

IMPLEMENTATION OF BUSINESS LICENSE SERVICES BEFORE AND AFTER THE JOB CREATION LAW

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Abstrack

Indonesia as a nation upholds the idea of a welfare state, in which the state is thought to be crucial in guaranteeing the well-being of each and every individual. Prioritizing licensing services is crucial because of their implementation's setup of legal indicators and simplicity. Business actor licensing is crucial to the operation of the company. The passage of Law Number 11 of 2020 concerning Job Creation seeks to lower the complexity of licensing, which has been identified as one of the primary barriers to investment, boost investment, expand employment possibilities, and improve workforce capacities. There are several different types of licensing, such as certification, quota determination, registration of recommendations, and permissions. This methodology for research makes use of. Cette méthode de recherche utilise la recherche en bibliothèque. The licensing mechanisms in Indonesia before and after the Job Creation Law were very different, so it is hoped that after the law passes, entrepreneurs in Indonesia and abroad will be more motivated to invest and do business.

Keywords: *Licensing, Company, Regulations, Official.*

INTRODUCTION

As a country, Indonesia adheres to the concept of a welfare state, where the government plays an important role in ensuring the welfare of all its citizens. In the legal perspective of National Public Administration (HAN), the government has the role and responsibility to carry out coordination and control activities to improve quality and ensure the provision of business licensing services in accordance with good general principles. Governance. To realize a welfare state or the ideals of a welfare state, quality and guaranteed public services must be provided. (susetiyo and Iftitah).

The basic concept of permission is in the form of granting authority which has similarities such as exceptions, authorization, leniency, etc., which aims to regulate all activities or behavior of individuals or groups that are preventive in nature. Utrecht explains the meaning of recognition (Vergunning) as follows: This occurs when the authorized institution does not expressly prohibit an activity, but permits it as long as it is carried out in a certain way. An action permitted by a state government is a permit. (vergunning).

Permission (vergunning) is an agreement from the authorities based on law or government regulations to, under certain circumstances, deviate from the prohibitive provisions of statutory regulations. Apart from that, permission can also be interpreted as a dispensation or release from a prohibition.

Policies in the form of permits must describe a policy that is in accordance with the life and comfort of the entire community, as a form of policy of course permits must not conflict with statutory regulations and norms of life that exist in society both vertically and horizontally, so that the state's goals are in concept welfare state as stated in the fourth paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia can be realized.

Licensing services are important to prioritize because firstly, the provision of licensing services by the government has a clear legal basis for implementation and has a configuration of legal indicators and straightforwardness. Second, to improve the professional work of state officials and other civil servants, various soft legal tools such as codes of ethics and other regulations are available. These two tools have not yet functioned at the level of strengthening the role of the state and are less oriented towards creating improvements and accountability for officials in licensing services. (Wardani)

The authorities give authority to carry out certain acts or actions which are essentially prohibited by issuing permits based on statutory regulations, and if the authorities take into account the public interest, permit certain actions which are actually prohibited and require supervision. The definition of licensing is an example of the application of regulatory and administrative functions carried out by the state for activities carried out by the community. Licensing can take various forms, including registration, certification recommendations, quota determination, and business permits. It usually must be owned or acquired by a business organization or individual before that person can undertake any activity or action. There are differences in the new law, namely The Job Creation Law.

RESEARCH METHODS

The type of research used in this research is normative legal research. This type of research involves primary legal sources in the form of laws on all regulations, then legal journals resulting from previous research, and tertiary legal sources, namely secondary legal sources in the form of legal dictionaries. Prescriptive legal research is used because it is secondary data which consists of used. And an encyclopedia. Normative legal research based on Soerjono Soekant and Sri Mamuji stated that the research was based on library legal research. The method or technique for collecting legal research materials used for research is "library study or library research" (Soekanto dan Mamuji). The method used is library research or interest research and secondary legal data or materials used in the research,

namely published articles/journals, books, websites/news, reports related to the research are obtained by obtaining them. The data analysis method used by the author is qualitative descriptive analysis.

RESULT AND DISCUSSION

ELEMENTS OF LICENSING

Licenses are granted by the government based on applicable regulations that establish specific procedures and requirements applicable to a particular event. Based on this description, there are several factors:

1. Legal instruments

Based on the modern legal situation, the Government's duties and authority are not only to ensure the maintenance of security and order (order based on order), but also to improve order. Welfare of Community Life (Bestuurzorg). To carry out its mission, the government is given the power to regulate in the form of decisions, from which several legal acts arise, and its function is to provide action to deal with real and individual events.

The state has the task of creating prosperity and maintaining security and order. To carry out this task, the state is given regulatory powers and requires legal means in the form of regulations to handle certain events. Regulations create new rights that society did not originally have and introduce new rights that were not originally prohibited. Therefore, permits are used by governments to handle and regulate certain events, and can also be described as legal instruments.

