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IMPLICATIONS AND LEGAL CONSEQUENCES OF IMPLEMENTING A RISK BASED ONLINE SINGLE SUBMISSION SYSTEM FOR LIMITED LIABILITY COMPANY BUSINESS LICENSING

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ABSTRACT

Limited Liability Company (PT) as a Business Entity must have permits to carry out its business activities legally. Risk-based Online Single Submission (OSS) is designated as a Business Licensing portal based on the level of risk of a business activity in determining the type of business licensing. The purpose of this research is to find out how much influence the implementation of business licensing through the risk-based OSS system has in the business licensing of Limited Liability Companies and to formulate the legal consequences that arise if the Limited Liability Company does not comply with the standards of its business activities. The research method used is a normative juridical approach with analytical descriptive research specifications. Data analysis was carried out using qualitative normative methods. The results of the study show that the implementation of business licensing through the risk-based OSS system in practice has implications for limited liability company business licensing, namely providing convenience for limited liability companies in managing business licensing, because permits are issued at the beginning then the government as the authority will verify compliance with business activity standards. legal consequences that arise if the Limited Liability Company does not fulfill the standards of its business activities is the imposition of administrative sanctions on the Limited Liability Company.

Keywords: risk-based business licensing; limited liability company; risk level of business activities.

INTRODUCTION

Law of the Republic of Indonesia No 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Job Creation Law) regulate the simplification of Business Licensing through the application of risk-based business licensing which is a standard method based on the level of risk of a business activity in determining the type of business licensing and the

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quality/frequency of supervision.¹ Business Identification Number (BIN) is the identity of business actors issued by the Investment Coordinating Board (hereinafter referred to as BKPM) through the *Online Single Submission* (OSS) institution.

The level of risk that is the basis for business licensing is classified into low risk, medium low, medium high and high, for PT with low risk level, business licensing required is BIN, for PT with medium low risk level, required business licensing is BIN and Standard Certificate in the form of independent statement, for PT with medium high risk level, required business licensing is BIN and Standard Certificate that has been verified, while for PT with a high level of risk, the required business licenses are BIN, Standard Certificate that has been verified and other operational licenses that have been verified.²

Business Entities that are required to have a business license include Limited Liability Companies. The most important element in a Limited Liability Company which is a capital partnership is the authorized capital divided into shares and then conducts business activities with the authorized capital. Business licensing is the starting point for a Limited Liability Company to start business activities that have been stated in the deed of establishment.

The government through the Central Statistics Agency (CSA) compiled the Standard Classification of Indonesian Business Fields (CIBF) as a guide for determining the type of business activities to make it easier for business actors to determine the category of business fields to be developed in Indonesia. This reference was updated in September 2020 in accordance with BPS Regulation Number 2 of 2020 concerning CIBF, with the addition of 216 5-digit CIBF codes from CIBF 2017, so that there are currently 1,790 CIBF codes.³

The definition of CIBF is in accordance with Article 1 of CSA Regulation No 2 of 2020 concerning CIBF, namely:

"In this Agency Regulation, what is meant by the Standard Classification of Indonesian Business Fields is to classify Indonesian economic activities/activities that produce products/outputs, both in the form of goods and services, based on business fields that are used as standard references and tools for coordination, integration, and synchronization of statistical implementation."

Having an BIN is a requirement to be able to take care of other business licenses. Other business licenses required are location permits, water location permits, environmental permits, and Building Permitted (BP) which are now known as Building

¹ Penjelasan Peraturan Pemerintah Republik Indonesia Nomor 5 Tahun 2021, p. 1

² *Ibid*

³ <https://oss.go.id/informasi/CIBF-berbasis-risiko> accessed on 01 December 2022.

Approval (BA) documents at business locations. If needed, business actors can register for commercial or operational licenses. This license is given to business actors who have met the standards, certification, licensing, and/or registration of goods/services in accordance with the type of business commercialized through the OSS system.⁴

Business licensing through the risk-based OSS system or known as OSS RBA (Risk Based Approach) can be done by business actors themselves, but in practice there are still many business actors who do not understand the selection of business activities in accordance with the 2020 CIBF which should be adjusted to the amount of authorized capital of the Limited Liability Company, besides that the business licensing process has legal influences and consequences for the issuance of business licenses according to the level of risk, so that it needs direction efforts in the business registration/licensing process and fulfillment of standards for business activities after obtaining a business license through risk-based OSS.

RESEARCH METHODS

The research method used in this research is normative juridical, Normative juridical method is a scientific research procedure to find truth based on scientific logic and its normative side, including research on legal principles, research on legal systematics, studying and testing problems based on existing laws and regulations.⁵ The use of normative juridical methods was chosen in this study because this study emphasizes more on applicable norms and regulations, using secondary data sources or literature as the main data source based on positive law and its implementation in the practice of business licensing process through risk-based OSS.

