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**RISK-BASED LICENSING AS LICENSING REFORM
IN INDONESIA BASED ON GOVERNMENT
REGULATION NUMBER 5 THE YEAR 2021**

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ABSTRACT

The purpose of this paper is that the author tries to explain the birth of the concept of risk-based licensing (RBA) in Indonesia which is regulated in Government Regulation Number 5 of 2021. The author elaborates on the transformation of the concept of risk-based approach license and its role in replacing the previous licensing concept. The author also analyzes this policy more deeply through the ROCCPI Method to find weaknesses and provide recommendations. Licensing in Indonesia so far still has many weaknesses, including regulations that are not yet harmonious, the difficulty of licensing bureaucracy, and low investment realization. With this, the government carried out deregulation and debureaucratization to give birth to licensing reform in Indonesia. The government introduced a new licensing concept called the Risk-Based Approach or RBA which changed the licensed-based concept to risk-based. Based on the scope of research, in writing this manuscript, the author uses a normative juridical research method. The conclusion that comes from this paper is that the RBA is a bold step taken by the government, and so far it has had a good impact in terms of accelerating the issuance of permits. On the other hand, there are still many components that need to be maximally improved by the government such as the readiness of the OSS RBA system, readiness of human resources, and also improving the quality of public services so that licensing reform in Indonesia is not just an idea but can be fully realized through this regulation.

Keywords: policy; risk-based approach; reform

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INTRODUCTION

Licensing is the granting of legality to a person or business actor for certain activities, either in the form of a license or a business registration certificate. Permission is one of the most widely used instruments in administrative law to control people's behavior.¹ In the dictionary of legal terms, permission (*vergunning*) is explained as an agreement from the authorities based on laws or government regulations to in certain circumstances deviate from the provisions of the prohibition of laws and regulations.²

The central government and local governments have the task of administering the government, one of the scopes of their authority is permits. In general, the permit instrument is to allow an action or activity that in certain cases is prohibited, including in business licensing in all sectors. A business license is a registration that is given to entrepreneurs or business actors to start and run a business and/or activity and is given in the form of approval as outlined in a letter/decision or fulfillment of requirements and/or fulfillment of commitments.³

Discussing more deeply about licensing, licensing in Indonesia has its own challenges. Compared to other countries and peer group ASEAN countries, licensing regulations in Indonesia are considered very difficult because they must involve various ministries, institutions, and local governments. This has caused many investors to be more attracted to our peer group countries such as Thailand and Malaysia compared to Indonesia.

In 2015 the government tried to make policy improvements to simplify licensing requirements by carrying out the concept of One-Stop Integrated Service (PTSP). PTSP is the activity of administering a permit and non-licensing based on the delegation or delegation of authority from an institution or agency that has licensing and non-licensing authority, the management process starting from the application stage to the issuance stage of documents carried out in one place. The PTSP system can reduce the processing time for several permits, making it more efficient and effective. The presence of PTSP has a positive impact in terms of permit processing which can shorten the time and reduce the number of permits required.⁴

The government's steps continued with the establishment of an Economic Policy Package (PKE) which was implemented with the pattern of bringing up new regulations formulated in the context of accelerating investment. Through Presidential Regulation Number 91 of 2017, the government seeks simplification in terms of licensing through services and escorts (end to end), fulfillment of requirements (checklist), reform of

¹ Philipus M. Hadjon, *Pengantar Hukum Perizinan*, Surabaya: Yuridika, 1993, p. 2.

² Vera Rimbawani Sushanty, *Buku Ajar Hukum Perizinan*, Surabaya: Ubhara Press, 2020, p. 4-5.

³ Siti Kotijah, *Buku Ajar Hukum Perizinan Online Single Submission*, Bantul: CV MFA, 2020, p. 5.

⁴ Academic Paper of the Job Creation Bill, p. 22

simplification of regulations, and also implementation the Electronically Integrated Business Licensing System. Electronically Integrated Business Licensing is then regulated through Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services.

Electronically Integrated Business Licensing is also known as Online Single Submission, hereinafter referred to as OSS. OSS is a business licensing system issued by the OSS Institution for and on behalf of ministers, institutional leaders, governors, or regents/mayors to business actors through an integrated electronic system.⁵ Through this system, the government has reduced the number of permits from 537 to 237 and 362 to 215. In the OSS system, the types of permits are categorized into commercial or operational permits, namely permits issued by the OSS Institution for and on behalf of ministers, heads of institutions, governors, or regents/mayors after business actors obtain business permits and carry out commercial or operational activities with meet the requirements and/or commitments.⁶

