



Risk-Based Business Licensing According Perspective of Investment Certainty in Indonesia

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Abstract

In order to improve the investment ecosystem and business activities to create jobs, the Government has enacted Law Number 11 of 2020 concerning Job Creation, regulating the simplification of business licensing through the implementation of Risk-Based Business Licensing using standard methods based on risk levels as stated in Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing, the licensing transformation aims to provide legal certainty for foreign investors in investing in Indonesia. This study will examine the implementation of risk-based business licensing based on Government Regulation Number 5 of 2021 using Normative Legal Research or library research, with a statute approach, conceptual approach and historical approach to examine existing legal problems. The results of this study show that the change in business licensing to risk-based business licensing that integrates the authority and licensing issuance process in the OSS system still has problems starting from the implementation of authority and the issuance process of basic requirements, business licensing, supporting business licensing and risk classification based on sector. With these problems still existing, it can create legal certainty for investors to invest in Indonesia so that it is necessary to amend Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing.

Keywords: Business Licensing, Legal Certainty, Investment

Introduction

Developing countries like Indonesia require investment from both domestic and foreign sources to drive economic growth, especially improving the domestic economy. Investment plays an important role in increasing the economic growth of a developing country supported by the entry of foreign investment. Obstacles in Indonesia and also several other developing countries are due to investors having difficulty investing, including the lack of information related to business implementation, as well as a very long bureaucratic process. These obstacles

cause investors to be uninterested in investing in developing countries. Habibie, Dicky & Sonny Ferra Firdaus, 2021 :77)

The main investment factors are business and economic factors, namely cash flow, efficiency and effectiveness of procedures, market penetration, and demographic empowerment of the young generation of Indonesia. Although agreements and laws play a very important role, they do not seem to be fundamental indicators that can stimulate investment unless they have a direct impact on the loss of economic opportunities. Therefore, implementing regulations are much more influential than laws, usually covered in laws and regulations. However, umbrella agreements in large-scale aspects will have a much greater impact on investment only if they achieve multilateral or regional conformity can simplify licensing procedures. (Aurora, Adinda & Jonathan, 2024: 77)

The Investment Law provides legal certainty needed by foreign and domestic investors at all stages of investment, from the pre-establishment to post-establishment phases, from managing permits to commercial production. Risk-based business licensing regulations are the initial stage that investors must go through before the construction/land acquisition stage, the initial stage is very important to determine the continuity of investment in the host state. The purpose of the formation of the Job Creation Law initiated by the Government which produces the concept of risk-based business licensing is to provide certainty in obtaining permits by simplifying procedures and unifying the process of fulfilling requirements or verifying permits carried out into one system, namely Online Single Submission and also integrating the implementation of authorities between the central government and regional governments in implementing business licensing in the OSS System. (Iqbal, 2021:13)

Business licensing policies still have several problems according to Haryadi Sukamdani as the General Chairperson of the Indonesian Employers Association, after 2 years of implementing risk-based licensing there are still obstacles such as the lack of integration of central and regional data, the OSS system is only effective for managing permits for small-scale businesses with simple business models and low environmental risk impacts, such as kelondong shops. However, the OSS system has not made it easier to manage medium-large scale business permits that have a higher risk of environmental impact and require various sectoral permits such as building approval (PBG) to environmental impact analysis (amdal)

The authority to issue permits between the central government and regional governments is clearly regulated in Attachment I of Government Regulation Number 5 of 2021, which in nomenclature is different from that stated in Law Number 23 of 2014 concerning Regional Government and the mechanism for delegation of authority. This will certainly raise legal certainty issues, especially if the Government Regulation on business licensing conflicts with the Regional Government Law. In addition, the use of the name in the decision issued on the business licensing product has legal consequences in the form of the need to delegate authority to officials who sign the business licensing and risk-based business licensing requirements as stated in annex II of PP 5 of 2021 for standard classification of business fields (KBLI) with medium high and high risk

Thus, based on the description above, the author found several problems in the implementation of the issuance of business permits after the Job Creation Law, there were a number of obstacles to legal uncertainty in the process of issuing business permits and the unclear authority of the central government and regional governments as officials issuing business permits, the unclear process of implementing business permits in accordance with the requirements stipulated by government regulations, and the role of the Ministry of Investment and Downstream as well as an Online Single Submission institution to provide legal certainty for investment. Therefore, the author is interested in conducting research from "Risk-based business licensing from the perspective of legal certainty for investment in Indonesia" which focuses on the implementation of the regulation of the authority of the central government and regional governments, the implementation of the implementation of business permits and the role of the Ministry of Investment and Downstream/BKPM *ex officio* as an OSS Institution that organizes and manages the OSS system in providing legal certainty in the process of issuing business permits based on Government Regulation number 5 of 2021.