DISCUSSION

The effect of Implementing the Risk-Based Online Single Submission (OSS) System on Limited Liability Company Business Licensing Practices.

Indonesia adheres to a state of law system based on the principle of legality with a power-sharing system. Law functions as a means of community renewal based on the existence of order or order in development or renewal efforts is something that is desired and law as a means of development is that in legal regulations it can indeed function as a tool or means of development in the sense of channeling the direction of human activities in the direction desired by development.⁶

⁴ *Ibid*

⁵ Ibrahim, Johnny (2013). *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia, p. 57

⁶ Khotijah, Siti (2020). *Buku Ajar Hukum Perizinan Online Single Submission (OSS)*, Yogyakarta: Lingkar Media, p. 13.

A Limited Liability Company is a legal entity, which is an entity that can act as a legal subject and has wealth separated from the personal wealth of its shareholders and conducts business activities with authorized capital which is entirely divided into shares and meets the requirements stipulated in the law. Similarly, shareholder liability is limited only to the number of shares deposited which is separate wealth from shareholders as well as limited liability.⁷

The definition of Limited Liability Company as written in Article 1 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) juncto the Job Creation Law reads:

"Limited Liability Company, hereinafter referred to as the Company is a legal entity that is a capital partnership, established based on an agreement, conducting business activities with authorized capital entirely divided into shares or Individual Legal Entities that meet the criteria for Micro and Small Enterprises as stipulated in the laws and regulations regarding Micro and Small Enterprises."

Based on the definition of Limited Liability Company, there are several elements of a Limited Liability Company, as follows:

1. Limited Liability Company is a legal entity;
2. Limited Liability Company is a capital partnership;
3. Established by agreement;
4. Conducting business activities with authorized capital.
5. Its authorized capital is divided into shares; and
6. Its establishment must meet the requirements stipulated in the Law and its implementing regulations.⁸

Limited Liability Company as a business entity must have licenses to carry out its business activities legally. Permission is one of the instruments that must be used in the administrative law of the country. Permission is not only to give permission in special circumstances, but for the permitted acts to be carried out in such a way that various conditions are included in the relevant provisions.⁹ The government uses permits as a juridical means to ensure business certainty, carry out guidance, direction, supervision, and create a healthy business climate, so that it will be able to provide guaranteed business certainty and legal protection to Limited Liability Companies.

Licensing will act as a form of policy engineering that plays a role in every development cycle, namely from planning to supervision and evaluation. The planning

⁷ Budiono, Herlien (2022), *Tanya Jawab Masalah Hukum Perdata di Bidang Kenotariatan*. Bandung: PT Citra Aditya Bakti, p. 232

⁸ Mulhadi (2019), *Hukum Perusahaan Bentuk-Bentuk Badan Usaha di Indonesia*, Jakarta: Rajawali Pers, p. 98

⁹ Karnantohadi, Pung (2020). *Prinsip Hukum Pelayanan Perizinan Terpadu di Indonesia*, Jakarta: Kencana, p. 33.

process will be one of the policy variables that can force business actors (in this case Limited Liability Companies) to work according to the targets to be achieved in national/regional development, thus, the granting of permits cannot be separated from the interests of development broadly with various requirements as indicators of its objectives.¹⁰

The development of technological advances in today's modern era, the development and progress in the field of public services will also have to continue to be improved in order to realize optimization, effectiveness and better efficiency, the sophistication of innovations created by the government will provide new thinking as a form of managing effective and efficient authority.¹¹

Permits are present as an effort to prevent all actions taken by the community so as not to cause negative impacts on the activities carried out, the licensing system also continues to develop, in today's digital era, permits are increasingly easy to access electronically. The electronic-based licensing system is expected to increase government supervision of business activities so that the negative impact of these activities can be minimized, to support the government's efforts, an electronic-based licensing system or commonly called OSS is issued. This is expected so that the ease of licensing by the community can be realized¹²

Account registration at OSS begins with the selection of the type of business owned divided into Micro and Small Enterprises (UMK) or Non-UMK.¹³ At the time of making the deed of establishment of a Limited Liability Company, the selection of business activities must be adjusted to the amount of authorized capital of the Limited Liability Company, so that the consequences for the selection of these business activities will determine the level of risk and responsibility in meeting the standards of business activities that must be carried out by the Limited Liability Company.

