

The Effect of Licensing through Online Single Submission (OSS) on the Establishment of the Company

R. Murjiyanto, Devi Andani

Faculty of Law, Janabadra University, Jl. Timoho II No. 40, Yogyakarta, Indonesia

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Abstract: The business actor must obtain a permit in the form of an agreement that is stated in the form of a letter / decision or fulfillment of the requirements and / or commitment to start and run a business and / or activity. With this agreement, the business actor is given a Business Registration Number (NIB), namely the identity of the Business Actor issued by the OSS Institution after the Business Entity registers through Online Single Submission (OSS). The Business Actor must enter the business data when establishment the company to be able to access the OSS in the AHU Director General of the Ministry of Law and Human Rights, in accordance with the Indonesian Standard Industrial Classification (KBLI). The method used is normative research methods, by reviewing several documents, applicable regulations, and company establishment documents. The conclusions of the problems are as follows: 1. Enforcement of integrated business licensing services through on line or OSS has an effect, that each company establishment must enter company data specifically in the business field of the AHU Director General of the Ministry of Law and Human Rights, through a process of ratification or registration, namely for business entities in the form of legal entity is using ratification, while a business entity that is not a legal entity is using registration. 2. Business actors in determining business fields for business activities carried out in the business establishment process must adjust to the Indonesian Standard Industrial Classification (KBLI) as stipulated in the Regulation of the Head of the Central Statistics Agency. 3. For companies that have been established before the OSS is applied, they must adjust their activities according to the business fields listed in KBLI 2017 by amending their articles of association, especially concerning the purpose of putting business data into the Public Law Administration Director General of the Ministry of Law and Human Rights' system and registering to OSS Institution to obtain a company registration number (NIB).

1 INTRODUCTION

In order to improve the national economy through business development efforts in all fields, the government has issued regulations relating to business licensing, by simplifying business licensing through Government Regulation Number 24 of 2018 concerning Electronic Integrated Licensing Services or Online Single Submission (OSS). So far, business actor in managing permits have been done manually by knocking on doors one by one starting from the district / city Integrated One-Stop Services or in Indonesia is called as PTSP, provincial PTSP, to the central PTSP (Investment Coordinating). The one-stop service policy which aims to make it easier for the public to take care of all needs related to licensing is considered not optimal.(Bagijo, 2010)

The ease of licensing services is not only for the interests of domestic investment business activities but is also intended to facilitate foreign investors to run their businesses domestically in the form of foreign investment, which licensing problem has been a problem that has hampered the establishment of businesses. Some incentives and conveniences for foreign investors who will invest their capital in a country are increasingly mixed attractively. The juridical sector is no exception, which is also demanded to not become a hindrance, or not to be left behind by the juridical sector in competing countries.(Fuady, 1996)

Through this online integrated business licensing regulation, business licensing is carried out online through a single system called OSS. This policy is expected to provide convenience and accelerate business licensing, while at the same time increasing the development of investment and business which in

itself will increase business growth and the national economy. Business Licensing is registration that is given to Business Actors to start and run a business and / or activity and is given in the form of an agreement outlined in the form of a letter / decision or fulfillment of requirements and / or commitments. With registration to obtain this agreement, the business actor is given a company registration number, hereinafter abbreviated as NIB, is the identity of the Business Actor issued by the OSS Institution after the Business Actor registers.

In the management of licensing registration through OSS, it is integrated with several agencies which are related on business actor's data, including company data at the Public Law Administration Director General of the Ministry of Law and Human Rights, population data at the Ministry of Home Affairs of Director General of Population and Civil Disputes, Tax Identification Number at the Director General of Taxes even labor data that must be registered with the Social Insurance Administration Organization or in Indonesia is called as BPJS.

To be able to access OSS, company data is needed at the Public Law Administration Director General of the Ministry of Law and Human Rights, so that all business actors must enter company data either through endorsement or registration, depending on the legal status of the company which is a legal entity or not and requires approval or registration. So far, there are several forms of business entities, both legal entities such as Limited Liability Companies as stipulated in Law number 40 of 2007, while forms of business that are not legal entities such as the form of partnership (*maatschap*)(Prasetya, 1995) as the main federation form which are regulated in the Civil Code, while General Partnership and Limited Partnership are regulated in the Code of Business Law.

In addition, when applying for registration or ratification of legal entities through the Public Law Administration Director General of the Ministry of Law and Human Rights, data must be put in line with the Indonesian Standard Industrial Classification (KBLI) as stipulated in the Central Bureau of Statistics Regulation number 95 of 2015 concerning Indonesian Standard Industrial Classification (KBLI) as has been amended by Regulation of the Head of the Central Bureau of Statistics number: 19 of 2017, hereinafter referred to as KBLI 2017. Thus the business actors who will carry out a business activity in their establishment must adjust KBLI 2017 so that data on business fields registered with the Public Law Administration Director General can be accessed through OSS when managing business permits.

