determining the type of business licensing accompanied by the implementation of inspections for effective control, will simplify the business licensing mechanism and will ultimately provide economic, social, and environmental benefits.

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