Risk-based business licensing is issued by the OSS system based on several factors, such as the level of risk of business activities, the scale rating of business capital criteria, and land area as stated in the annex to the government regulation on the implementation of risk-based business licensing.¹⁴ Risk-based OSS is a standard method based on the level of risk of a business activity in determining the type of business license.

¹⁰M. Radjab, Abi (2015). *Buku Ajar Hukum Perizinan*. Bandung: Kalam Media, p. 1

¹¹Sapto Nugroho, Sigit dan Tri Haryani, Anik (2021). *Hukum Perizinan Berbasis OSS (Online Single Submission)*. Klaten: Lakeisha, p. 62.

¹²Amir, Syarah Syam et.al (2022). Implikasi yang TBPul dalam Kemudahan Penerbitan Perizinan Berusaha Berdasarkan Peraturan Pemerintah Nomor 5 Tahun 2021 tentang Perizinan Berusaha Berbasis Risiko. *Jurnal Pemikiran dan Penelitian Ilmu-ilmu Sosial, Hukum, & Pengajarannya*. Vol. XVII Nomor 1, p. 12

¹³<https://www.bkpm.go.id/id/publikasi/detail/berita/pengenalan-tentang-oss-berbasis-risiko>, diakses pada tanggal 31 Januari 2023.

¹⁴*Ibid*

Business actors do not understand the selection of business activities in accordance with CIBF 2020 which should be adjusted to the size of the authorized capital of Limited Liability Companies and the fulfillment of standards for business activities and procedures for business registration/licensing through the risk-based OSS system, for example large trade in laboratory equipment, pharmaceutical equipment and medical devices for humans (CIBF Code 46691) this is a medium-high risk business activity that requires authorized capital above Rp.5.000.000.000,- (five billion rupiah), the business activity is a large trading business field so it cannot be run simultaneously with the retail trade business field.

Research on matters related to business licensing management issues through the risk-based OSS system is important so that in the future this research can be the basis for Limited Liability Companies as business actors need to consider the selection of business activities in the establishment of Limited Liability Companies and/or changes to be adjusted to the scale of the criteria for the amount of authorized capital of Limited Liability Companies and the level of risk, then after the business license is issued, the Limited Liability Company must carry out its responsibilities in fulfilling the standards of business activities that must be carried out by the Limited Liability Company.

Risk-based business licensing as explained in Appendix III of Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Licensing (PP Number 5 of 2021) basically changes the concept of *ex-ante* licensing (requirements are met first at the beginning) with the concept of *ex-post* licensing (verification is carried out afterwards). This concept can mainly be applied to Limited Liability Companies with a low level of risk or business activities that have been set by standards. After the Limited Liability Company obtains BIN, the government as the authority will verify the fulfillment of the business activity standards. The verification process for meeting standards is part of the supervision process, which is an important component of risk-based business licensing as stipulated in Article 12 of the Job Creation Law.

An effort to simplify and accelerate the business licensing process, in changing the OSS system, RBA requires Limited Liability Companies as business actors to only need to take care of licensing according to the level of business risk. Government Regulation Number 5 of 2021 as a mandate for the implementation of the Job Creation Law, changes the implementation of the OSS system version 1.1 to the RBA OSS system with a risk-based licensing approach.¹⁵

¹⁵ Lestariningsy, Twotik dan Roqib, Muhammad. (2020). "Perlindungan Data Pribadi Pengguna Sistem Layanan rizinan Berusaha Terintegrasi Secara Elektronik OSS 1.1 dan OSS RBA (Risk Basic Approach)", *Jurnal Jendela Hukum*, p. 1

Licensing and Supervision is a means of the government, both central and local governments in controlling and protecting the implementation of a Limited Liability Company's business activities associated with risks that may arise from business activities carried out by Limited Liability Companies. Risk-based business licensing is determined based on the initial risk level of business activities obtained from the results of risk analysis of each business activity carried out by a Limited Liability Company by considering the scale of micro, small, medium or large enterprises based on business capital criteria as described in Article 11 paragraph (2) of BKPM Regulation Number 4 of 2021 concerning Procedures for Risk-Based Business Licensing Services and Investment Facilities (BKPM Number 4 of 2021) It is set as follows:

1. Micro Enterprises have a working capital of up to a maximum of Rp1,000,000,000.00 (one billion rupiah) excluding land and buildings for business premises;
2. Small businesses have a working capital of more than Rp1,000,000,000.00 (one billion rupiah) up to a maximum of Rp5,000,000,000.00 (five billion rupiah) excluding land and buildings for business premises; and
3. Medium enterprises have a working capital of more than Rp5,000,000,000.00 (five billion rupiah) up to a maximum of Rp10,000,000,000.00 (ten billion rupiah) excluding land and buildings for business premises.