Literature Review

This study is to analyze the authority to issue risk-based business permits, as well as the implementation of risk-based business permits in providing legal certainty for business actors supported by the role of the Ministry of Investment and Downstream/Investment Coordinating Board as the Online Single Submission (OSS) Institution, Business Licensing is essentially a state administrative decision issued by an Official/Government Agency based on its authority, in addition, the authority to issue a decision must pay attention to the procedures and substances contained in its basic regulations. The researcher will analyze the implementation of the authority contained in Article 22 of Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing and the Implementation of risk-based business licensing carried out by the OSS Institution based on the provisions of Attachment II of Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing. By using a regulatory approach related to legal issues related to risk-based business licensing and the use of the theory of authority and legal certainty as a basis for testing the legal issues.

1. Theory of Authority

Authority or authority has an important position in the study of state administrative law and administrative law. This authority is so important that F.A.M Stoink and J.G Steenbeek stated "*Het Begrip bevoegdheid is dan ook een kembegrip in he staats en administratief recht*" It can be concluded that the definition of authority is the essence of constitutional law and administrative law.

Some experts differentiate the terms authority and authority in Indonesian language literature. KBBI even differentiates the two. Because of this difference, the definition of authority may differ. In Law Number 30 of 2014 concerning Government Administration, "Authority is the right held by a Government Agency and/or Official or other state administrator to make decisions and/or actions in the administration of government".

According to Article 1 number 6 of Law Number 30 of 2014 concerning Government Administration, "Government Authority hereinafter referred to as Authority is the power of a government agency and/or official or other state administrator to act in the realm of public law. "In the definition of public law, authority consists of three elements: influence, legal basis, and legal consistency.

- 1) The use of authority intended to control the actions of legal subjects is known as the component of influence.
- 2) The use of authority based on a legal basis is called a basic legal component.
- 3) In the context of conformity, there are two types of authority standards: general standards for all types of authority and specific standards for certain types of authority.

In line with the main pillars of the rule of law, the principle of legality is also known as the principle of legality or government authority on the basis of this principle that government authority comes from laws and regulations. Attribution and delegation are two ways for the government to obtain authority, according to administrative law literature. Mandates are also sometimes considered as a separate way to obtain authority.

The opinions of experts on authority and the origins of authority vary, some connect authority with power and also separate them and separate between attribution, delegation and mandate. Philipus M. Hadjon, stated that all government steps must be based on valid (legitimate) authority. Authority is obtained from three (3) sources, namely attribution authority, delegation authority, and mandate authority. Attribution authority is usually limited through the grouping of state powers by the constitution, but in delegation authority and mandate authority is authority that comes from the transfer.

2. Legal Certainty Theory

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia expressly states that "The State of Indonesia is a state of law". As a state of law, all aspects of society, nationhood, statehood including government must always be based on law. According to Simorangkir, "a state of law is defined as a state that applies the principle of legality, namely all state actions through, based on and in accordance with the law". To ensure that the implementation of state power does not deviate from the law, the law has the highest position. Thus, power will be subject to the law, not the other way around. (Bagir Manan, 2017: 54).

According to Gustaf Radbruch's "Standard Priority Doctrine", there are three basic ideas of law: justice, utility, and legal certainty. Although justice is the most important of the three components, it does not mean that the other two components should be ignored altogether. Good law is law that can combine the three components for the common good. According to Radbruch, the justice in question is justice in the narrow sense, which means that everyone has the same rights before the courts. While legal certainty is defined as a condition in which the law can function as a regulation that is obeyed, utility or finality describes the content of the law because the content of the law is in accordance with the objectives to be achieved by the law. (Bagir Manan, 2017:28)

That Gustav Radbruch explained the theory of legal certainty which is outlined in four basic things which are related to the meaning of legal certainty itself, which can be explained as follows: (Ahmad, 2017:96)

- 1) Law is a positive thing, which means that positive law is legislation. Hukum didasarkan pada sebuah fakta, artinya hukum itu dibuat berdasarkan kenyataan.
- 2) Facts contained or stated in the law must be formulated in a clear manner so as to avoid errors in meaning or interpretation and can be easily implemented.
- 3) Positive laws cannot be easily changed.

