

LEGAL ASPECTS OF INVESTMENT IN BUSINESS LICENSING IN INDONESIA

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ABSTRACT

Along with the development of the digital-based era, licensing has also undergone a revolutionary evolution with the holding of an electronic licensing system to facilitate licensing management. This is expected to provide convenience to the business community to be more enthusiastic in managing permits so that with the increasing number of business actors who take care of permits, it will also be easier for government supervision efforts so that business activity does not cause negative effects on the community and the environment. Business Actors through an integrated electronic system as stipulated in Government Regulation Number 24 of 2018 concerning Electronic Integrated Business Licensing Services. With the issuance of PP No. 24/2018, all laws and regulations are hierarchically lower than Government Regulations. Researchethode is a type of normative legal research or research using the rules in existing laws and regulations and research carried out by collecting data directly in the field from competent parties related to the object studied because it is in the form of secondary data such as legislation and literature books. Restructuring is carried out in the service system, and regulations in accordance with the demands of the business world, technological developments, and global competition. The rearrangement of the service system is carried out mainly in the One-Stop Integrated Service (PTSP). This is because based on Article 25 paragraph (4) of Law Number 25 of 2007 concerning Investment, investment companies that will conduct business and/or activities must obtain licenses in accordance with the provisions of laws and regulations from authorized agencies unless otherwise stipulated in the law.

Keywords: *OSS, licensing, investment*

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INTRODUCTION

The establishment of state government one of them aims to advance the general welfare (Grigorakis & Rigos, 2011). The mandate, among others, has been described in Article 33 of the Constitution of the Republic of Indonesia Year 1945 and is a constitutional mandate that underlies the formation of all laws and regulations in the economic sector. The constitution mandates that national economic development must be based on democratic principles that are able to create the realization of Indonesia's economic sovereignty (Saputra & Emovwodo, 2022). The linkage between economic development and popular economic actors is further strengthened by the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVI / MPR / 1998 concerning Political Economy in the Framework of Economic Democracy as a source of material law. Thus, investment development for micro, small, and medium enterprises, and cooperatives is part of the basic investment policy (Indrajit et al., 2021).

Indonesia is a developing country. Building requires a large capital or investment (Ghosh & Nanda, 2010). In general, investment or investment can be interpreted as an activity carried out by a natural person or legal entity (juridical person) in an effort to increase and/or maintain the value of its capital in the form of cash (cash money), equipment, immovable assets, intellectual property rights, and expertise. Article 1 of Law Number 25 of 2007 concerning

Capital Investment, states that investment or investment is all forms of investment activities, either by domestic investment or foreign investment to do business in the territory of the Republic of Indonesia (Ana et al., 2022).

According to Salim HS and Budi Sutrisno, investment is an investment of money made by investors, both foreign and domestic investors in various business fields that are open for investment with the aim of obtaining profits.

The preamble to the 1945 Constitution stipulates clearly the purpose of state life based on law, this means that the law is supremacy or there is no other power higher than the law. In an effort to realize the State based on law and realize state life, the law becomes the director, engineer, and designer of how to form a legal society to achieve justice. In this regard, it is necessary to establish regulations that must be adjusted to the development of society and do not conflict with applicable laws and regulations (Abbott et al., 2000). The definition of permission according to definition is a favor or statement of granting (Macagno & Walton, 2010). While the term allows the meaning of allowing, allowing, not prohibiting (Fisher et al., 2014).

Broadly speaking, licensing law is a law that regulates public relations with the State in the event that there are people who apply for permission. Along with the development of the digital-based era, licensing has also undergone a revolutionary evolution with the holding of an electronic licensing system to facilitate licensing management (Ojala et al., 2018). This is expected to provide convenience to the business community to be more enthusiastic in managing permits, so that with the increasing number of business actors who take care of permits, it will also be easier for government supervision efforts so that business activity does not cause negative effects on the community and the environment. For this reason, the government issued an electronic-based licensing registration system called OSS. Electronic Integrated Business Licensing or Online Single Submission (OSS) is a Business Permit issued by the OSS Institution for and on behalf of ministers (Mayasari, 2020), heads of institutions, governors, or regents/mayors to Business Actors through an integrated electronic system as stipulated in Government Regulation Number 24 of 2018 concerning Electronic Integrated Business Licensing Services (Government Regulation No. 24/2018). With the issuance of PP No. 24/2018, all laws and regulations that are hierarchically lower than Government Regulations such as: Presidential Regulations, Ministerial Regulations, Institutional Regulations, Regional Regulations, Regional Head Regulations must follow and make adjustments to the OSS system. The OSS system is intended to accelerate and increase investment and strive and facilitate business actors, both individuals and non-individuals. To facilitate registration/management of business activity permits such as Environmental Permits, Building Permits, and so on.