Large business scale, namely business entities sourced from Foreign Capital Investment (FCI) or Domestic Investment (PMDN) as described in Article 12 of Perka BKPM Number 4 of 2011, have a working capital greater than Rp10,000,000,000.00 (ten billion rupiah) excluding land and buildings for business premises.

In Article 10 paragraph (8) of Perka BKPM Number 4 of 2021 that the OSS Institute issues BIN based on:

- a. Risk Level;
- b. Provisions for the investment business sector;
- c. Minimum investment requirements; and
- d. Capital provisions,

The risk level of business activities is obtained based on the multiplication of the hazard value with the value of the potential for harm arising from business activities carried out by Limited Liability Companies. This multiplication is done for each aspect of risk, where the result of multiplication refers to the risk matrix and the result of multiplication in each aspect determines the level of risk. The level of risk of business activities is determined based on the maximum risk level of at least one of the risk aspects as described in Appendix III of PP Number 5 of 2021, namely safety aspects, health

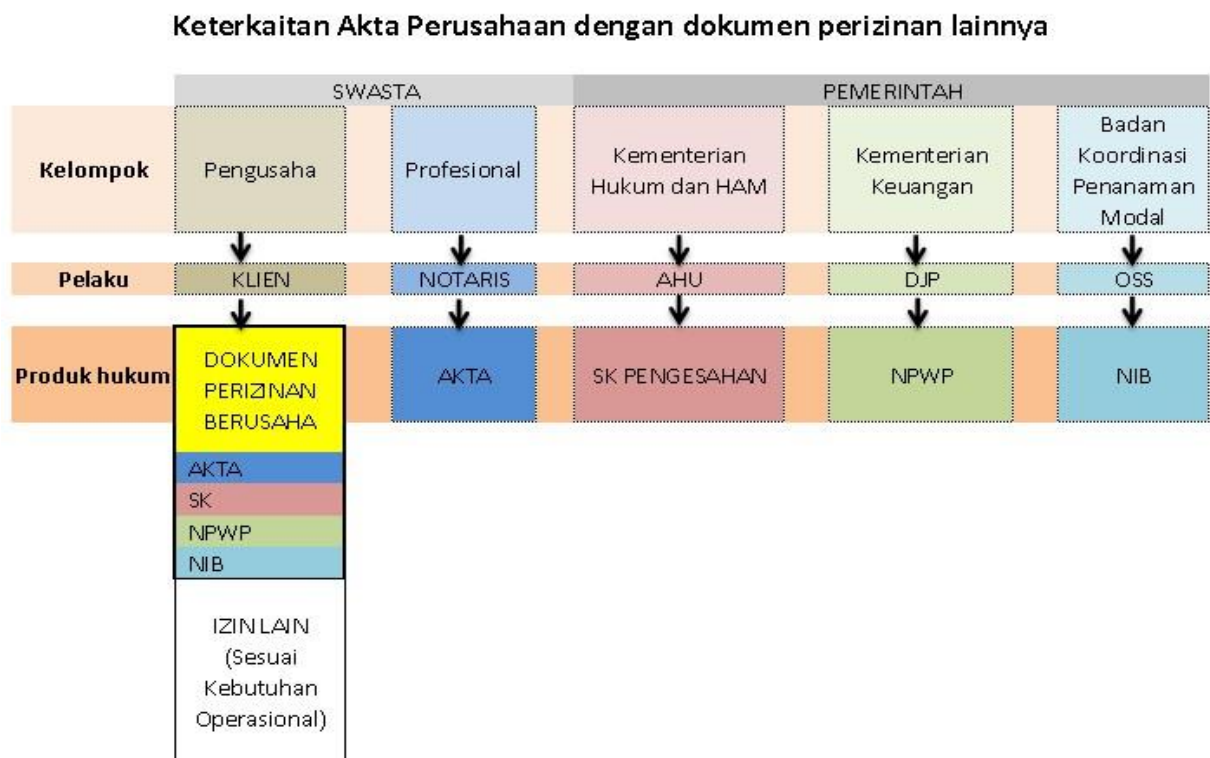
aspects, environmental aspects (K2LI), resource utilization and management aspects; and other aspects.

The business activity identification process is the first stage of the risk level analysis process of a Limited Liability Company, starting from the stage of recognizing and identifying the type of business license currently (existing) for each business activity that is adjusted to CIBF BPS Regulation Number 2 of 2020. Business activities that are the initial stage of determining business licensing are listed in the articles of association of the Limited Liability Company.