After more or less two years in Indonesia (from 2018 to 2020), the existence of OSS is still not enough to realize Indonesia's ideals in terms of accelerating and increasing investment and business. Indonesia's investment climate and competitiveness are still low and even lagging behind other countries (peer groups) such as Malaysia and Thailand. Based on the Ease of Doing Business (EoDB) ranking data in 2020, Indonesia is ranked seventy-three, far below Malaysia which is ranked twelve, and Thailand is ranked twenty-first. In terms of competitiveness based on the Global Competitiveness Index (GCI) in 2019, Indonesia is ranked fifty while Malaysia is ranked twenty-seven and Thailand is ranked forty. Furthermore, in terms of digitalization, Indonesia's digital business competitiveness in 2019 was still ranked fifty-six, far behind Malaysia at twenty-six.⁷

Various obstacles and problems are still being experienced, caused by several indicators such as the complexity of licensing in starting a business, rigid land acquisition, and difficulty in getting access to finance.⁸ Juridically, the one-door licensing that is to be achieved has also not been able to be implemented because in certain sectors the authority still exists in sectoral laws. The sectoral law gives attribution of permits to ministers, and this does not go hand in hand with the goal of one door that will fall under the authority of the Investment Coordinating Board (BKPM).

⁵ Article 1 Number 5 Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services.

⁶ Article 1 Number 9 Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services.

⁷ Academic Paper of the Job Creation Bill, p. 3.

⁸ *Ibid.*, hlm. 4-5.

To encourage economic growth through increased investment, the government needs to reform regulations in the field of business licensing. Reforms need to be carried out to resolve investment barriers, namely the long bureaucratic chain, and the many regulations that are less harmonious, especially in central and regional regulations (hyper-regulation). Therefore, it is necessary to deregulate the provisions regarding business licensing, investment requirements, employment, Micro, Small, and Medium Enterprises (MSMEs), land acquisition, development of economic zones, implementation of government projects, as well as provisions regarding government administration and the imposition of criminal sanctions regulated in various Constitution.⁹ In addition to deregulation, debureaucratization is also needed to reduce obstacles in the bureaucratic system, simplify service stages, and also simplify organizational structures.

With this, the government applies a new regulatory technique, namely the Omnibus Law. By using the Omnibus Law technique, problems in sectoral laws can be resolved without having to revise various licensing regulations. Omnibus Law is a method for making a regulation or law that consists of many subjects or basic materials, then integrating and codifying regulations whose ultimate goal is to streamline the application of these regulations. Departing from this, the government ratified Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as UUCK).

Along with the issuance of UUCK, the government adopted a new licensing concept, namely the Risk-Based Business Licensing or Risk-Based Approach, hereinafter referred to as RBA.¹⁰ 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 certain business activities, the tighter the control from the government and the more licensing documents required and inspections carried out.¹¹

The adoption of the RBA concept in the licensing simplification program is based on the target that the implementation of the RBA is expected to reduce the number of existing permits. In addition, supervision activities are also expected to be more efficient, because supervision resources will only be deployed for high-risk activities. Coupled with the omnibus format which is expected to overcome hyperregulation problems.¹²

The RBA concept has a very high goal, namely to be a means of licensing reform in Indonesia. This RBA concept has a focus on reducing the types of business licenses by reducing commercial/operational licensing based on a risk approach, and reducing

⁹ *Ibid.*, hlm. 6.

¹⁰ Muhammad Mova, "Konsep Regulasi Berbasis Risiko: Telaah Kritis Dalam Penerapannya pada Undang-Undang Cipta Kerja", *Jurnal Konstitusi*, Volume 18, Nomor 1, 2021, p. 68.

¹¹ Academic Paper of the Job Creation Bill, p. 88.

¹² Muhamad Azhar, "Omnibus Law sebagai Solusi Hiperregulasi Menuju Sinkronisasi Peraturan Per-Undang-undangan di Indonesia", *Administrative Law and Governance Journal*, Volume. 2, Nomor. 1, 2019, p. 170.

costs associated with compliance. The application of this concept will be carried out by focusing on the implementation of supervision, not on licensing instruments.¹³ The targets for implementing the RBA are: simplification and harmonization of licensing regulations, quality investment, creation of quality jobs, and sustainable worker welfare, as well as empowering small and medium scale businesses (UMKM).¹⁴

To achieve this, the government has regulated this licensing issue in Law Number 11 of 2020 concerning Job Creation and implemented it in Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing. This regulation was ratified in February 2021 and will begin to be implemented in August 2021. Within a month of running, the RBA has so far had a good impact, having issued approximately 200,000 business permits, and 98% of what was issued was NIB for micro and small businesses.¹⁵ But on the other hand, some parties continue to criticize the existence of this system. What is still not known with certainty is whether the RBA is the right move designed by the government and whether the RBA will succeed in becoming a licensing reform in Indonesia with its advantages and disadvantages.

The author will evaluate and analyze Government Regulation Number 2021 through the ROCCIPI Method. Evaluation methods need to be used so that there is detailed guidance on what elements will be analyzed further. There are several regulatory evaluation methods known in Indonesia, including ROCCIPI, RIA (Regulatory Impact Assessment), Regulatory Mapping, and MAPP (Method of Analysis of Legislations). The author chose the ROCCIPI method because this method has practical steps and has seven detailed components as a guide for the author in conducting the analysis. ROCCIPI stands for Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology. In addition, ROCCIPI is also a flexible method and can be combined with other question components outside of ROCCIPI.