According to Jan Michiel Otto, legal certainty is defined as the possibility in the situation, as follows:

- 1) There are clear, consistent and easily obtained rules, published by and recognized by the state (power).
- 2) The governing bodies (government) apply legal rules consistently and also submit to and obey them.
- 3) Citizens in principle adjust their behavior to these rules.
- 4) Independent and unbiased judges (courts) apply these legal rules consistently when they resolve legal disputes.
- 5) Judicial decisions are concretely implemented

According to Utrecht, legal certainty has 2 (two) meanings. First, the existence of general rules makes individuals know what actions may or may not be carried out and second, it is in the form of legal security for individuals and government arbitrariness because with the existence of general rules, individuals can know what the State may impose or do to individuals. (Riduan, 1999:23)

Legal certainty also has the meaning of provisions or stipulations. The word certainty when combined with the word law becomes the legal certainty of a country that is able to guarantee the rights and obligations of every citizen. According to Sudikno Mertokusumo, legal certainty is basically the implementation of the law according to its wording so that the community can ensure that the law is implemented. Legal certainty is essentially a law that is obeyed and implemented. Legal certainty itself can be interpreted as the strict application of the law in the midst of society. This is in accordance with the opinions of several legal experts, such as Sudikno Mertokusumo, who stated that legal certainty is justifiable protection against arbitrary actions which means that someone will be able to obtain something that is expected in certain circumstances. (Sudikno, 1985:145).

In the implementation of state administration to ensure legal certainty is contained in the Principle of legality. The principle of legality is one of the main principles that is used as a basis for every government administration in each country of law, especially for Continental countries of law. Tax collection by the state is the beginning of the implementation of the principle of legality. That there is a term: "No taxation without

representation" which appears in England which means there is no tax without (approval) of parliament or in the United States or there is also a term: Taxation without representation is robbery, tax collection without the approval of the council is the same as robbery. The law containing the regulation of tax collection procedures becomes the legal basis for collecting taxes from the people.

Research Method

This paper examines business licensing from the perspective of investment certainty in Indonesia. The type of research used in examining the problems in this study is normative juridical. Research approach The approach used in this study is the statute approach, The statute approach is carried out by examining laws and regulations related to the legal issues being studied. By studying various views in legal doctrines, researchers can find ideas that produce an understanding of the meaning of law, legal concepts, and legal principles related to the problems faced. The research will focus on the authority to issue and implement business permits by the government and regional governments in conjunction with other laws and regulations. Library materials and secondary data alone, can be called normative legal research or library legal research. (Soejono & Sri Mamudji, 2001:13-14) by collecting primary, secondary and/or tertiary legal materials. Research is conducted in depth, in detail and specifically on the rules related to risk-based business licensing.

Result

Authority to Issue Risk-Based Business Licensing After the Job Creation Law Comes into Effect

In a modern state of law, the government's authority is not only to maintain order and security but also to strive for public welfare. (*bestuurszorg*). The government's task and authority to maintain order and security are classic tasks that are still maintained today, in order to carry out this task, the government is given authority in the field of regulation, from which several legal instruments emerge to deal with individual and concrete events, namely in the form of decisions. In accordance with its individual and concrete nature, this decision is the spearhead of legal instruments in the administration of government or as the closing norm of a series of legal norms in the form of permits, thus permits are legal instruments in the form of decisions that are constitutive and which are used by the government in dealing with or determining concrete events. As a decision, the permit is made with the applicable provisions and requirements.

In licensing services, state administrative officials (hereinafter referred to as TUN Officials) are authorized to follow all provisions given by attribution, delegation or mandate in implementing procedures in accordance with the substance that has been determined in the provisions of legislation. Both the central government and regional governments carry out licensing services in accordance with the authority determined by the provisions of legislation.

