

THE IMPACT OF THE RISK-BASED OSS PROGRAM RELATED TO THE SUITABILITY OF SPACE UTILIZATION ACTIVITIES ON THE LICENSING PROCESS FROM A LEGAL PERSPECTIVE OF PUBLIC POLICY

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Abstract

Licensing in a business in a country is a requirement for citizens to maintain their business activities. These business activities not only concern citizens but also citizens/foreign corporate institutions that wish to invest in Indonesia. The executive and legislative governments in Indonesia are striving to streamline business activities through legislation and a technology system called One Single Submission (OSS). This study aims to examine the Indonesian government's efforts to simplify the process of obtaining business activity permits for Indonesian citizens, foreign citizens/foreign corporate institutions. This study uses research through documents and is non-interactive. The research sources in this journal include laws enacted by the Indonesian government, the OSS system created by the Indonesian government, and scientific concepts related to good governance. The results of this study found a lack of data integration in the OSS, which can create loopholes that make it challenging to process business activity permits and provide room for bribes to expedite the business permit process in Indonesia.

Keywords: *Business License, Law, One Single Submission (OSS)*

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INTRODUCTION

All government efforts are essentially aimed at advancing economic growth. Economic growth is one indicator of a country's position. Supporting this economic growth requires investment, both domestic and foreign. Investment transforms potential economic strength into real economic strength. In carrying out its governmental duties, the government requires regulations to regulate economic activity for the welfare of the nation. Law 25 of 2007² was drafted to establish provisions regarding basic investment policies to encourage the creation of a conducive national business climate and accelerate investment growth. Investment includes both domestic and foreign investment.

Companies as investors intending to conduct production or operational activities are required to possess business licenses and commercial or operational permits. Business licensing is a registration granted to business actors to conduct economic activities. In this case, it is given in the form of approval outlined in a decree or fulfillment of requirements and/or commitments.

To start a business, investors/companies are required to obtain a permit regarding the suitability of their spatial use activities. To streamline the licensing process, the government issued Government Regulation No. 24 of 2018³ on Electronically Integrated Business Licensing Services. This Government Regulation stipulates Electronically Integrated Business Licensing,

² Undang-undang 25 tahun 2007

³ Peraturan Pemerintah no 24 tahun 2018

or Online Single Submission, hereinafter referred to as OSS.

The government aims to utilize technology to support business licensing administration. Technical implementation requires careful consideration through the use of legal instruments. To further develop the OSS, in 2021, the government issued Government Regulation No. 5 of 2021⁴ concerning the Implementation of Risk-Based Business Licensing, which, in Article 5, states:

(1) The basic requirements for Business Licensing, as referred to in Article 4 letter a, include compliance with spatial utilization activities, environmental approval, building approval, and a certificate of functional suitability.

(2) Provisions regarding the basic requirements for Business Licensing as referred to in paragraph (1) are regulated in legislation in the fields of spatial planning, the environment, and buildings.

Therefore, obtaining a spatial utilization activity suitability permit (KKPR) is a crucial and fundamental requirement for any business activity. The KKPR (Spatial Utilization Activity Plan) certifies the conformity of a company's/business's Spatial Utilization Plan with the Spatial Planning Plan (RTR).

Based on this, business actors are required to obtain a KKPR. This KKPR covers business locations on land, sea, and forest areas

⁴ Pemerintah Nomor 5 tahun 2021

(Article 24, paragraph 2 of BKPM Regulation No. 4 of 2021)⁵. The KKPR for business activities is divided into Confirmation of Conformity of Spatial Utilization Activities (KKKPR) and Approval of Conformity of Spatial Utilization Activities (PKKPR) (Article 5 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/BPN Decree No. 13 of 2021)⁶. Confirmation of the KKPR (KKKPR) for business activities is granted based on the conformity of the spatial utilization activity location plan with the detailed spatial planning plan (RDTR), which has been integrated with the OSS system.

Based on these regulations, KKPR permits will be processed through the OSS system. However, if the location for which the RDTR is not yet available in the OSS system, or if the area is not yet integrated with the OSS system, the PKKPR permit cannot be processed and, in other words, will be rejected.

