

Legal Certainty of Business Licensing Integrated Electronically in Investment Licensing



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ABSTRACT: To drive the national economy, investment is one of the factors that continues to be developed by the Indonesian Government. Various efforts have been made by the Government to encourage both domestic and foreign investors to invest in Indonesia. One of these efforts is to build a new electronic-based licensing system. Based on PP Number 24 of 2018 concerning Electronically Integrated Business Licensing Services or often referred to as OSS, licensing services are becoming easier. Through the OSS system, licensing for business and investment is increasingly simplified. Through the OSS system, it is hoped that legal certainty for investing and doing business in Indonesia will be realized with certainty of requirements, certainty of time periods, certainty of costs incurred and certainty of licensing procedures. It is certain that these permits must be able to provide comfort for business actors, avoiding overlapping permits, abuse of authority or corruption from licensing holders. Business and investment permits must provide certainty of fulfillment of predetermined procedures and requirements so as to avoid disputes and lawsuits in court. With the issuance of Law Number 11 of 2020 concerning Job Creation (UUCK), it has further strengthened OSS as a business and investment licensing service system while realizing legal certainty and legal protection for investors in Indonesia.

KEYWORDS: OSS, Investment Licensing, Legal Certainty

I. INTRODUCTION

Investment is expected to be able to open up opportunities for increased employment opportunities which will result in increased income so that people's welfare will increase. Investment activities carried out by domestic business actors (PMDN) and foreign business actors (PMA) have an important role in creating economic growth and also moving real sectors of the economy at the national and regional levels. Investment realization can be increased in quantity and quality, one of which is by means of business actors understanding policies related to investment. Business actors' understanding of investment policies is very important so that business actors can obtain rights and carry out their obligations in accordance with applicable provisions or regulations. Law Number 25 of 2007 concerning Capital Investment (UUPM) has provided regulations for investment in Indonesia.

In practice, the implementation of capital investment in Indonesia experiences many obstacles. According to the Investment Coordinating Board (BKPM), there are at least 5 (five) obstacles that investors often face when investing in Indonesia which makes foreign investment interest in Indonesia decline. The five obstacles are: (1) complicated regulations; (2) difficult land acquisition; (3) uneven public infrastructure; (4) taxes and other non-fiscal incentives that do not support investment; and (5) insufficient skilled workforce. [1]

One of the obstacles to investing in Indonesia is regulatory issues. Complicated licensing issues are the main problem with direct investment programs experienced by investors in Indonesia. It is suspected that the complicated domestic licensing mechanism makes foreign investors think twice about carrying out business activities in Indonesia.

The strategic step taken by the Government to fix business licensing problems in Indonesia is by issuing Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services (hereinafter referred to as PP No. 24 of 2018), then improving its implementation with Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing (hereinafter referred to as PP No. 5 of 2021). Article 1 number 21 defines Online Single Submission (OSS) as an integrated electronic system managed and organized by the OSS Institution to carry out Risk-Based Business Licensing. The OSS institution is a government institution that is engaged in carrying out government affairs in the field of investment coordination. Business permits issued by ministries/institutions and regional governments based on these regulations are used to initiate, carry out and develop business activities and are not otherwise an obstacle to the development of business activities. In this case, the implementation of OSS is expected to provide benefits for business actors in the licensing process and in running their business.

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With the implementation of OSS, there will be a significant increase in investment in Indonesia. OSS is also expected to provide legal certainty for investing and doing business in Indonesia.

Based on the background of the problem, the problem can be formulated, namely whether OSS will guarantee legal certainty for investors who invest their capital in Indonesia?

II. RESEARCH METHODS

The research used in this writing is a normative legal research type. Normative legal research is legal research that places law as a building system of norms. The norm system that is built is about the principles of norms and rules, from statutory regulations, court decisions, agreements, and doctrines (teachings). The problem approach used in this research is the conceptual approach. The conceptual approach is intended to analyze legal materials so that the meaning contained in legal terms can be known. This is done as an effort to obtain new meanings contained in the terms studied, or to test these legal terms in theory and legislative approaches or statute approaches. [2]

III. RESULTS AND DISCUSSION

According to Hans Kelsen, law is a system of norms. Norms are statements that emphasize the "should" or *das sollen* aspect by including several rules about what must be done. Norms are the product of deliberative human action. Laws containing general rules serve as guidelines for individuals to behave in society, both in relationships with fellow individuals and in relationships with society. These rules become limits for society in burdening or taking action against individuals. The existence of these regulations and the implementation of these regulations create legal certainty. [3]