The Articles of Association of a Limited Liability Company must be made in an authentic deed, then the deed must be registered to obtain ratification and/or approval from the Ministry of Law and Human Rights of the Republic of Indonesia in electronic administrative services through the Legal Entity Administration System (LEAS) organized by the Directorate General of General Legal Administration (Dijten GLA). Then the Limited Liability Company NPWP will be issued automatically along with the Limited Liability Company endorsement letter, so that the Limited Liability Company can directly take care of the business licensing process through risk-based OSS.

The picture of the relationship between the Limited Liability Company deed and business licensing and other legalities summarized by the author as follows:

Figure 1:



Business licensing through the risk-based OSS system brings changes and benefits to Limited Liability Companies in managing business licensing, including:

1. Provide ease of business licensing for MSEs and Limited Liability Companies with a low level of risk.

Limited Liability Companies simply register in the OSS system to get BIN. BIN applies as the identity of a Limited Liability Company and as a business license, BIN is proof of the legality of a Limited Liability Company to carry out its business activities, specifically for business activities with a low level of risk carried out by MSEs, then BIN applies as a single license.

2. Provide ease of business licensing for Limited Liability Companies with medium low risk level.

The types of business licenses issued are BIN and Standard Certificates. The Standard Certificate is issued by the OSS system in the form of an independent statement regarding the ability to meet business activity standards, making it very easy for Limited Liability Companies to start operating their business activities.

BIN and Standard Certificate are as business licenses that are used as the legality of the Limited Liability Company's business to carry out its business activities, starting from the preparation, operational and/or commercial implementation of its business activities. The standards for the implementation of business activities must be met by Limited Liability Companies during business activities and supervision and guidance will be carried out by the Minister/head of the institution, Governor, Regent/Mayor, SEZ Administrator, or Head of the KPBPB Concession Agency according to their respective authorities, for the fulfillment of these standards to monitor the level of compliance of the PT in meeting the standards of its business activities.

3. Provide ease of business licensing for Limited Liability Companies with medium high risk level.

The types of business licenses issued are BIN and Standard Certificates issued by the government based on the results of verification of compliance with business activity implementation standards. The convenience for Limited Liability Companies can use BIN and Standard Certificates that have not been verified to start preparing for business activities.

After obtaining the BIN, then the Limited Liability Company makes a statement through the OSS system to meet the standards for the implementation of business activities in order to carry out business activities and the ability to be verified by the central government or local government according to their respective authorities. The statement will be the basis for the issuance of Standard

Certificates that have not been verified and can be used as business legality, but are limited only to carry out preparations to start business activities.

Before the Limited Liability Company carries out operational and commercial activities, the central government or local government in accordance with its authority will verify the fulfillment of business activity implementation standards. The implementation of verification by the government can cooperate with third parties that have been accredited by the government.

For certain business activities, verification of compliance with business activity implementation standards can be carried out in line with the operational implementation of business activities. The standards for the implementation of business activities must be met by the Limited Liability Company during business activities and supervision will be carried out on the fulfillment of these standards to monitor the level of compliance of the Limited Liability Company. In the event that the Limited Liability Company does not obtain a Standard Certificate according to the stipulated period and based on the results of supervision does not prepare for business activities within 1 (one) year since the BIN is issued, the OSS institution cancels the unverified Standard Certificate. BIN and Standard Certificate that have been verified are business licenses for Limited Liability Companies to carry out operational and/or commercial business activities.

4. Provide ease of business licensing for Limited Liability Companies with a high level of risk.

The types of business licenses issued are BIN and Permit. In this case, what is meant by License is business legality in the form of government approval for the implementation of business activities that must be fulfilled by a Limited Liability Company before carrying out its business activities. The convenience for the Limited Liability Company can use BIN to prepare for the implementation of business activities before the License is issued.

In the event that the business activities of a Limited Liability Company require the fulfillment of business standards and/or product standards, the central government or local government in accordance with their respective authorities can assign certified or accredited expert institutions or professions to issue business standard certificates and product standard certificates based on the results of verification of standard compliance.

Government approval is issued after the PT meets all the requirements for the implementation of the business activities. In the event that business activities with a high level of risk are required by standards for the implementation of business activities that require verification, the central government or local

government in accordance with its authority issues standard certificates based on the results of verification of compliance with business activity implementation standards

5. The process of issuing business licenses through the risk-based OSS system can be issued in a short and efficient time.

Business licensing through the risk-based OSS system is carried out *online* so that it can be done at any time without being limited to working hours and can be done anywhere as long as the server is *online*, and can cut the bureaucratic mesh of the licensing process.

6. Simplification of licensing data in one identity and legality of doing business Limited Liability Company in the form of BIN.