An unintegrated RDTR will hinder the licensing process. For example, investors with a location in Tuban Regency, East Java, will experience difficulties obtaining permits because only eight of the 20 districts within Tuban Regency are integrated with the OSS system.⁷

Therefore, if an application is submitted to a location not yet integrated with the OSS system or to any of the other 12 districts, it will be automatically rejected. If asked about this, the relevant

⁵ peraturan BKPM no 4 tahun 2021

⁶ peraturan menteri ATR/ kep BPN no 13 tahun 2021

⁷ One Single Submission

agencies will not provide a definitive answer regarding when integration will occur.

This could occur in other locations if remote areas are not yet integrated with the OSS (One Single Submission) system. The absence of a remote area in the OSS will discourage investors from conducting business there and hinder local residents' economic growth. Furthermore, transparency regarding locations already integrated with the OSS is also poorly publicized.

This creates a contradiction: while investors must comply with government regulations, implementation challenges occur, and there is a lack of certainty regarding integration into the OSS. Regional governments need to coordinate with the central government, which handles the OSS.

Therefore, it is necessary to examine how policymakers, relevant institutions, and public service providers can effectively implement public policies. This ensures that all business actors can conduct their business activities and obtain permits with clear transparency, without violating regulations or engaging in undesirable behavior, such as bribery and other actions that are not part of the noble purpose of the rules.

RESEARCH METHODOLOGY

This study uses a non-interactive qualitative approach. This research is called analytical research. The researcher will identify and analyze data, then provide interpretations of observable scientific concepts and policies.

This research was conducted by observing legislative policies regarding business permits and scientific concepts in good governance. The researcher reviewed scientific concepts regarding good governance and observed the reality of legislation enacted by legislative institutions in Indonesia. The results of this review are expected to inform the evaluation of business permit facilitation services in Indonesia.

RESULTS AND DISCUSSION

A. Review of Public Policy Concepts and the Importance of Building Good Governance

In its operations, the government establishes regulations to achieve reasonable goals. This can encourage investment, including simple rules and facilitating the acquisition of business permits quickly, effectively, and in an integrated manner.

Administration encompasses several policies related to conceptual structures and sound management in their oversight. Accountability, transparency, and the policy-making process, along with their implementation, must be guided by the administration and its laws. Administrative law is fundamentally based on the principles of a democratic state. Implementation is a series of activities aimed at disseminating policies to the public.

In government administration, the actions of government officials have external legal force based on the submission to conditions or requirements stipulated in statutes and other laws. This is also why administration, in the context of public policy, is

essential for state administrative law, as it regulates the legal relationship between government officials or apparatus and the public within the public legal domain. This state administrative law consists of regulations that govern and bind those who carry out general government duties in all their actions.

Fundamentally, policy science contains three essential elements:

1. Policy science is problem-oriented. To overcome licensing obstacles, the government intends to simplify licensing through a risk-based OSS (Online Government System).
2. Policy science is intellectual and practical, meaning that policies are not merely understood but must be implemented.
3. Policy science is oriented toward human values; in this case, policies must be interpreted as providing benefits.

Based on the explanations above, it can be concluded that the government's regulations aim to expedite the licensing process, ultimately benefiting investors and business actors. In formulating public policies, Government Regulation No. 5 of 2021⁸ and BKPM Regulation No. 4 of 2021⁹ both underwent several stages of developing basic concepts and procedures for developing public policies. This can be seen in the agenda-setting process, which is a highly strategic phase in the reality of public policy. It is the process of interpreting what is referred to as a public problem and a public

⁸ Peraturan Pemerintah no 5 tahun 2021

⁹ Peraturan Pemerintah no 5 tahun 2021 dan peraturan BKPM no 4 tahun 2021

agenda that needs to be considered. In formulating such a policy, it is necessary to determine who should be involved in the formulation, who is affected, the scope, the economic impact, and so on. This is aimed at creating public policies oriented towards good governance as follows:

1. Achieving the objectives of the established policy.
2. Policy Formulation. Issues included in the policy agenda are then discussed by policymakers. These issues are defined, and the best solutions are sought. These solutions come from various alternatives or available policy options. Similar to the struggle to have a problem included on the policy agenda, during the policy formulation stage, each alternative competes to be selected as the policy to address the issue.
3. Identification of Problem-Solving Options. In this case, it is necessary to examine the roles of the central government and the regional governments, which control the region. Will similar interests be accommodated to increase compliance?