The authority of the TUN officials affects the validity of a State Administrative Decision issued in the form of a license.

After the formation of the Job Creation Law, the Government aligned the process of facilitating business licensing with the concept of risk assessment for each business activity implemented at the central and regional levels. The process of facilitating business licensing is accompanied by the concept of integrating the authority to issue business licenses in one Online Single Submission system. Before the Online Single Submission system, the implementation of licensing based on the authority held was carried out manually or through a system developed by each Ministry/Institution or Regional Government. The source of authority of the Ministry/Institution or Regional Government comes from the Law, more briefly referred to as attributive authority.

To encourage Ministers or Heads of Institutions to delegate authority as mandated in Presidential Regulation Number 97 of 2014 concerning One-Stop Integrated Services in the Investment Sector, the President issued Presidential Instruction Number 4 of 2015 concerning the Implementation of the Central PTSP at BKPM which states that investors do not need to enter and exit Ministries/Institutions to take care of their business licenses and only need to come to the Central PTSP at BKPM. With this regulation, PTSP is increasingly free to work and provide various forms of convenience for prospective investors. The One-Stop Integrated Service (PTSP) launched by President Joko Widodo at the Investment Coordinating Board on January 27, 2015, supported by 22 agencies/institutions in providing services at the Central PTSP and up to October 2015, 160 permits have been delegated to the Central PTSP from 107 permits delegated to the Central PTSS in the period December 2014 - June 2015, then continued with 53 permits delegated in the period July - October 2015.

All licensing and non-licensing services for investment that are the affairs of the central government are carried out by BKPM. Presidential Regulation No. 27/2009 as last amended by Presidential Regulation No. 97/2014 has the same specifications regarding investment activities that are included in the affairs of the central government and regional governments according to their authorities. Law Number 23 of 2014 concerning Regional Government again changed the institutional management of PTSP in the regions which were originally the Provincial Investment and One-Stop Integrated Service Agency (BPMPTSP), and the Regency/City Government was carried out by the Regency/City Investment and One-Stop Integrated Service Agency (BPMPTSP) Regency/City to the Investment and One-Stop Integrated Service Agency. This is because investment affairs are mandatory affairs so that institutionally it becomes an agency. The change in the institutional structure of PTSP in the regions which became the Investment and One-Stop Integrated Service Agency was accompanied by the delegation of authority from both the Governor or Regent/Mayor to the Head of the Investment and One-Stop Integrated Service Agency. The delegation of authority is in the form of Regional Regulations or Regional Head Regulations. For example, the form of delegation of authority in regional government.

For several Ministries/Institutions that have delegated authority to the Head of the Investment Coordinating Board in the framework of implementing the One-Stop Integrated Service, there are several inconsistencies in the form of delegation, starting from delegation

given in the form of a Decree as given by the Minister of Agriculture, delegation but in the issuance of business permits using the phrase on behalf of such as delegation given by the Minister of Energy and Mineral Resources, Minister of Forestry, Minister of Maritime Affairs and Fisheries, Minister of Public Works and Public Housing, and Delegation whose issuance does not use the phrase on behalf of, namely from the Minister of Health.

In addition to the integration of authority through licensing services through the Central PTSP, To increase economic growth, the Government issued the second economic policy package, BKPM launched the 3-hour Investment Licensing Service, Direct Construction Investment Service Facilities (KLIK) and Green Lane Facilities. All of these policies focus on providing easy, cheap, fast and simple services. In accordance with technological developments. BKPM then launched service innovations in the form of digitalization of the implementation of licensing services in 2017. In 2017, the Government in order to increase the efficiency of business activities which are determinants of economic growth, job creation formed a policy to accelerate the implementation of business which is the origin of the formation of business licensing. The policy to accelerate the implementation of business as stated in Presidential Regulation Number 91 of 2017 which assigns tasks to the Task Force for the Acceleration of Business Implementation which is divided into 2 (two) stages, namely the first stage in the form of monitoring and resolving obstacles through the formation of a task force; implementation of Business Licensing in the form of fulfilling the requirements (checklist) carried out in KEK, KPBPB, Industrial Areas and KSPN and implementation of Business Licensing using data sharing and non-repeated submissions carried out outside KEK, KPBPB, Industrial Areas and KSPN and the second stage is in the form of implementing reform of Business Licensing regulations and implementing an Integrated Business Licensing System electronically (Online Single Submission).