Until now, specific research on this focus has not existed before. Similar studies that have been conducted are as follows:

Thesis on behalf of Suend Saragih from the Faculty of Law, University of North Sumatra with the title "Juridical Overview of the Ease of Business Permits granted to Cooperatives and Micro, Small and Medium Enterprises (UMK-M) in Law Number 11 of 2020 concerning Job Creation."

The research conducted by the author is more specific than previous research, the problems studied are regarding the role and impact of Risk-Based Business Licensing in

¹³ Aryo Hanggono, "Perizinan Usaha Berbasis Risiko: Penerapan RBA", Kementerian Koordinator Bidang Perekonomian Republik Indonesia, <https://kkp.go.id/an-component/media/upload-gambar-pendukung/Ditjaskel/publikasi-materi-2/cipta-kerja/Omnibuslaw%20Dirjen%20PRL%2023042020.pdf>, Accessed on September 25 2021.

¹⁴ *Ibid.*

¹⁵ Dimas Jarot Bayu, "Sebulan beroperasi, OSS Berbasis Risiko Terbitkan 200 Ribu Izin Usaha", 2021, <https://katadata.co.id/dimasjarot/berita/6145dc8752891/sebulan-beroperasi-oss-berbasis-risiko-terbitkan-200-ribu-izin-usaha>, Accessed on September 26 2021.

Government Regulation Number 5 of 2021 as licensing reform in Indonesia, and the study is based on the ROCCIPI method. The author is interested in raising this topic as the title of the final project because licensing is a very important and crucial sector in Indonesia. With good licensing regulations, there will be many positive impacts felt by the state, such as the development of the quality of public services, increased investment, more even business competition, and expanded employment opportunities. In addition, the vision and target of the existence of Government Regulation Number 5 of 2021 are very high and is ideal for a concept that has just been launched, namely risk-based, so the authors are interested in examining the juridical impact caused by the presence of this regulation.

Based on the description of the research background, the identification of the problem can be formulated as follows:

1. What is the juridical impact of changing the concept of licensing in the Job Creation Law Number 11 of 2020 in conjunction with Government Regulation Number 5 of 2021 on the implementation of the concept of business licensing in Indonesia?
2. How is the substance of Government Regulation Number 5 of 2021 in accordance with the ROCCIPI method?

RESEARCH METHODS

The approach method in this research uses a normative juridical approach, namely examining concepts, principles, and positive law by examining books, laws, and regulations, and other documents related to research and how they are implemented in the practice of administering Licensing-Based Licensing. Risk. In this study, the library materials used were regulations, books, and documents related to the regulation of RBA in Indonesia.

DISCUSSION

The juridical impact of changing the concept of licensing in the Job Creation Law Number 11 of 2020 in conjunction with Government Regulation Number 5 of 2021 on the implementation of the concept of business licensing in Indonesia

In 2020, the government passed Law Number 11 of 2020 concerning Job Creation, hereinafter referred to as UUCK, which has the objectives of creating jobs, empowering MSMEs, improving the investment ecosystem, accelerating national strategic projections, as well as licensing reform. Efforts to improve the investment ecosystem and business activities are regulated in Article 5 Paragraph (1) which includes the application of risk-based business licensing, simplification of the basic requirements for business licensing, simplification of sector business licensing, and simplification of investment requirements. Further arrangements regarding RBA are regulated in Articles 7 to 11 of

the UUCK. Determination of the type of Business Licensing is based on the level of business activity risk.¹⁶

This Risk-Based Business Licensing is expected to be a solution to simplify the licensing process while still using the OSS System. Through Risk-Based Business Licensing with a lower level of risk, the type of business licensing will be relatively easier for business activities with a higher level of Risk. In accordance with the provisions stipulated in Article 12 UUCK, further provisions regarding RBA and its supervision will be regulated in a Government Regulation. On February 2, 2021, Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing has been ratified.

A risk-based business license is a business license based on the level of business activity risk.¹⁷ Risk-based licensing or RBA changes the concept of *ex-ante* licensing (requirements are met first) with the concept of *ex-post* licensing (verification is carried out afterward). This *ex-post* concept emphasizes the principle of "Trust by verify" which means that the process of issuing business permits will be simplified and issued at the beginning, after which strict supervision will be carried out in the implementation of business activities. This concept can mainly be applied to types of low-risk business activities or business activities that have established standards. After business actors carry out business activities based on standards, the government as the authority will verify compliance with these standards. Verification is also part of the oversight process, one of the most important elements in the implementation of the RBA.

Next, the author will describe the level of business licensing risk which is divided into four levels, namely Low Risk, Low Medium Risk, High Medium Risk, and High Risk.