Thus, it can be said that public policy, in its formulation process, must still aim to address problems with intellectual analysis and be created in accordance with the principles of the public policy process. This is intended to ensure practical, effective, and efficient implementation.

In every action, decisions by the government must be based on the needs and requirements of the community and on the development of state administrative law in accordance with the

principles of good governance. First, good governance practices must provide space for non-governmental actors to participate optimally in government activities, thus enabling synergy between government actors and non-governmental institutions, such as civil society and market mechanisms. Second, good governance practices, embodied in government policy values, can work more effectively to achieve shared prosperity. Values such as efficiency, justice, and responsiveness are essential in reasonable governance efforts. Third, good governance practices are clean and free from Corruption, Collusion, and Nepotism (KKN) and oriented towards the public interest. Therefore, good governance practices are considered essential for achieving transparency, law enforcement, and public accountability. The main challenge in building good governance is how to realize these three characteristics in daily governance.

In other words, it can be interpreted that Good Governance, which is our common ideal, can be created with a system that begins with seriousness and awareness to provide space for the government and the community to play an optimal role by encouraging actors, both business actors and the government, to work effectively and efficiently and have responsiveness, which are essential values in realizing Good Governance.

The KKPR is implemented through the OSS system. Confirmation of Conformity of Spatial Utilization Activities (KKKPR) is granted upon alignment of the Spatial Utilization activity plan with the Detailed Spatial Planning Plan for State

Border Areas (RDTR), commonly known as zoning. So, how is KKPR confirmation conducted in areas without an RDTR?

Regarding this, under the provisions of BKPM Regulation 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities, if an area already has an RDTR (approximately 18), it will be registered in the Gistaru (Geographic Information System for Spatial Planning) system.

ATR/BPN. The OSS system will validate the Gistaru only if the RDTR already exists. If the completed business plan complies with the spatial plan, a KKPR confirmation will be issued automatically.

The Conformity of Spatial Utilization Activities (KKPR) is one of the permits for spatial utilization plans and serves as the basis for businesses or the public to acquire land. However, the extent to which the KKPR can effectively serve as a basis for regulating land control, ownership, use, and utilization so as not to give rise to land problems remains an issue.

B. Suitability of Spatial Utilization Activities (KKPR)

The government, through Government Regulation 21 of 2021, regulates spatial utilization activities and requires every business in Indonesia to comply. This regulation outlines the suitability of spatial utilization activities for business activities, for non-business activities, and for nationally strategic activities. Suitability of spatial utilization activities, hereinafter referred to as KKPR, for business activities includes: business activities for non-Micro,

Small, and Medium Enterprises (MSMEs) and business activities for Micro, Small, and Medium Enterprises (MSMEs). For non-MSME business activities, KKPR is obtained through the KKPR confirmation mechanism, and KKPR approval is obtained through the OSS system. KKKPR for business activities is granted based on the suitability of the planned location of the spatial utilization activity with the RDTR (Regional Spatial Planning Area) integrated with the OSS system. This process involves registration, assessment of the proposed spatial utilization activity document against the detailed spatial planning plan (RDTR), and issuance of the KKKPR. PKKPR for business activities located on land is granted if the location plan and spatial utilization activities are not available in the RDTR, or if the available RDTR is not integrated into the OSS system.

PKKPR is divided into 2, namely:

1. A PKKPR for business activities issued without an assessment of the proposed spatial utilization documents is granted if it meets the criteria stipulated in Article 181 paragraph 1 of Government Regulation No. 5 of 2021¹⁰, which is also regulated in Article 13 of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 13 of 2021.¹¹
2. A PKKPR for business activities is issued through an assessment process, which begins with registration,

¹⁰ Peraturan Pemerintah no 5 tahun 2021

¹¹ Peraturan Menteri ATR/ Kepala BPN no 13 tahun 2021

assessment of the proposed spatial utilization documents against the Spatial Planning (RTR), Regional Spatial Planning (RZKSNT), and Regional Spatial Planning (RZKAW), and then issuance of the PKKPR.