The regulation of authority for issuing risk-based business permits has been regulated based on Article 22 paragraph (1) of PP 5 of 2021 and the division of authority between the central government and regional governments is regulated in Attachment I of PP 5 of 2021, business permits are issued by the Central Government and Regional Governments in accordance with the norms, standards. Procedures and criteria set by the central government, in this case both the central government and regional governments in issuing business permits are guided by PP 5 of 2021. Meanwhile, Article 22 paragraph (2) of PP 5 of 2021 emphasizes the implementation of the issuance of business permits or products/decisions on business permits issued in the name of the OSS Institution, the OSS Institution in the name of the minister/head of the Institution, the head of the provincial DPMPTSP in the name of the governor, the head of the district/city DPMPTSP in the name of the regent/mayor; KEK administrator and head of the KPBPB Business Agency.

To assess the form of delegation of authority in business licensing in the context of implementing the Job Creation Law, specifically regulated in Article 22 and Attachment I of PP 5 of 2021 by citing the opinions of experts regarding the theory of authority and the various origins of authority, some connect authority with power and also separate it and separate between attribution, delegation and mandate. Philipus M. Hadjon, stated that all government steps must be based on valid (legitimate) authority. Authority is obtained from three (3)

sources, namely attribution authority, delegation authority, and mandate authority. Attribution authority is usually limited through the grouping of state powers by the constitution, but in delegation authority and mandate authority is authority that comes from the transfer.

The author found that the implementation of the delegation of authority before the enactment of the Job Creation Law was based on Presidential Regulation Number 97 of 2014. The delegation of authority to the central government was carried out by the Minister/Head of the Institution by delegating authority to the Head of the Investment Coordinating Board as the Central PTSP in the form of a ministerial regulation, but the issuance of permits used the phrase in the name of. So the issuance of business permits carried out by the OSS Institution/OSS Agency on behalf of the Minister/Head of the Institution based on Article 22 of PP 5 of 2021 comes from the authority held by the Minister of Investment/Head of the Investment Coordinating Board. The delegation of authority to the Regional Government is also based on Presidential Regulation Number 97 of 2014 which orders the Governor/Regent/Mayor to delegate their authority to the Head of DPMPSTP in the context of one-stop integrated services.

As the author describes above, the delegation of authority of the Ministry/Institution to the Head of BKPM uses the concept of delegation but is followed in the issuance of permits using the phrase on behalf of. The concept of delegation put forward by the Experts emphasizes that delegation is the granting of authority from the delegate to the recipient of the delegation which is an equal institution and there is no superior-subordinate relationship and delegation does not use the phrase on behalf of in the issuance of State Administrative Decisions, whose liability for the issuance of a State Administrative Decision is borne by the recipient of the delegation because in the process of issuing a decision the recipient of the delegation has full authority or will that is not influenced by the giver of the delegation. The author found that there were several delegations of authority to the Head of the Investment Coordinating Board using the delegation of authority in the form of delegation but in the product/State Administrative Decision using the phrase on behalf of. This is feared to cause ambiguity or unclear liability or legal responsibility for the issuance of disputed objects. So the form of delegation using the phrase "on behalf of" for the permits issued is contrary to the concept of delegation and mandate adopted by the theory of authority

Implementation of risk-based licensing in providing legal certainty for business actors and the role of the Ministry of Investment and Downstream/BKPM as the implementer of the Online Single Submission Institution