For businesses with a Low-Risk level, the business licensing process is simply completed through the OSS system without requiring verification or approval from Ministries/Institutions/Local Governments.¹⁸ For business activities with a Low-Risk level, business actors only need a Business Identification Number (NIB). In Article 12 Paragraph (2) of Government Regulation Number 5 of 2021, it is stated that NIB can apply as SNI and also a statement of halal assurance as referred to in the laws and regulations of each field. In the case of low-medium-risk business licensing (or hereinafter referred to as MR), there are similarities with the low-risk licensing method because the two levels are simply completed through the OSS system without requiring

¹⁶ Article 7 Paragraph (1) of Law Number 11 of 2020 concerning Job Creation.

¹⁷ Article 1 Number 3 Government Regulation Number 5 of 2021 concerning Implementation of Risk-Based Business Licensing.

¹⁸ Article 194 Paragraph (1) Government Regulation Number 5 of 2021 reads "In the event that business activities are included in the low Risk level, NIB is automatically issued through the OSS System after the Business Actor has fulfilled the data as referred to in Article 177"

verification or approval from Ministries/Institutions/Local Governments. The types of business licenses used at the MR level are NIB and Standard Certificates.

Medium and high business activities (or hereinafter referred to as MT) are slightly different from MR, which still require verification or approval from the Ministry/Agency/Local Government.

- 1) Standard Certificate issued by the OSS System after the Business Actor makes an independent statement in the OSS System, will fulfill and implement all standards for implementing business activities.
- 2) The NIB and the Standard Certificate as Business Licensing are used as limited business legality only to carry out preparations for starting a business.¹⁹
- 3) Prior to carrying out operational and commercial activities, the Central Government or Local Government according to their respective authorities will verify compliance with the Standards for Implementation of Business Activities. The government can cooperate with third parties that have been accredited by the government.²⁰
- 4) For certain business activities, verification of compliance with the Implementation Standards for business activities can be carried out in line with the operational implementation of business activities.²¹
- 5) Business actors must comply with the standards for implementing business activities during their business activities, and supervision will be carried out in compliance with these standards in order to monitor the level of compliance of business actors.²²

High-Risk business activities require NIB, Permit, and/or Standard Certificate if needed. A permit is business legality in the form of government approval for business actors to carry out operational and commercial business activities.²³ Government approval will be issued after the Business Actor has fulfilled all the requirements for the implementation of the said business activity.

If a business activity with a High-Risk level requires standards for the implementation of business activities that require verification, the Central Government or Regional Government by their respective authorities shall issue a Standard Certificate based on the results of verification of compliance with the standards for implementing business activities. The implementation of verification by the government can cooperate with third parties that have been accredited by the government.²⁴

RBA carries the motto "Sure, Easy, and Fast" in its implementation. The certainty referred to is the requirements and types of permits that have been confirmed and

¹⁹ Article 14 Paragraph (5) Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing.

²⁰ Attachment III of Government Regulation Number 5 of 2021 concerning Implementation of Risk-Based Business Licensing.

²¹ *Ibid.*

²² *Ibid.*

²³ Article 15 Paragraph (2) Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing.

²⁴ Article 15 Paragraph (5) Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing.

registered in the KBLI. Requirements and types of permits have also been included in the OSS system and the Attachment to Government Regulation Number 5 of 2021 so that they can be accessed by business actors. The time for completion of the licensing process is also certain by the type of permit, even for micro and small businesses the certificate will be issued immediately. For types of businesses that require document verification, verification will be carried out as soon as possible by the system. If the time period has passed the SLA (Service Level Agreement), the certificate will be issued.

Another certainty is regarding the location of the business. When a business actor inputs business location data, if it is in accordance with the RDTR/RDRW (Spatial Detailed Plan and Regional Spatial Detail Plan), it will be immediately verified. The utilization of forest areas and marine coastal areas is also certain because spatial maps have been integrated into the OSS data input system. The form of supervision in the RBA is also certain with the existence of regularly scheduled supervision and includes coaching. In contrast to the supervision in the previous licensing system, which was not scheduled and uncertain, this will try to be addressed in the RBA system.

The next motto of the RBA system is "easy". The first convenience that can be felt by business actors is the ease of the application process to the permit issuance process. The OSS 1.1 system has made features with a user-friendly concept so that ordinary users can still operate the application easily. OSS can also be accessed via a web browser or an application on a smartphone device. Business actors will also find it easy to obtain data or information needed for licensing applications because OSS has been integrated with all government agencies. Business actors can also very easily track & trace the verification process and permit issuance process. The next feature that also makes it easier for business actors in the service and customer service/call center which is active for twenty-four hours to serve questions and complaints from business actors.

The last motto carried in the RBA concept is "fast". The speed of the licensing process is one of the main issues as well as the reason for the birth of the RBA concept. With this concept, the licensing process will be faster, especially for licenses with low risk and medium-low risk which will be issued immediately after business actors fill out commitment documents for meeting standards.

Compliance with the substance of Government Regulation Number 5 of 2021 based on the ROCCIPI method.