Investment comes from the word invest which means to plant or invest money or capital. The term investment or capital investment is a term that is known in daily business activities as well as in statutory language. In general, investment can be interpreted as an activity carried out by both natural persons and legal entities in an effort to increase and/or maintain the value of their capital, whether in the form of cash or equipment.), immovable assets, intellectual property rights, or expertise. Meanwhile, in Article 1 paragraph (1) of Law Number 25 of 2007 concerning Capital Investment (UU-PM) it is stated that investment is defined as all forms of domestic investment activities or foreign investment to carry out business in the territory of the Republic of Indonesia. [4]

Licensing is termed license, permit (English); *vergunning* (Dutch). Permits are only the government's authority and monopoly. There is no other institution outside the government that can grant permits and this is related to the principle of state power over all natural resources in the interests of the lives of many people. In addition, the function of permission is repressive. Permits can function as an instrument to overcome environmental problems caused by human activities that are inherent in the basis of permits. This means that a business that obtains a permit for environmental management is burdened with the obligation to overcome pollution or environmental damage arising from its business activities. [5]

Licensing is the granting of legality to a person or business actor or certain activities, either in the form of a permit or business registration certificate. Permit is one of the instruments most widely used in administrative law, to control the behavior of citizens. Apart from that, permission can also be interpreted as a dispensation or release or release from a prohibition. Licensing is a form of implementing regulatory and controlling functions that the government has over activities carried out by the community. Licensing can take the form of registration, recommendation, certification, quota determination and permission to carry out a business which usually must be owned by a person or person before the person concerned can carry out an activity or action. [6] It can be said that the basic concept of licensing is preventive, that is, it aims to control every activity or behavior of individuals or legal entities by issuing permits by the government.

Permits are used as a tool by the authorities, in this case the government, to influence the public to follow the recommended method in order to achieve a desired goal. As a tool, permits function to direct actions or deeds, engineer and design a just and prosperous society, apart from that permits can be used as a function to bring order to society. Licensing is something that absolutely must be done by every business actor, the objectives of the licensing system are: 1) There is legal certainty; 2) Protection of public interests; 3) Prevention of environmental damage or pollution; 4) Equal distribution of certain goods; 5) The desire to control certain activities; and 6) Direction, by selecting certain people and activities. [7]

Development in the economic sector has only one goal, namely achieving a prosperous national life. The welfare of the nation can not only be measured by the high level of community income and state income, but also measured by the equitable distribution of economic development results for the entire community in a fair manner. One of the government's efforts in economic development is to prepare good legal instruments in the form of licensing sector regulations. Licensing is a government policy instrument for implementing negative externalities that may arise from social and economic activities. A permit is also an instrument to provide legal certainty regarding ownership or implementation of activities.

Indonesia's investment figures are still low compared to ASEAN and Southeast Asian countries, causing the government of the Republic of Indonesia to strive to create a good climate for investment and competitiveness. President Joko Widodo as the highest head of government forced regional governments to immediately implement integrated business licensing electronically or

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online single submission (OSS). [8] These efforts are carried out through seven steps to encourage domestic economic development including: 1. providing tax holidays; 2. improving business licensing through Online Single Submission (OSS); 3. change the tax system as a whole; 4. provide fiscal incentives; 5. trade policy to encourage exports; 6. prepare competent human resources; and 7. optimize infrastructure.

Along with the development of digital-based times (revolution 4.0), licensing has also experienced a revolutionary evolution with the introduction of an electronic licensing system to make licensing easier. It is hoped that this will make it easier for business actors to process permits, so that with more and more business actors processing permits, it will be easier for the government to monitor efforts so that a business activity does not have a negative effect on society and the environment. For this reason, the government has issued an electronic-based licensing registration system called OSS.