The implementation of risk-based business licensing issuance is carried out through the Online Single Submission (OSS) system. OSS is an integrated electronic system used by business actors and authorized agencies (Central Government and Regional Government) in organizing business licensing. In a three-year period, from 2018 to 2021, the OSS System has undergone three major changes. The first change was OSS version 1.0 which came into effect on June 21, 2018 based on PP No. 24 of 2018. Furthermore, this system was updated to OSS version 1.1 which came into effect on November 4, 2019, with the aim of improving the quality of the licensing management system based on an evaluation of the problems faced by business actors in the previous licensing process. The latest change that is still in effect today is the OSS-RBA (Online Single Submission-Risk Based Approach) system, which began to be

implemented on August 9, 2021 based on Law No. 11 of 2020. The OSS-RBA system is a form of digitalization in the public service mechanism. With the digitalization through an electronic business licensing system, the public has easy access to the licensing system, which allows processing to be done anywhere and anytime without having to go through PTSP (One-Stop Integrated Service). Licensing digitalization is expected to facilitate business activities and accelerate the investment process. The OSS-RBA system has also been integrated with various other systems such as AHU Online, DJP Online, LKPM, and other systems, thus enabling data synchronization through OSS. In OSS-RBA, business actors can apply for various facilities, such as business permits, permits that support business activities, and facilities such as tax holidays, tax allowances, import facilities, and others. With the OSS-RBA system, all business permit applications can be done through one platform, which will reduce and even resolve the problem of overlapping authority in issuing permits.

After the enactment of the Job Creation Law, the concept of business licensing has changed to risk-based licensing. The government determines or assesses the risk to business sectors under its authority by identifying business activities, assessing the level of danger, evaluating the potential for danger, determining the level of risk, and considering the scale of the business and the type of permit required. The results of determining the risk of business activities are listed in the attachment to Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing. Risk-based business licensing covers various sectors, including marine and fisheries, agriculture, environment and forestry, energy and mineral resources, nuclear power, industry, trade, public works and public housing, transportation, health, medicine and food, education and culture, tourism, religion, postal telecommunications, broadcasting, electronic systems and transactions, and employment.

In Government Regulation No. 5 of 2021 concerning the Implementation of Risk-Based Business Licensing (PP 5/2021) regulates the basic requirements for Business Licensing as an obligation for Business Actors to start and carry out business activities, where the basic requirements include the suitability of space utilization activities, environmental approval, building approval, and certificate of functional feasibility. Potential problems arise because the provisions regarding the basic requirements for Business Licensing are each regulated in laws and regulations in the fields of spatial planning, the environment, and building construction. Business licensing will be issued if it has met the three basic requirements as stipulated in Article 4 of PP 5 of 2021. Furthermore, the Author describes the three basic requirements including the suitability of space utilization activities, environmental approval, building approval, and certificate of functional feasibility.

The author found that there were problems with the basic requirements procedures related to the suitability of the use of space based on Article 181 of PP 5 of 2021 which contradicted Article 107 of PP 21 of 2021, namely the provisions of PKKPR 181 which are issued automatically by the OSS system as long as they meet the requirements even though the location being requested does not yet have an RDTR, while the PKKPR evaluation based on the provisions of Article 107 of PP 21 of 2021 will assess the application based on the district spatial plan using the Gistaru system.

That PP 5 of 2021 does not yet contain a norm containing regulations in the event of a change in the risk scale of business activities listed in Appendix I of PP 5 of 2021 for business actors who already have a business license, for example for beef cattle breeding activities with KBLI 01411 if the number of cattle is less than 50, business actors only need to have an SPPL as an environmental approval. However, if in carrying out activities there are additional cattle so that they exceed 50, then Business Actors are required to have a UKP-UPL as an environmental approval. The provisions regarding the list of business scales regulated in Article 106 of PP 22 of 2021 are further regulated in the Attachment to the Regulation of the Minister of Environment and Forestry Number 4 of 2021 concerning the List of Businesses and/or Activities that are Required to Have an Environmental Impact Analysis, Environmental Management Efforts and Environmental Monitoring Efforts or a Statement of Commitment to Environmental Management. This regulation allows changes in environmental risk, from the original SPPL to be changed to UKP-UPL or AMDAL depending on the environmental impact caused by the business actor's activities.

The OSS institution as the manager and organizer of the issuance of business permits through the OSS System is guided by the provisions of PP 5 of 2021, which is not free from obstacles in the issuance of business permits in each sector, the implementation of risk-based business permits in each sector includes regulations:

- a. Indonesian Standard Classification of Business Fields (KBLI) Code related to the KBLI title, scope of activities, risk parameters, risk level, business licensing, time period, validity period and authority of business licensing as stated in Appendix I of PP 5 of 2021;
- b. Requirements and/or obligations for risk-based business licensing, as stated in Appendix II of PP 5 of 2021;
- c. Guidelines for risk-based business licensing as stated in Appendix III of PP 5 of 2021.