To evaluate a statutory regulation, we need a method as a guide for writers. The ROCCIPI method was developed by Ann Seidman, Robert B. Seidman, and Nalin Abeyserkere to analyze in more detail a statutory regulation and try to find problems that might arise. ROCCIPI consists of seven elements, namely Rule, Opportunity,

Capacity, Communication, Interest, Process, and Ideology.²⁵ The following is an analysis of the suitability of the substance of Government Regulation Number 5 of 2021 based on the seven elements in the ROCCIPI.

Rule

Risk-Based Business Licensing is regulated in Government Regulation Number 5 of 2021. Article 5 Paragraph (2) of the 1945 Constitution states that:²⁶ *"The President establishes government regulations to carry out the law properly."* The definition of Government Regulation is contained in Article 1 Number 5 of Law Number 12 of 2011 concerning the Establishment of Legislation which reads:²⁷ *"Government Regulation is a statutory regulation stipulated by the President to carry out the law as it should."*

Government Regulation Number 5 of 2011 is the implementing regulation of the Job Creation Act (UUCK) which is intended to simplify business licensing, simplify investment, and also as licensing reform in Indonesia. The payload material is packaged in twelve detailed chapters. A statutory regulation must be formed based on the principles of establishing good statutory regulations, which include: clarity of purpose, appropriate forming institutions or officials, conformity between types, hierarchies, and content material, can be implemented, usability, clarity of formulation, and openness.²⁸

Government Regulation Number 5 of 2021 has detailed various aspects regarding risk-based business licensing. Further rules are also detailed in Annexes I, II, III, and IV. The regulation has also fulfilled the aspects and principles contained in the provisions. The objectives in the regulations have been clearly mapped out, and the existing articles can be clearly understood in one reading. The systematics of writing and the form of this draft regulation are also in accordance with the provisions of Law Number 12 of 2011 concerning the Establishment of Legislation.²⁹

Opportunity & Capacity

Opportunities can be seen from the aspect of whether the surrounding circumstances encourage business actors to act in accordance with legal provisions or vice versa, the surrounding circumstances encourage business actors to act in accordance with legal provisions. As is known, the OSS RBA concept was built to provide convenience to business actors with the motto "Sure, Easy, and Fast." This departs from the anxiety of business actors who complain that the licensing process is not yet practical,

²⁵ Gede Marhaendra, *Metodelogi dan Bahasa Perundang-Undangan*, Denpasar: Bimbingan Teknis Penyusunan Peraturan Daerah, 2016, p. 9.

²⁶ Look up Article 5 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

²⁷ Look up Article 1 Number 5 of Law Number 12 of 2011 concerning the Establishment of Legislation.

²⁸ Article 5 of Law Number 12 of 2011 concerning the Establishment of Legislation.

²⁹ Attachment II of Law Number 12 of 2011 concerning the Establishment of Legislation.

uncertain, and tends to be slow to handle. With this in mind, regulations are indeed designed to answer the needs of business actors, this factor is what motivates business actors to act in accordance with legal provisions because it will bring benefits to business actors. If the business actor chooses to act inconsistently with the legal provisions, the business actor will not be able to feel the convenience designed in the RBA. In this case, the opportunity aspect that the regulations will be complied with and implemented by business actors is fulfilled.

One of the principles of regulation is that it can be implemented (*Het Beginsel van Uitvoerbaarheid*). Therefore, for the regulation to be implemented, it is necessary to consider aspects of the ability of the party who will implement the regulation, both in terms of the availability of human resources, time availability, as well as the availability of facilities and infrastructure. This is closely related to the aspect of capacity.

In this case, the government has carried out many internal training activities and technical guidance for each institution and apparatus, both online and face-to-face. This activity was carried out by the government to carefully prepare for the implementation of the RBA regulation which was launched last August 2021. With a sufficient quantity of human resources and already equipped with training, it is hoped that the implementation of RBA will be executed properly. The role of the apparatus is very important because it will run the OSS system, provide public services, and also supervise the licensing process and the reality on the ground.

Communication

Like a regulation that has just come into effect, Government Regulation Number 5 of 2021 must also disseminate information to the community and stakeholders, moreover, this regulation carries the concept of new licensing in Indonesia. Socialization needs to be carried out for the community and stakeholders to provide an in-depth understanding of the concept of risk-based licensing. In addition to in-depth understanding, socialization can also take the form of technical guidance and training aimed at business actors, as well as apparatus operating the OSS system. In essence, socialization is mandatory for both internal government parties and external parties (general public).

Socialization also needs to be given to fulfill the principle of legal certainty which is one of the main essences of the birth of this regulation. One of the reasons for the establishment of the RBA is that many licensing regulations are not harmonious, making business actors and investors uncertain about the licenses being applied for.