Spatial utilization located in forest areas, where changes in the designation and function, and the use of forest areas for non-forestry development purposes, are subject to forestry regulations. For spatial utilization located on land, the KKPR approval is issued by the Minister, or this authority can be delegated to the governor, regent, or mayor without prejudice to the Minister's authority. Then, if the Minister, governor, regent/mayor does not issue a PKKPR or if the minister in the maritime sector does not issue a marine PKKPR for business activities within a maximum period of 20 days calculated from the registration or payment of non-tax state revenue (PNBP), the marine PKKPR will be issued by the OSS Agency.

Term, Extension Mechanism, and Update of KKPR for Business Activities In accordance with Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (BPN) No. 13 of 2021¹², specifically Articles 18, 19, and 22, landowners and applicants for KKPRs for business activities may apply for KKPRs for locations issued with KKPRs, provided that they comply with land ownership information as contained in the land technical considerations, and that the KKPR submitted does

¹² peraturan Menteri ATR/ Kepala BPN no 13 tahun 2021

not exceed the land area owned. For businesses that have not yet acquired land for their business activities, the KKPR is valid for a period of three years. However, if the KKPR applicant has acquired land for their business activities, the KKPR validity period follows the period of ownership of the land already acquired and corresponds to the land area acquired and approved in the KKPR.

According to the OSS website, the KKPR is a single reference for:

1. Spatial Utilization;
2. Land Acquisition;
3. Transfer of Land Rights; And
4. Issuance of Land Rights

The KKPR is implemented through the OSS system. Confirmation of Conformity of Spatial Utilization Activities (KKKPR) is granted based on the alignment of the Spatial Utilization activity plan with the Detailed Spatial Planning Plan for State Border Areas (RDTR), commonly known as zoning. So, how is KKPR confirmation conducted in areas without an RDTR?

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¹³ Peraturan BKPM 4 2021

system.¹⁴

ATR/BPN. The OSS system will then only validate the Gistaru if the RDTR already exists. If the completed business plan complies with the spatial plan, a KKPR confirmation will automatically be issued.

The Conformity of Spatial Utilization Activities (KKPR) is one of the permits for spatial utilization plans and serves as the basis for acquiring land by businesses or the public. However, the extent to which the KKPR can effectively function as a basis for regulating land control, ownership, use, and utilization so as not to give rise to land problems still remains an issue.

In this case, the KKPR can be considered a basic permit for business activities and will serve as a reference for spatial utilization, land acquisition, the transfer of land rights, and the issuance of land rights. This permit can be obtained through the risk-based OSS system, namely from the RDTR (Regional Development Plan) for the location, which is integrated into the risk-based OSS system.

C. POLICY DELIBERATION IN ISLAMIC VALUES

Formulating business policies within legislation can benefit humanity. In Surah An-Najm, verse 39¹⁵, it is explained that humans obtain what they desire only through their own efforts. Efforts to facilitate licensing for economic activities are aimed at creating

¹⁴ Geographic Information System Tata Ruang

¹⁵ Surah An Najm ayat 39, Al-Qur'an

goodness and benefit for humanity.

Policymaking efforts must also be carried out through deliberation among all parties, from the government to citizens who need policies to facilitate business activities. In Surah Ali Imran, verse 159¹⁶, it is explained that it is God's mercy that makes humans gentle with one another. If humans are harsh and harsh in matters, there will undoubtedly be no harmony among people. The verse also explains that all parties need to listen to one another, forgive one another when there are differences of opinion, and consult together on matters of common purpose. Policymaking must also be based on the intention of the common good and ask for God's blessing and help for the smooth running of a joint business/affair.

CONCLUSION

Thus, it can be explained that the KKPR process will only be processed if the RDTR for the region has been integrated. The Online Single Submission Risk Basic Approach (OSS RBA) is a government instrument used to facilitate business ease, particularly in licensing. One of the licensing classifications in question is the Suitability of Spatial Utilization Activities (KKPR). The implementation of KKPR licensing has encountered many obstacles.

The lack of good governance is reflected in the incomplete recording of the entire regional integration system in the OSS (Own

¹⁶ Surah Ali Imran ayat 159, Al-Qur'an

Information System). This is evident in the existence of two systems for spatial utilization for business activities in the GISTARU and OSS systems. This can create obstacles or constraints on the ease of doing business. This loophole can actually allow for licensing procedures, which in turn opens up opportunities for bribery due to the complicated process and the potential for corruption.

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