2. Laws and regulations

One of the principles of a legal state is government based on the rule of law, or *Wet Machi Guide van Bester*. In other words, every legal action taken by the government, whether in carrying out its regulatory or service functions, must be based on the authority granted by the applicable legal provisions. The government's power to issue permits is a discretionary power, meaning that the government is given the authority to consider, on its own initiative, matters - Examples of licensing matters :

- a. Permit conditions are given to the applicant.
- b. The legal consequences that arise as a result of granting or rejecting a permit application are related to applicable legal and regulatory restrictions.

- c. Procedures that must be followed or prepared during, after, and at the time of issuing a permit, regardless of whether the recipient or permit giver rejects the permit.

3. Government organs

Government agencies are institutions that carry out government functions at the central and regional levels. According to Mr. Shakran Basah, various aspects of government administrative regulations in carrying out the task of issuing permits can be seen starting from the country's highest executive institution, namely the President, and ending with the lowest executive institution. Village head. The issuance of permits can be said to have different forms of state control, both based on positions at the central and regional levels. Due to the large number of authorities issuing permits, especially central and regional government agencies, permit applicants often have difficulty obtaining the permits requested.

This often takes a long time and is certainly detrimental to the permit applicant. Therefore, its implementation requires debureaucratization and deregulation to certain limits. These specific limitations are:

- a. De-bureaucratization and deregulation do not eliminate the essence of the licensing system.
- b. Deregulation only impacts technical, administrative and financial issues.
- c. Deregulation and debureaucratization do not eliminate the principles of legal regulation that underlie licensing.
- d. Deregulation and debureaucratization require consideration of general principles of good governance.

4. Procedures and Requirements

Applying for a permit requires certain procedures set by the government. In addition, permit applicants must fulfill certain requirements required by the permit issuing government. Established procedures and requirements usually vary depending on the type of permit and licensing authority. There are generally four forms of local government permits:

- a. An exception is a state administrative decision that excludes a law from the enactment of a regulation that denies that law.

- b. A license is a special and special permit that gives permission to run a business. A license can also be used by someone to run a business.
- c. A concession is a permit related to a business or public interest, which is actually the responsibility of the government, but the authority to administer it is given to the concession holder (permit giver) or to a non-government official.
- d. Licensing is one of the tools used by the government in state administrative law. The government uses permits as a tool to control the population.

Licensing in State Administration Law

Types of Licensing There are several terms used in discussing state administrative law:

1. License means a permit that gives the right to run a business. A license is used to state a person's permission to run a business with a special license or permit.
2. Dispensation means a national administrative decision that excludes a law from the regulatory authority to reject the law. WF Prince said that a disposition is a government action that results in overriding a legal regulation regarding a particular issue.
3. Concessions, namely permits for large construction work involving the public interest and the work is actually the responsibility of the government, are concessions whose implementation rights lie with the concession holder (permit holder) who is not a government employee, this will be done.

Types of Permits According to H.R, Mr Ridwan divided these permits into three types of permits (vergunning):

1. License is actual permission (deiegenlyke). The reason for this decision to apply to licensing is because the matters covered by licensing are subject to government supervision and are subject to mandatory control.
2. A dispensation is an exception to a statutory provision, unless the statutory regulations generally provide for such an exception.
3. The concession here is that the government wants to encourage the presence of companies in the sugar or fertilizer industry to customers by giving them mandatory powers.

The permission format is:

1. **Written Power of Attorney** Written power of attorney is a form of power of attorney granted by the government from an authorized official on the basis of a request for power of attorney and is also a written power of attorney signed by the government. Parties authorized by this institution.
2. **Oral.** Forms of verbal consent can be found in public consultations. The verbal form of authorization is usually only used by an organization to carry out its activities and report its activities to the competent authorities. This form of verbal authorization is for reporting purposes only.

Licensing is a state decision, and the types and number of permits are varied and scattered. Below is an overview of the number of permits issued by district/city governments: Site permits, land use permits, business permits, greening business permits, restaurant business permits, accommodation business permits, entertainment business permits, permits for installing signboards/signs.

Mechanism Before and After the Job Creation Law

Licensing is a form of implementing the government's regulatory function and acts as a control over community activities. Licensing for business actors has an important role in the running of the business. Business actors who have a business permit will get the legality to start and run their business activities smoothly. As explained in article 2 of Presidential Decree Number 98 of 2014 concerning Micro and Small Licensing, licensing for Micro and Small Enterprises (UMK) is intended to provide protection, legal certainty, assistance, easy access to financing through banks and non-banks, as well as to obtain facilities in empowerment from the government, regional regulations, and/or other institutions. (Wibowo).