Based on the results of the author's search, socialization and technical guidance for OSS RBA have been carried out in the central and regional areas throughout Indonesia, both offline and online. One of the socialization that was carried out offline was located

in Ambon, Maluku. The Maluku Province One-Stop Integrated Service Investment Service (DPM-PTSP) together with the Governor's Team for the Acceleration of Development (TGPP) and the Indonesian Young Entrepreneurs Association (HIPMI) held socialization of the OSS system at the Natsepa Hotel Ambon. The outline of the agenda carried out in the series of socializations was training on registration of OSS access rights, technical guidance on making Investment Activity Reports (LKPM), making NIBs, and providing important information for business actors about ISO, halal labels, and product certification.

Apart from offline meetings, socialization was also carried out online to reach more participants. Online socialization was carried out through the media zoom meetings. Socialization and technical guidance were held by the BKPM Education and Training Center which was attended by business actors as well as representatives of district/city governments throughout Indonesia. In addition to being held through a zoom meeting, the results of the meeting are also broadcast through the BKPM Pusdkilat YouTube account so that it can be accessed and watched by the general public.

The government in particular has also established a YouTube account for OSS Indonesia which periodically provides informative and educative videos for the entire community. OSS Indonesia's youtube account was created on August 1, 2021, and so far has uploaded forty-two videos in it. The total impressions obtained from this OSS Indonesia youtube account have reached 232,592 (two hundred and thirty-two thousand five hundred and ninety-two) impressions.

The BKPM Ministry also conducts socialization and guidance to students (students), in this case, researchers participate in activities organized by the BKPM Ministry in December 2021. In this activity, students have explained the new concept of RBA in Indonesia. Students are given education and tutorials using the OSS application and operating the OSS website. In this activity, participants had the opportunity to simulate risk-based licensing registration, starting from requesting access rights, filling in business actor data, and filling in business details, to the final stage of verification and printing of NIB. Participants were also given the training to classify business scales and map the KBLI code to find out the requirements of each proposed business field.

Interests

This component analyzes more deeply the interest of the parties to implement Government Regulation Number 5 of 2021. In this case, both the government and business actors both have different interests, motives, and interests. From the government's perspective, of course, the goal to be achieved is the implementation of effective regulations. With the implementation of effective regulations, these regulations and licensing reforms have proven to be legal products that bear fruit for the people and

the Indonesian economy. As is well known, the purpose of establishing the RBA concept is to reform licensing in Indonesia, create jobs, empower MSMEs and also realize Indonesia as a country with an "investment-friendly" identity. In this case, the government will seek the maximum implementation of the RBA so that the expected goals can be realized.

For business actors, the motive for implementing this regulation is for business interests. Business actors so far have had to take a long time to take permits and a long process and create uncertainty regarding the licenses being applied for. Uncertainty regarding the status of the proposed permit makes many business actors object because the business that should have been running has been delayed due to these obstacles. On the other hand, the complicated licensing climate makes many investors from abroad not interested in entering their funds into Indonesia, this causes the absence of economic turnover on a large scale. With the RBA regulation in Government Regulation Number 5 of 2021, business actors will get convenience and also legal certainty regarding the mechanism for obtaining permits, verification, and the status of the permits they submit.

Process

The process of implementing regulations is closely related to the RBA mechanism regulated by the government. If the RBA mechanism has been properly regulated, this becomes one of the important components for business actors to be able to implement regulations. The mechanism for implementing the RBA is regulated in the Attachment to Government Regulation Number 5 of 2021, namely as follows:

1. Attachment I describes the KBLI Code, KBLI title, scope of activities, risk parameters, risk level, business licensing, time period, validity period, and business licensing authority.³⁰
2. Attachment II outlines the requirements and/or obligations of risk-based business licensing in each sector.³¹
3. Attachment III outlines risk-based business licensing guidelines.³²
4. Attachment IV describes the preparation of business activity standards and/or product standards.³³

The process of implementing regulations is also closely related to the division of tasks and coordination of each institution. The issuance of permits is attempted by the OSS Institution, the OSS Institution on behalf of the minister or head of the institution, the head of the provincial DPMPSTP on behalf of the governor, the head of the

³⁰ Article 6 Paragraph (4) Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing.

³¹ Article 6 Paragraph (5) Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing.

³² Article 6 Paragraph (6) Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing.

³³ Article 6 Paragraph (9) Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing.

regency/city DPMPTSP on behalf of the regent/mayor, KEK administrator, and the head of the KPBPB Concession Agency.³⁴ The minister/head of institution, governor, regent/mayor, KEK Administrator, and/or head of the KPBPB Concession Board in accordance with their respective authorities shall examine the requirements for business licensing in accordance with the time period, and also grant business permits in accordance with the validity period as attached. in Appendix I.³⁵ Further, regarding the division of duties and authorities of each institution, it is regulated in the Regulation of the Investment Coordinating Board Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities.