METHOD

Based on the problems that the author presents, the author uses research methods, namely the type of normative legal research or research using the rules in existing laws and regulations and research carried out by collecting data directly in the field from competent parties related to the object studied, because it is in the form of secondary data such as legislation and literature books. "In this research, the way to access and research is to take a lot of library materials, namely materials that contain new or latest scientific knowledge, or new understandings of

known facts and ideas, in this case including books, journals, dissertations or theses and other legal materials. The research of these normative legal materials fully uses premier legal materials and secondary legal materials." (Nasution, 2008)

RESULTS AND DISCUSSION

In order to accelerate and increase investment and business, Business Licenses issued by ministries/agencies and Regional Governments to start, implement, and develop businesses and/or activities, need to be reorganized so that they become supporters and not vice versa become obstacles to business development and/or activities. Restructuring is carried out in the service system, and regulations in accordance with the demands of the business world, technological developments, and global competition. The rearrangement of the service system is carried out mainly in the One-Stop Integrated Service (PTSP). This is because based on Article 25 paragraph (4) of Law Number 25 of 2007 concerning Investment, investment companies that will conduct business and/or activities must obtain licenses in accordance with the provisions of laws and regulations from authorized agencies, unless otherwise stipulated in the law. Then in paragraph (5) it is regulated that services for permits to conduct business and/or activities are carried out through PTSP.

PTSP services to the Central Government and Regional Governments are refined to be more efficient, serving, and modern. One of the most significant is the provision of an Electronic Integrated Business Licensing Service (OSS) system. Through the OSS, Business Actors register and manage the issuance of Business Licenses and the issuance of Commercial and/or Operational Licenses in an integrated manner. Through the OSS, the Central Government and Regional Governments issue Business Licenses submitted by Business Actors. Based on the above considerations, the government feels the need to establish a Government Regulation on Electronic Integrated Business Licensing Services.

Based on this desire, Government Regulation Number 24 of 2018 concerning Electronic Integrated Business Licensing Services was issued which regulates provisions regarding:

- a. Type, Applicant, and Issuer of Business Licensing;
- b. Implementation of Business Licensing;
- c. Sector Business Licensing Reform;
- d. OSS system;
- e. OSS Institute;
- f. OSS Funding;
- g. Incentives or Disincentives for the implementation of Business Licensing through OSS;
- h. Solving Business Licensing problems and obstacles through OSS; and
- i. Penalty.

All business actors can use OSS. Whether it is a business in the form of a business entity or an individual, be it a micro, small, medium or large enterprise; individuals/business entities, both new and established, before the operationalization of OSS; Also businesses with capital that entirely comes from within the country, as well as there is a composition of foreign capital. Steps that must be done using OSS include: (Indonesia, 2018)

- a. Create a user-ID;
- b. Log-in to the OSS system by using user-ID;
- c. Fill in the data to obtain a Business Identification Number (NIB);

- d. For new businesses: carry out the process to obtain basic licenses, business licenses and/or commercial or operational licenses, along with their commitments.

Meanwhile, businesses that have been established must continue the process to obtain new business licenses (business and/or commercial licenses) that are not yet owned, extend existing business licenses, develop businesses, change and/or update company data.

The prerequisites that need to be met before accessing OSS are as follows:

- 1) Have a NIK and input it in the user-ID creation process. Especially for business actors in the form of business entities, the Identity Number (NIK) required is the NIK of the Person in Charge of the Business Entity;
- 2) Business actors in the form of PT, business entities established by foundations, cooperatives, CVs, firms, and civil partnerships complete the business entity attestation process at the Ministry of Law and Human Rights through AHU Online, before accessing OSS;
- 3) Business actors in the form of public companies, corporations, other legal entities owned by the state, public service agencies or broadcasters prepare the legal basis for the formation of business entities.