After conducting a search and analysis, 140 overlapping KBLIs were found which were recognized as being supervised by more than one Ministry/Institution and there were 356 KBLIs outside PP Number 5 of 2021 which had not been regulated by the Ministry/Institution (KBLI without a Supervisory Ministry/Institution) which were directly related to business licensing. For example, the Fish Salting/Drying Industry, Fish Smoking Industry, Fish Freezing Industry which were supervised by the Ministry of Fisheries and Maritime Affairs and the Ministry of Industry. The wheat flour industry, the Rice and Corn Starch Industry, the Starch Industry were supervised by the Ministry of Industry and the Ministry of Environment and Forestry. Not only was there an overlap in authority or sector supervisors in Attachment I of PP 5 of 2021 but in Attachment II of PP 5 of 2021 which regulates business licensing requirements, there was also a dualism of regulation between Ministries, for example the Wheat Flour Industry whose requirements were regulated by the Ministry of Environment and Forestry with the Ministry of Industry.

The laws and regulations issued by the Government starting from Law Number 25 of 2007 (UUPM), Law Number 6 of 2023 (UUCK), PP Number 5 of 2021 and other implementing regulations are expected to provide legal certainty for investing in Indonesia, as well as provide legal protection for business actors in obtaining business permits for investment activities. Jan M. Otto stated that legal certainty can be achieved if the substance of the law is in accordance

with the needs of the community. Legal regulations that are able to create legal certainty are laws that are born from and reflect the culture of the community. This kind of legal certainty is called real legal certainty, which requires harmony between the state and the people in orienting and understanding the legal system. harmony between the state and the people in orienting and understanding the legal system. Legal certainty is the implementation of the law according to its wording so that the community can ensure that the law is implemented. In understanding the value of legal certainty, what must be considered is that this value has a close relationship with positive legal instruments and the role of the state in actualizing it in positive law.

Integration of authority, norms, standards and procedures into one regulation under the Law or what can be called an omnibus law at the government regulation level is not easy, the relatively short time is an obstacle in the process of drafting PP 5 of 2021 even though the government at that time was faced with technical problems between one Ministry and another that had not been resolved, resolving these technical problems requires a longer time. The relatively short drafting of PP 5 of 2021 cannot answer the real problem but instead creates new problems such as inaccuracy in analyzing risks, continuity of previous permits, unanticipated changes in business activity risks in the future, incomplete requirements listed in the attachment to PP 5 of 2021 so that regulations are needed at the Ministerial Regulation level, and also the regulation of basic requirements that tend to be rigid and conflicts between PP regulations and sectoral laws.

In line with the opinion of Prof. Wicipto Setiadi who stated that simplification or streamlining of regulations requires precise and measurable steps, the first step is to inventory problematic regulations, then followed up by evaluating the implementation of regulations. Options for existing problematic regulations are carried out by simplifying, revoking and merging regulations. This option must be carried out carefully to avoid problems in the future. Analysis of regulations must involve integrated professional personnel. In order to improve the quality of regulations. (Wicipto, 2020:42).

The inaccuracy of the preparation of licensing regulations will have an impact on legal uncertainty in investing in Indonesia so that resolving overlapping investment regulations is still homework for the government, the Job Creation Law which uses the omnibus law method and a series of implementing regulations for business licensing has not become an attraction for foreign investors to invest in Indonesia, based on UNCTAD in the World Investment Report 2024, it reported that FDI flows to Indonesia reached USD 21.6 billion in 2023, down 14.8% compared to the previous year, making this country the eighteenth largest recipient of FDI worldwide. Throughout this year, Indonesia has emerged as a major destination for announced greenfield projects by value. Important investments include USD 11 billion in upstream projects by Chinese glass and solar manufacturer Xinyi Group. In addition, a consortium of European and Indonesian companies is developing a USD 9 billion electric vehicle battery supply chain. By the end of the same period, the total FDI stock is estimated to reach USD 285.7 billion. (UNCTAD, 2023).