The authority of the Central Government covers the implementation of cross-provincial investment, investment with non-renewable natural resources, foreign investment, investment related to the inter-regional liaison function, investment related to national defense and security strategies, and in the field of national scale industry.³⁶ The authority of the Provincial Government includes investment in activities across districts/cities within one province, an investment that is authorized by the Central Government, an investment that is under the authority of the Provincial Government based on statutory regulations, and large industrial sectors.³⁷

The authority of the district/city government covers investment within the scope of the district/city, the sector assigned to the district/city government, and the industry classified as medium-sized industry and small industry located in the district/city.³⁸ The authority of the KEK administrator and the head of the KPBPB exploitation agency includes the authority of the district/city government as referred to in Paragraph (4) and is carried out based on the delegation/delegation of authority from the Central Government/Local Government and taking into account the laws and regulations related to KEK and KPBPB.³⁹ The issuance of NIB is under the authority of the OSS Institution, while standard certificates, permits, and permits trying to support business activities are issued according to the authority of each institution.⁴⁰

As of the end of January 2022 (four months since the RBA was ratified), the Ministry of Investment has issued 733,957 (seven hundred thirty-three thousand nine hundred and fifty-seven) NIB. 92% of the issued NIB is for micro-enterprises, 4% for

³⁴ Article 22 Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing.

³⁵ Article 23 Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing.

³⁶ Article 10 Paragraph (2) Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities.

³⁷ Article 10 Paragraph (3) Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities.

³⁸ Article 10 Paragraph (4) Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities.

³⁹ Article 10 Paragraph (5) Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities.

⁴⁰ Article 10 Paragraph (7) Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities.

small businesses, 1.18% for large enterprises, and 0.87% for medium enterprises. The issued NIB is used to run 1,757,000 (one million seven hundred and fifty-seven thousand) projects throughout Indonesia.⁴¹ Investment income in Indonesia in 2021 will reach 901 trillion, an increase of 9% from 2020. In 2020, investment realization only increased by 2.1% to Rp. 826.3 trillion. The Head of the Investment Coordinating Board, Bahlil Lahadalia, noted that the realization of investment in 2021 even exceeded the target given by the President, which was Rp. 900 trillion.⁴²

Apart from the many achievements of the RBA OSS, there are still many things that must be improved by the government. Based on the results of the researcher's search, the lack of the OSS system is still a lot of complaints by the public regarding various aspects. Public criticism was conveyed through various media such as Instagram, Twitter, call center, and also WhatsApp. According to public complaints, the OSS contact center does not provide a good two-way communication and tends not to respond to questions and complaints even after days or even weeks. Several parties stated that they have tried to contact OSS from various media but still no reply for months.

With a very slow response, the public was forced to spam the comments column of various OSS social media to get a response, from these comments not all of them received a response from related parties. People also think that online services are not optimal and suggest that face-to-face services can be an option to solve problems. Whereas on the other hand, one of the purposes of establishing OSS RBA as an online licensing is to simplify the licensing process, so that business actors do not need to come to the local office in the hope of saving time and costs.

In addition to obstacles in terms of communication and service, business actors also complained about the OSS system constraints that hindered the licensing process. Several business actors complained about OSS pages that suddenly crashed or could not be accessed, access rights constraints, NIBs that could not be printed, and various other system problems. The three screenshots that the researcher has included are the results of criticism and input from business actors which were published throughout February 2022. Approaching five months of the implementation of the OSS RBA in Indonesia, the government should improve itself by making many system improvements. In addition to improving the system, the government also needs to improve the quality of services and two-way communication with business actors. OSS RBA is here to simplify the

⁴¹ CNN Indonesia, "733.957 Nomor Induk Berusaha Terbit Hingga 31 Januari 2022", <https://www.cnnindonesia.com/ekonomi/20220131191109-92-753535/733957-nomor-induk-berusaha-terbit-hingga-31-januari-2022>. Accessed on February 14, 2022.

⁴² Dany Saputra, "Menteri Bahlil Semringah, Realisasi Investasi 2021 Lampau Target Jokowi", <https://ekonomi.bisnis.com/read/20220127/9/1494051/menteri-bahlil-semringah-realisasi-investasi-2021-lampau-target-jokowi#:~:text=BKPM%20mencatat%20realisasi%20investasi%20pada,diberikan%20oleh%20Presiden%20Joko%20Widodo>. Accessed on February 14, 2022.

licensing bureaucracy in Indonesia, don't let these unresolved obstacles make this goal even more difficult to achieve.

Ideology

According to Gustav Radbruch, justice, legal certainty, and expediency are three legal identities. The establishment of Government Regulation Number 5 of 2021 is a form of government realizing legal certainty in the licensing sector as well as a means of licensing reform in Indonesia.⁴³ RBA is here to provide legal certainty, convenience, and benefits for business actors. The RBA is designed to ease licensing bureaucracy and facilitate investment.

The birth of the RBA certainly fulfills the five licensing functions, in this case, the function that we want to pursue in greater depth is the function of budgetary and regularity. As a regular function, RBA is present as an instrument for regulating community actions and behavior. Licensing requires a special legal umbrella as a guide and also legal certainty for the community, especially business actors. The RBA provides definite rules and limitations regarding the licensing mechanism.