OSS is very useful for business actors. The benefits of OSS received by business actors include the following:

- a. Facilitate the management of various business permits, both prerequisites for doing business (permits related to location, environment, and building), business licenses, and operational permits for business operations at the central or regional levels with a mechanism for fulfilling the commitment of permit requirements;
- b. Facilitating business actors to connect with all stakeholders and obtain permits safely, quickly, and in real-time;
- c. Facilitating business actors in reporting and solving licensing issues in one place;
- d. Facilitating business actors to store licensing data in one business identity (NIB).

To be able to use OSS, Business Entities first take care of ratifying the deed of establishment or changing the deed through AHU online. Especially for public companies, regional public companies, other legal entities owned by the state, public broadcasters, or public service agencies using the legal basis of formation, government regulations or regional regulations. The Business Entity then registers in the OSS system by entering the Identity Number (NIK) of the Person in Charge of the Business Entity or President Director and several other information on the Registration Form provided (Munawir & Hidayani, n.d.). In the event that the licensing process is carried out by other parties such as Legal Consultants and Notaries, the data filled in the Registration Form is the data of the Person in Charge of the Business Entity / Company. Especially for Business Entities / Companies it is recommended to use company email for account activation. The OSS system will send 2 (two) emails to the Business Entity for registration and verification of the OSS account. The verification email contains a temporary user-ID and password that can be used to log-in to the OSS system.

Business Identification Number (NIB) serves as the identity of Business Actors issued by OSS Institutions after Business Actors register. NIB also applies as:

1. Company Registration Certificate (TDP);
2. Import Identification Number (API), if business actors will carry out import activities;
3. Customs access, if business actors will carry out export and/or import activities.

NIB must be owned by business actors who want to take care of business licensing through OSS, both new businesses and businesses that have been established before the operationalization of OSS. Business actors can obtain Other Registration documents during NIB registration, namely:

- 1) NPWP of an Agency or Individual, if the business actor does not already have;
- 2) Letter of Ratification of the Plan for the Use of Foreign Workers (RPTKA);
- 3) Proof of BPJS Employment and BPJS Health Membership Registration;
- 4) Notification of eligibility for fiscal facilities and/or
- 5) Business Licenses, for example for Business Licenses in the Trade sector (Surat Izin Usaha Perdagangan (SIUP)).

Philip M. Hadjon stated that a good procedure should meet 3 (three) main foundations of administrative law, namely:

1. The principle of the rule of law in the procedure;
2. Democratic principles in procedures;
3. Instrumental principles.

The licensing process requires knowledge not only limited to legal aspects but also considering the impact that will be caused by the permit both in the short and long term. That is why in the Online Single Submission (OSS) system, a conditional permission mechanism is applied.

Quoting Soehino's view in his book entitled Principles of Governance Law, the conditions in the permit are constitutive and conditional. It is constitutive if a certain act or behavior must be (first) fulfilled, meaning that in the case of granting permission, it is determined that a concrete action if it is not fulfilled then sanctions are born. It is conditional if the assessment is new and can be seen and can be assessed after the required action occurs. Based on the provisions of Article 64 paragraph (1) of Law 30/2014, a decision can only be revoked if there are defects: authority, procedure, and/or substance. In the event that the decision is revoked, a new decision must be issued stating the basis for its revocation and still paying attention to the AUPB. The officials authorized to revoke the decree are government officials who make decisions, superiors of officials who make decisions or by court order. Based on the principle of *ius contrarius actus*, which means that the state administrative body or official who issues the state administrative decision is automatically authorized to cancel, so that in the event of license revocation must be carried out by the authorized official. This is also the basis that if the commitment fails to be fulfilled, the OSS institution has the authority to cancel the business license that has been issued. This has been explicitly regulated in Article 40 PP 24/2018.

The non-fulfillment of the elements of permit validity as a government action (with defects in authority, substance and procedure) causes legal uncertainty in the issuance of permits through the online single submission (OSS) system.

CONCLUSION

Human resources related to public services licensing procedures should try to improve the quality of performance by updating information related to business licensing procedures, and the government should also intensively socialize business licensing procedures and achieve accelerated investment in Indonesia, so that the country's economic stability can be carried out properly, and the government makes implementing regulations related to how licensing

procedures and requirements which applies so that the company strives in order to accelerate Investment in Indonesia.

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