For Limited Liability Companies with a low level of risk carried out by MSEs, BIN also applies as: Indonesian National Standard (SNI), Import Identification Number (API); and Halal guarantee statement (for Limited Liability Companies that carry out food processing industry business activities)

7. Facilitating Limited Liability Company data to be integrated with all *stakeholders*, namely:

- a. Directorate General of AHU for verification and validation of the deed of establishment and/or amendment of Limited Liability Company;
- b. Directorate General of Taxes (DGT) for verification and validation of individual NPWP and Business Entity NPWP;
- c. Dukcapil for verification and validation of Identity Number (NIK); and
- d. BKPM is a risk-based OSS system for the business licensing system and several other ministries/institutions according to CIBF which will be processed for licensing.

The benefits arising from business licensing through the risk-based OSS system, it is undeniable that in practice there are still problems arising from business licensing through the risk-based OSS system, including:

1. Data integration between the center and regions that have not been integrated so that it requires technical capabilities from regional devices.

In some regions, there are many Limited Liability Companies as business actors who experience problems in conducting business licensing through the risk-based OSS system due to data integration between the BKPM centralized system and regions that have not been integrated.

2. Business licenses issued based on the risk-based OSS system are issued based on the level of risk, examination of business sector regulations, minimum investment requirements and capital requirements, but in practice there are still many Limited

Liability Companies as business actors who do not understand in the selection of CIBF which is not adjusted to the minimum investment provisions and capital requirements, thus hampering the issuance of BIN.

Selection of Limited Liability Company business activities as described in example: selection of business activities Large trade in laboratory equipment, pharmaceutical equipment and medical equipment for humans (CIBF code 46691) is a large trading business field, so it cannot be carried out simultaneously with retail trade business activities through media for food, beverage, tobacco, chemical, pharmaceutical, cosmetic and laboratory equipment commodities (CIBF code 47911), This is as stipulated in Article 55 paragraph (1) of Government Regulation Number 29 of 2021 concerning the implementation of the trade sector (PP 29 of 2021), which stipulates that producers, distributors, and wholesalers/dealers are prohibited from distributing goods at retail to consumers. Thus, business actors who sell goods not directly and not in retail or unit form can be called conducting large trade.

Large trade in laboratory equipment, pharmaceutical equipment and medical equipment for humans (CIBF code 46691) is included in the medium high risk level, with a working capital criterion of more than Rp5,000,000,000.00 (five billion rupiah) so that the permits to be issued are BIN and certificates of business activity implementation issued by the central government or local governments according to their respective authorities based on the results of verification of compliance with the Company's business activity implementation standards The limited. While retail trade through the media for food commodities, beverages, tobacco, chemicals, pharmaceuticals, cosmetics and laboratory equipment (CIBF code 47911) are included in the low risk level, with MSE business scale with business capital criteria below Rp. 1,000,000,000.00 (one billion rupiah) so that the license to be issued is BIN as a single license or small business scale with business capital criteria of more than Rp. 1,000,000,000.00 (one billion rupiah) up to a maximum of Rp. 5,000,000,000, 00 (five billion rupiah) so that the permits to be issued are BIN and Standard Certificates in the form of independent statements. If the Limited Liability Company tries to combine these 2 (two) CIBF in one business when applying for BIN in the risk-based OSS system, then the BIN will not be issued due to different types of business licenses so that the Limited Liability Company does not have a license in carrying out its business activities.

Legal Effects on Limited Liability Companies that Do Not Comply with Standards for Business Activities After Obtaining Business Licenses through the Risk-Based Online Single Submission (OSS) System Reviewed from PP Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing.

The principle of risk-based business licensing is *Trust but Verify*. Basically, risk-based business licensing changes the concept of *ex-ante* licensing (requirements are met at the beginning) with the concept of licensing (verification is carried out after the requirements are met).¹⁶ The concept applied in this risk-based business licensing is that business licenses are issued to provide convenience in obtaining business legality in the preparation and operation of preparation for Limited Liability Company business activities, then the government as the authority will verify the fulfillment of business activity standards, supervision by the government in an accountable and transparent manner after granting licenses becomes a process that must be carried out.

The concept of risk-based supervision procedures as explained in Appendix III PP Number 5 of 2021 is to ensure compliance with standards for business activities carried out by Limited Liability Companies and collect data, evidence and/or reports of hazards to safety, health, the environment (K2L1) and/or other hazards that can arise from the implementation of these business activities, the intensity of supervision is based on:

1. The level of risk of business activities, the higher the level of risk, the more often supervision will be carried out; and
2. The level of compliance of Limited Liability Companies in reporting business activities, the more often they commit violations, the more often supervision will be carried out.