Ratification of Law Number 11 of 2020 concerning Job Creation (Job Creation Law). Created with an omnibus approach to make significant changes to a number of laws, including Law Number 23 of 2014 concerning Regional Government concerning Government Administration. The implementation of the Job Creation Law aims to increase investment, expand job opportunities and improve workforce skills, as well as reduce the complexity of licensing which is considered one of the main obstacles to investment. Yes (Dzulfaroh 2020). One of the licensing improvements following the enactment of the Job Creation Law is the simplification of risk-based business permits. This means that the legality

given to economic actors when starting or carrying out business activities is based on the level of defects or losses that occur based on the risk and the consequences of that risk. (Kasturi and Ayunda).

Its introduction marks a major change in the business licensing system, which was previously dominated by local governments. However, business licensing matters will now be managed directly by the ministry with the introduction of Online Single Submission (OSS), a system created by the government to make it easier for people who want to register. We hope to be able to obtain business permits and increase domestic and foreign investment more smoothly, as well as integrate all licensing services and standardize licensing bureaucracy at the central and regional levels, so that business licensing becomes simple and fast. And it is integrated, although the regional and central licensing systems are expected to be integrated, but in reality all business licensing authority will be transferred to the central government. Following the enactment of the Job Creation Law and significant adjustments to the licensing system, the Constitutional Court issued a judicial review decision on the request for formal review of the Job Creation Law and declared the Job Creation Law conditionally unconstitutional. The publication of this decision will provide advantages and disadvantages for the local community, especially for investors and business owners, because it will have a negative impact on the Indonesian state when investing in Indonesia due to business permit problems. This does not only happen between capital and business owners, but also between local governments.

That PP no. 5 of 2021 requires all business actors to fulfill certain requirements if business actors wish to start and carry out business activities for various business sectors in Indonesia, namely: 1) Basic requirements for business permits, which include suitability of space utilization, environmental approval, building approval, and certificate of functional worthiness and;/or 2) Risk-based business licensing requirements. (Nasution)

According to the Government, there are at least 3 (three) benefits from implementing the Omnibus Law: 1) Eliminate overlap between laws and regulations; 2) Efficiency of the process of changing or revoking statutory regulations; 3) Eliminate sectoral egos contained in various laws and regulations.

In the Job Creation Law there are 11 policy clusters, namely; 1) Simplification of Licensing, 2) Investment Requirements, 3) Employment, 4) Ease of empowering and protecting MSMEs, 5) Ease of Doing Business, 6) Support for research and innovation, 7)

Government Administration, 8) Imposition of sanctions, 9) Land acquisition , 10) government investments and projects, and 11) Economic Zones. (Suryokumoro and Ula)

In general, permits are made through a process and within a certain time period. In order for a permit to be issued, it begins with the submission of an application by an interested party, accompanied by the fulfillment of the specified conditions and then processing by considering these conditions until the requested permit is then issued. A permit is something important to have because it will make it easier to carry out legal relations, both with the government and with other parties.

Below we present a table containing a comparison of business licensing mechanisms before and after the Job Creation Law was passed by the government of the Republic of Indonesia.

1. Figures and Tables

No	Comparison of Business Licensing Mechanisms	
	Before the Ciptaker Law was passed	After the Ciptaker Law was passed
1	Permission-based Licensing Approach	Risk-based licensing approach
2	Licensing is spread across multiple portals and is not coordinated	Licensing is carried out solely through the OSS system as a portal consisting of information subsystems.
3	Overlapping and interlocking regulations, such as location permits and environmental permits which require each other up front	Licensing subsystem and supervision subsystem simplifying regulations governing investment from 76 laws to 1 Job Creation Law
4	Investment requirements in several different business fields, with integrated investment (requirements follow the lowest)	Standard investment requirements refer to the investment law
5	There is no certainty about the availability of land for investment activities	Land use confirmation is based on zoning from RDTR and RTRW integrated in the OSS system

6	The length of the licensing process for investment activities located in industrial estates, KEK, and KPBPB	Business licensing within Industrial estates, KEK, and KPBPB, can be done within 2 hours
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In the table it is clear that licensing before the passing of the Job Creation Law was very complicated and made entrepreneurs in Indonesia and abroad reluctant to invest in Indonesia. Another case when the Job Creation Law has been passed, the licensing mechanism in Indonesia is very easy, so it is beneficial for Indonesia because many entrepreneurs from within and outside the country invest a lot in business services in Indonesia.

CONCLUSION

The mechanism before and after the enactment of the Job Creation Law explains that the issuance of business licenses is a form of implementing government regulatory functions and managing community activities. Licenses for entrepreneurs who have an important role in running their business. This is one of the requirements for business legalization. This decision, in turn, has both advantages and disadvantages for local communities, particularly entrepreneurs and other stakeholders involved in the implementation of concessions. It was explained that the business license structure would make people better understand the importance of legalizing business licenses.

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