After the implementation of OSS in order to support ease of doing business (EODB), it turns out that it has a significant correlation in increasing the ranking of ease of licensing in Indonesia. Based on the Ease of Doing Business (EoDB) ranking released by the World Bank, which includes assessments for indicators related to ease of construction permits, access to electricity, legal property management, credit facilities, taxation, export-import procedures, and legal protection for investors who have minority shares, in 2015, Indonesia was ranked 114th out of 190 countries. Currently in 2023, Indonesia's Ease of Doing Business (EoDB) ranking is ranked 73rd and 190th in the country. [9]

Government Regulation Number 24 of 2018 concerning Electronic Integrated Business Licensing Services (PP Online Licensing), according to the provisions of this Government Regulation, the types of investment licensing consist of Business Licenses and Commercial or Operational Licenses. Business Licensing is issued by the Minister, Head of Institution, Governor, or Regent/Mayor according to their authority, including business permits whose issuance authority has been delegated or delegated to another official. To further increase investors, both domestic and foreign, investing their capital in Indonesia, the government continues to strive to improve electronic licensing services by issuing Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing (PP 5 of 2021), which is a derivative of Law- Law Number 11 of 2020 concerning job creation. Licensing through the OSS RBA system, investors only need to fill in the data in the system and prepare the documents needed for the licensing process without having to go to the One Stop Investment and Integrated Services Service (DPMPTSP), investors who will issue business permits will be handled by the regional government which has the authority through OSS RBA system. In Government Regulation Number 5 of 2021 in Article 10 regarding the OSS RBA system there is an assessment of the level of danger, assessment of the potential for danger to occur, level of risk and ranking of the business scale of activities which are classified as:

- a. Business activities with a low level of risk
- b. Business activities with a medium risk level
- c. Business activities with a high level of risk

The level of risk has been analyzed in a transparent, accountable manner and prioritizing the precautionary principle. For businesses that have low risk, investors do not need a business license and can immediately start their own business. Investors only need a Business Identification Number (NIB) to be able to do business. Meanwhile, at the medium to low risk level, requirements are required, namely a Business Identification Number (NIB) and a Standard Certificate (SS) which provide legality in carrying out activities in the business sector in the form of a statement from investors/business actors to meet business standards in order to carry out business activities provided through the System. OSS RBG. This Standard Certificate must be verified by the Ministry/Institution/Regional Government and is issued automatically as output after undergoing data input on the OSS RBG page. Medium high risk requires NIB and Standard Certificate and high risk requires NIB and permits verified by the central, regional and provincial governments. If it is deemed that the business to be established has a low level of risk, a permit for the business will be immediately issued, however, if the business activity to be established has a medium or high level of risk, it will be verified by a technical team from other agencies that have relevant authority. establishment of the business.

Business permits that have been issued indirectly are not yet effective. Business permits can be used and are effective if investors can fulfill commitments at the department or One Stop Integrated Service regarding their respective permit authority. Commitment is a statement from investors to fulfill the requirements for business permits and/or commercial or operational permits. Even though investors have obtained a business permit through the OSS RBG Institute, they are still required to fulfill their commitments to obtain operational and/or commercial permits.

Simplifying bureaucracy and cutting requirements as well as eliminating convoluted procedures that have plagued investors applying for permits both at the central and regional levels, have stimulated investors' interest in carrying out business activities in Indonesia. Even though it is a new licensing system, OSS has provided an answer to investment licensing service solutions in Indonesia. In providing comfort to investors, legal certainty and legal protection factors are the main factors besides political and economic stability factors. The political stability factor is one aspect that investors really pay attention to. Vertical conflict (between political elites) and horizontal conflict (between community groups) must be avoided in foreign investment efforts in Indonesia. Likewise, economic factors such as the availability of natural resources are a strong economic attraction to

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attract foreign investors. However, economic attractiveness is also related to political factors, because conducive national political stability will encourage a country's economic performance to be conducive..

The business permit application process is carried out completely online, filling out the information form in applying for a business permit no longer needs to be done repeatedly. In addition, the auto approval system makes it possible to avoid the process of reviewing the required documents, which of course will take more time. With OSS-RBA, it is hoped that it will become the main gateway to the service system implemented by the government. This means that all permits issued by Ministers, leaders, institutions, regents and/or governors can be obtained through one service, namely OSS-RBA as a system for making business permits for both foreign and domestic investors, as well as providing legal certainty for investors. in Indonesia.

IV. CONCLUSION

Based on this discussion, it can be concluded that legal certainty for investors who invest their capital in Indonesia is very necessary to attract investors to invest their capital in Indonesia. Certainty in procedures and licensing requirements stipulated in the OSS, as well as certainty in the time period and amount of costs that must be paid by investors have provided legal certainty for investing in Indonesia. The elimination of convoluted procedures and corrupt practices from licensing processing has also provided business comfort and legal certainty for investing in Indonesia. The legal certainty that every investor desires can be fulfilled by ensuring the standardization of procedures and requirements provided in every licensing process. The legal certainty expected by every business actor is contained in licensing decisions issued by ministries/institutions or the Regional Government.

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