The Ministry of Investment and Downstream/Investment Coordinating Board/Online Single Submission Agency as the main implementer of national licensing needs to strengthen

its authority not only as a coordinator of investment implementation policies but also to be able to execute licensing obstacles that have so far been highly dependent on ministries/technical institutions. The authority of the central government and regional governments integrated into the OSS system makes it a difficult task for the Ministry of Investment and Downstream/Investment Coordinating Board as the manager of the Online Single Submission system which is expected to eliminate obstacles for business actors due to complicated bureaucracy.

The obstacle to investing in Indonesia experienced by both foreign and domestic investors is the problem of complicated regulations. As a result of the uncertainty of regulations and the licensing process, foreign investors think twice about doing business in Indonesia. Some of the impact problems such as business actors do not obtain legal certainty to invest in Indonesia, complicated bureaucracy, overlapping regulations between the government and regional governments, the long duration of the licensing process and the high cost of licensing that must be paid by business actors. Such things cause investors to think twice about doing business in Indonesia.

The OSS Institution as the manager of the OSS system formed based on PP 5 of 2021 which is also a mandate of the Job Creation Law is expected to be able to overcome the obstacles or barriers experienced by Investors in investing in Indonesia, for this reason it is necessary not only to carry out institutional transformation in business licensing. However, the legal aspect of the OSS Institution's institution needs to be strengthened by forming laws and regulations that specifically regulate the duties and functions of the OSS Institution, as well as the Ministry of Investment and Downstream/BKPM which has a strategic role in implementing investment, is expected to have a check and balance mechanism for sectoral institutions and local governments so that there is no "local interpretation regime". It is necessary to shift from being just an investment facilitator to a guardian of equitable development, which is also the institutional goal of the Ministry of Investment and Downstream/BKPM, which means not only filtering business risks, but risks arising from investment such as injustice and exploitation.

Discussion

This study reveals the inconsistency of the implementation of authority based on Article 22 of Government Regulation Number 5 of 2021, for the Government and Regional Governments it is necessary to delegate authority to the OSS Institution or the Head of DPMPTSP if the product of the issuance of business permits uses the form as stipulated in Article 22 of Government Regulation Number 5 of 2021. The use of the phrase on behalf of in the issuance of business permits creates ambiguity because based on the theory of authority, the use of on behalf of it is a mandate, not a delegation and also in Government Regulation Number 5 of 2021 there are still overlapping authorities, imperfect requirements, unsynchronized basic requirements and no person responsible for kbli that is not listed in the attachment to Government Regulation Number 5 of 2021. These things create legal uncertainty which basically the law must be clear and understandable to the public.

Conclusion

This study reveals that the implementation of the issuance of business permits based on Article 22 of PP 5 of 2021, namely the OSS Institution, the OSS Institution on behalf of the Minister/Head of the Institution has the authority to issue business permits which are the authority of the central government derived from the delegation of authority from the Minister/Head of the Institution to the Minister of Investment/Head of BKPM as the Central PTSP as well as the Head of the Provincial/Regency/City DPMPTSP has the authority over the delegation of authority from the Governor/Regent/Regent. As a note, the delegation of the central government and regional governments was carried out before the enactment of Government Regulation Number 5 of 2021. The implementation of business permits which includes the procedure for issuing business permits starting with basic requirements, business activities and business risks found inconsistencies in the implementation of the KKKPR or PKKPR for the mining sector, one of which is in the Mining Law does not require Mining Business Permit owners to have a location permit as a requirement for a mining business permit. There was also a discrepancy between Article 106 of Government Regulation Number 21 of 2021 and Article 181 of Government Regulation Number 5 of 2021 which regulates the suitability of spatial utilization, in the environmental approval of Government Regulation Number 5 of 2021 or the OSS System there is no mechanism for changing environmental approval as regulated in Article 107 of PP 22 of 2021. annex II of PP 5 of 2021 which regulates business licensing requirements found overlapping requirements for issuing business licenses between the industrial sector, fisheries sector, and forestry sector.

Recommend the Government to amendment to annex I and annex II of PP 5 of 2021 to address overlapping authorities between the Industry, Maritime Affairs and Fisheries and Forestry sectors so as not to confuse business actors in fulfilling the requirements. and conduct regulatory evaluations on the implementation of business licensing by involving experts in their fields to provide input on which provisions or articles need to be regulated or improved.

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