Supervision carried out by the central government and/or local governments on all types of business activities with medium high risk and high risk levels is carried out in 2 (two) ways, namely:

1. Routine supervision, is supervision carried out by following the Norms, Standards, Procedures and Criteria (NSPK) set by the ministry/supervisory agency;
2. Incidental supervision, is supervision carried out based on public complaints on business activities carried out by Limited Liability Companies.

Supervision carried out in an integrated manner if the business activity has cross-sector guidance or multi-sector licensing approval, this is done in order to create efficiency in the government and also for the supervised Limited Liability Company.

¹⁶https://www.kppod.org/backend/files/laporan_penelitian/Implementasi%20OSS%20RBA%20di%20Daerah, diakses tanggal 12 Februari 2023.

The results of this supervision will provide input for determining the level of risk of PT business activities in the future.

Risk-based licensing/RBA is an approach where the level of risk becomes a consideration for every action or effort taken. The higher the potential risk posed by a particular business activity, the tighter the control from the government and the more permits required or inspections are carried out.¹⁷ Thus, through this approach, the legality of business licensing documents and the intensity of control/supervision of each Limited Liability Company's business activities will be determined based on the level of risk of the Limited Liability Company's business activities.

The matters that are the object of supervision as described in Article 8 of the Investment Coordinating Board Regulation Number 5 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Supervision (Perka BKPM Number 5 of 2021) are:

1. Standards and/or obligations for the implementation of business activities; and
2. Development of investment realization and provision of facilities, incentives, and facilities for investment, and/or partnership obligations.

The responsibilities of Limited Liability Companies as described in Article 6 of Perka BKPM Number 5 of 2021 are as follows:

1. Guarantee the availability of capital derived from sources that do not conflict with the provisions of laws and regulations;
2. Bear and settle all obligations and losses if the Limited Liability Company stops or abandons its business activities;
3. Creating a healthy competitive business climate and preventing monopolistic practices;
4. Preserving the environment; and
5. Creating worker safety, health, comfort, and welfare.

The Investment Activity Report (LKPM) is a progress report on the realization of Capital Investment and problems faced by Limited Liability Companies which must be submitted periodically as explained in Article 1 number (20) of BKPM Perka Number 5 of 2021. The obligation to submit LKPM online for all business actors and is not required for business actors with MSE scale, companies in the upstream oil and gas business, banking, non-bank financial institutions and insurance.

It became mandatory for Limited Liability Companies to carry out obligations and responsibilities for their business activities so that standard certificates can be verified.

¹⁷Naskah Akademis Rancangan Undang-Undang tentang Cipta Kerja. p.83

The obligations and responsibilities of Limited Liability Companies that must be carried out in meeting standards include:

1. Report LKPM regularly
2. Responsible for realizing activities with an estimated period of start of production/operation listed in the OSS system;
3. Maintain the environment at the business location so as not to endanger the safety of the community or prevent environmental pollution, both at the business location and around the business location; and
4. Fulfill the standard requirements of business activities; and prepare for business activities.

Legal consequences if the Limited Liability Company does not carry out obligations and responsibilities in fulfilling the standards of its business activities and/or fulfilling license requirements, then as explained in Chapter IX PP Number 5 of 2021 concerning sanctions arrangements for each sector of business activities juncto Article 49 and Article 51 of BKPM Perka Number 5 of 2021, the OSS Institution will impose administrative sanctions through the OSS system in the form of:

1. Cancellation of unverified Standard Certificates;

Business licensing for Limited Liability Companies with medium high risk levels is BIN and Standard Certificates issued by the government based on the results of verification of compliance with business activity implementation standards, to start preparing for business activities Limited Liability Companies can use BIN and Standard Certificates that have not been verified. If the Standard Certificate is not verified by the government within 1 (one) year since the BIN is issued because based on the results of supervision the Limited Liability Company has not prepared for business activities and/or is not in accordance with the standards of its business activities, the OSS system cancels the unverified Standard Certificate.

2. Revocation of BIN;

- a. For Limited Liability Companies with a medium high risk level that have been canceled Standard Certificate as referred to in point 1 above, Limited Liability Companies can reapply for the issuance of an unverified Standard Certificate within 6 (six) months after the cancellation is issued. If within 6 (six) months the Limited Liability Company does not have a verified Standard Certificate, the OSS system will issue a revocation of the BIN if the Limited Liability Company has 1 (one) business activity. if the Limited Liability Company has 1 (one) business activity.

- b. Business licenses for Limited Liability Companies with a high level of risk are BIN and License which is a government approval for the implementation of business activities that must be fulfilled by Limited Liability Companies before carrying out their business activities, before the License is issued Limited Liability Companies can use BIN to start preparing for business activities. If based on the monitoring results of the Limited Liability Company does not meet the License requirements within 6 (six) months since the BIN is issued, the OSS system will issue a revocation of the BIN if the Limited Liability Company has 1 (one) business activity.