To support the budgetary function, the RBA is a legal instrument that can move the wheels of the economy by designing regulations that make it easier for business actors and investors. Investors who are both foreign and domestic will of course have a good impact on the number of jobs and the unemployment rate in Indonesia. In addition, with the number of MSMEs operating, the income and productivity of the community will increase rapidly.

CLOSING REMARKS

Conclusions

Licensing in Indonesia is still experiencing many obstacles in it. The concept of PTSP which was born in 2015 and OSS which was born in 2018 still has not brought many significant positive impacts. Some of the weaknesses in licensing in Indonesia are the complexity of licensing in starting a business, rigid land acquisition, and difficulty in getting access to finance. The most common complaints expressed by business actors are the lengthy and uncertain licensing process, as well as the many types of permits that must be taken. All of these obstacles have brought Indonesia's position to be unfavorable in the world of international investment. Compared to other countries, Indonesia has a fairly complicated licensing climate, so foreign investors prefer other countries as their investment destinations.

⁴³ O. Notohamidjojo, *Soal-Soal pokok Filsafat Hukum, Loc.Cit.*

The birth of the concept of Risk-Based Approach or RBA is one of the government's steps to carry out licensing reform in Indonesia. RBA carries a risk-based concept that replaces the licensed-based concept. The RBA changes the concept of ex-ante licensing (requirements are met first) with the concept of ex-post licensing (verification is carried out afterward). This ex-post concept emphasizes the principle of "Trust by verify" which means that the process of issuing business permits will be simplified and issued at the beginning, after which strict supervision will be carried out in the implementation of business activities. This concept can mainly be applied to types of low-risk business activities or business activities that have established standards. After business actors carry out business activities based on standards, the government as the authority will verify compliance with these standards.

RBA classifies businesses based on their level of risk, namely low, medium, high, and high risk. This is a new thing in the Indonesian licensing system, therefore the government has detailed all of its aspects as outlined in Government Regulation Number 5 of 2021 along with Attachments (I-IV), and is also included on the guide page of the OSS Indonesia website.

After approximately five months in Indonesia, the Ministry of Investment has issued 733,957 (seven hundred thirty-three thousand nine hundred and fifty-seven NIB). The issued NIB is used to run 1,757,000 (one million seven hundred and fifty-seven thousand) projects throughout Indonesia. Investment income in Indonesia in 2021 reached 901 trillion, an increase of 9% from 2020. The Head of the Investment Coordinating Board, Bahlil Lahadalia noted that the realization of investment in 2021 even exceeded the target given by the President of Rp. 900 trillion.

But on the other hand, there are still many obstacles experienced in the implementation of the RBA, including the system that is not yet fully ready. As is known, RBA is still using the previous OSS system, which was later updated to OSS 1.1. This OSS RBA system update is equipped with additional features and simplifications to make it easier for users to operate. In practice, there are still many system errors that occur such as NIB that won't be published, OSS RBA page that automatically crashes, logging errors, verification page that can't be opened, and difficult data migration.

The public also complains a lot about the quality of communication and public services which they feel are still unresponsive. It can be seen in various OSS RBA social media, business actors have complained about various things ranging from an inactive contact center, chat and telephone calls that are not being responded to, and also customer service answers that are not helpful in solving problems. With this in mind, some parties regret that the "online" licensing system created by the government has made the public service process worse. This is compared to the face-to-face licensing

system that used to run, if there are complaints, the public can go to the nearest branch office and get a satisfactory answer.

Based on this, according to the author, the birth of the RBA is a bold step from the government that deserves appreciation. The presence of the RBA brings a new color and a big impact on the concept of licensing in Indonesia. There are many things that can be appreciated in its implementation, starting from the number of NIBs issued, and the increasing realization of state investment. In addition, the permit issuance process is very short, especially for licenses with low and medium risks. There are several points that need to be an important concern for the government, the first is to carry out thorough socialization of all business actors in Indonesia. This regulation was made with a big purpose, therefore it is very unfortunate if there are still many regions or remote areas that have not been given socialization about the concept and implementation of the RBA. This ease of licensing must be felt by all levels of society and business actors so that the principle of benefit and legal certainty can be fully realized.

The government must also be committed to continuing to improve the OSS system so that there are no more obstacles in terms of access, data, data migration, verification, and the process of issuing permits. System errors and errors must be minimized as best as possible so that the online system designed by the government can truly be enjoyed the benefits and conveniences. The quality of public services and the availability of human resources also need to be considered. Many people still complain that the contact center is not responsive, causing delays in the permit application process. This needs to be used as a lesson in the future for the government, to be alert in all media and prepared to provide the best service. In the end, according to the author, a big change requires a lot of effort. If the government wants this policy to become a policy with a large and positive impact, it also requires a very maximum effort to make it happen.

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