3. BIN Update;

- a. For Limited Liability Companies with medium high risk levels that have been canceled Standard Certificate as referred to in point 1 above, the Limited Liability Company can reapply for the issuance of an unverified Standard Certificate within 6 (six) months after the cancellation is issued. If within 6 (six) months the Limited Liability Company does not have a verified Standard Certificate, the OSS system will issue a revocation of the BIN if the Limited Liability Company has more than 1 (one) business activity.
- b. Business licenses for Limited Liability Companies with a high level of risk are BIN and License which is a government approval for the implementation of business activities that must be fulfilled by Limited Liability Companies before carrying out their business activities, before the License is issued Limited Liability Companies can use BIN to start preparing for business activities. If based on the monitoring results of the Limited Liability Company does not meet the License requirements within 6 (six) months from the issuance of the BIN, the OSS system will issue a revocation of the BIN if the Limited Liability Company has more than 1 (one) business activity.

4. Automatic cancellation of access rights;

In the event that the OSS system has revoked the BIN as referred to in point 2 above, but the Limited Liability Company does not have a new business license starting from 1 (one) year from the date of revocation of the BIN, the access rights will be canceled automatically.

From the writer analysis of the legal consequences for Limited Liability Companies with medium high risk if they do not meet the standards of their business activities, the OSS system will cancel the Standard Certificate that has not been verified, while for Limited Liability Companies with high risk if they do not fulfill the requirements of the Permit, the License will not be issued. If within a period of 6 (six) months do not have a verified Standard Certificate and/or do not meet the permit requirements, the OSS

system will issue a revocation of BIN if the Limited Liability Company has 1 (one) business activity; BIN update if the Limited Liability Company has more than 1 (one) business activity; or if the Limited Liability Company does not have a new business license starting from 1 (one) year from the date of BIN revocation, then the access rights will be revoked automatically.

CONCLUSION

The implementation of a risk-based OSS system on PT business licensing practices can have both positive and negative implications. Positive implications include: providing ease of business licensing for MSEs and Limited Liability Companies with a low risk level is BIN, business licensing for Limited Liability Companies with a medium low risk level is BIN and Standard Certificate, business and business licensing for Limited Liability Companies with a high level of risk is BIN and Licenses in the form of government approval for the implementation of business activities that must be fulfilled by Limited Liability Companies before carrying out their business activities, besides that there are also negative implications for Limited Liability Companies, namely: many business actors do not understand the selection of CIBF which is not adjusted to the minimum investment provisions and capital provisions that hinder issuance BIN.licensing for Limited Liability Companies with a medium high risk level is BIN and Standard Certificate that must be verified,

Legal consequences for Limited Liability Companies that do not carry out standard compliance for business activities after obtaining a business license through the risk-based OSS system are reviewed from Chapter IX PP Number 5 of 2021 concerning sanctions arrangements for each sector of business activities juncto Article 49 and Article 51 of BKPM Perka Number 5 of 2021, OSS Institutions will impose administrative sanctions through the OSS system in the form of cancellation of unverified Standard Certificates, while for Limited Liability Companies with high risk if they do not fulfill the requirements of the Permit, the License will not be issued. A period of 6 (six) months do not have a verified Standard Certificate and/or do not meet the permit requirements, the OSS system will issue a revocation of BIN if the Limited Liability Company has 1 (one) business activity; BIN update if the Limited Liability Company has more than 1 (one) business activity; or if the Limited Liability Company does not have a new business license starting from 1 (one) year from the date of BIN revocation, then the access rights will be revoked automatically.

Suggestions that can be submitted to the government in this case through BKPM need to improve the supervisory function by conducting direct monitoring to the place of business activities of the Limited Liability Company to assess the suitability between

business license applications and the implementation and fulfillment of business activity standards, as well as carrying out the application of sanctions if they do not meet the standards for business activities, so as to achieve the level of compliance of Limited Liability Companies in the form of The submission of LKPM, because with the delivery of LKPM which is an instrument of government supervision in assessing the realization of meeting standards for business activities.

In order to avoid that a Limited Liability Company that has obtained a business license does not get sanctions due to not fulfilling obligations after granting a license, the Limited Liability Company as a business actor needs to consider the selection of business activities in the establishment of a Limited Liability Company and / or its changes to be adjusted to the scale of the criteria for the amount of authorized capital of the Limited Liability Company and the level of risk, then after the business license is issued the Limited Liability Company must carry out its responsibilities responsible for meeting the standards of business activities that must be carried out by Limited Liability Companies.

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