In accordance with the consideration of regulations concerning integrated business licensing services, it is intended to facilitate business activities and development, as well as facilitate the business establishment process. From the description of business establishment before the issuance of the regulation on business licensing through OSS, the obligation to approve business entities of legal entities through the Public Law Administration Director General of the Ministry of Law and Human Rights only applies to business entities with legal entities, especially Limited Liability Companies. However, but with the enactment of business licensing services through OSS, this requires that businesses that are not legal entities such as alliances must also be registered through the Public Law Administration Director General of the Ministry of Law and Human Rights. This is so that company data can be accessed through OSS Institutions when submitting licensing applications through OSS with business fields that are in accordance with ISIC 2017. From this description, several problems can be stated as follows: 1. What is the effect of applying business licensing services through on line or OSS on business establishment procedures? 2. How do business actors determine the business sector for the business activities carried out in the business establishment process? What about the companies that have been established before the enforcement of the OSS?

2 RESEARCH METHODS

We strongly encourage authors to use this document for The method used is normative research methods, by reviewing several documents, applicable regulations, and documents on the registration process and / or endorsement of the establishment of the company, including:

1. Presidential Regulation Number 91 of 2017 concerning the Acceleration of Business Execution
2. Government Regulation of the Republic of Indonesia Number 24 of 2018 concerning Electronic Integrated Business Licensing Services
3. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2018 concerning Registration of the Limited Partnership, General Partnership, and Limited Liability Partnership
4. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia number 1 of 2016 concerning Amendments to Regulation of the Minister of Law and Human Rights of the

Republic of Indonesia number 4 of 2014 concerning Procedures for Submitting Requests for Ratification of Legal Entities and Approval of Amendments to Articles of Association and Submission of Notices of Amendments to Articles of Association and Amendments to Data of Limited Liability Companies.

5. Regulation of the Head of the Central Bureau of Statistics number: 95 of 2015 concerning the Indonesian Standard Industrial Classification (KBLI)
6. Regulation of the Head of the Central Bureau of Statistics number: 19 of 2017 concerning Amendments to the Regulation of the Head of the Central Bureau of Statistics number: 95 of 2015 concerning Indonesian Standard Industrial Classification (KBLI)

By analyzing in depth several regulations relating to business licensing services through electronic or Online Single Submission (OSS), and supported by data in the form of registration process documents and / or authorization of establishment of companies, it can be produced conclusions that can be accounted for academically.

3 RESULT AND DISCUSSIONS

3.1 The Effect of the Application of Business Licensing Services through on Line or OSS on the Business Establishment Procedure

In order to achieve a prosperous society, a mechanism must be created to facilitate business activities that can increase the economic growth of the community. One of which is ease and simplification in the field of business licensing. By providing convenience and simplification of business licenses, it is hoped that business activities can grow and develop so that it can increase the economic growth of the community and by itself will improve the welfare of the community. Economic development needs to be developed to create jobs, enhance sustainable economic development, increase national technological capacity and capabilities, and encourage people's development and realize public welfare in a competitive economic system.(Bagijo, 2010)

Some countries implement licensing intended to provide protection to the public and business actors themselves. Like the provisions of the regulations imposed in the United Kingdom, Its further recommendations went on to include creation of

personal and premises licences, exible opening hours, consistent nationwide conditions to protect the public from nuisance and disorder, and greater controls and sanctions for authorities dealing with liquor licensing. It also, controversially, suggested that liquor licensing should be transferred from magistrates to local authorities.(Poppleston, 2001)

Licensing in company activities is very important, because a permit owned by a company will give trust to the third parties or the consumers. The licensing effect was demonstrated in various consumer contexts focusing on consumers' self-behaviors.(Toder-Alon et al., 2017)

In connection with efforts to increase business ventures, the government has issued a number of new regulations, including Presidential Regulation Number 91 of 2017 concerning the Acceleration of Business Execution. One of the considerations of issuing the Presidential Regulation was stated in its consideration that business licenses issued by ministries / institutions and regional governments to start, implement and develop business activities need to be reorganized in order to become a supporter and not otherwise become an obstacle to the development of business activities. In order to accelerate and simplify business services, need to implement the use of information technology through an Integrated Electronic Integrated Business Licensing System (Online Single Submission) or OSS.

Then followed up with the issuance of Government Regulation of the Republic of Indonesia Number 24 of 2018 concerning Business Licensing Services to be Integrated Electronically. One of the considerations for issuing the Government Regulation is stated in its consideration, that in the context of accelerating and increasing investment and business, it is necessary to apply Business Licensing Services to be integrated electronically. Article 1 point 5 states that Electronic Integrated Business Licensing or Online Single Submission, hereinafter abbreviated as OSS, is Business Licensing issued by OSS Institutions for and on behalf of ministers, heads of institutions, governors, or regents / mayors to Business Executors through integrated electronic systems.

Business Licensing is obtained through registration given to the Business Actor to start and run a business and / or activity and is given in the form of an agreement as outlined in the form of a letter / decision or fulfillment of requirements and / or Commitments. Business Actors are individual or non-individual business actors who conduct business and / or activities in certain fields. Business License is a permit issued by OSS Institutions for and on behalf of

ministers, heads of institutions, governors, or regents / mayors after the Business Entity registers and starts a business and / or activity prior to commercial or operational implementation by fulfilling the requirements and / or Commitment. Commercial or Operational Permits are permits issued by OSS Institutions for and on behalf of ministers, heads of institutions, governors, or regents / mayors after the Business Entity obtains a Business License and for conducting commercial or operational activities by fulfilling the requirements and / or Commitments. Commitment is a statement of Business Actors to fulfill the requirements of a Business License and / or Commercial or Operational Permit. Management Institutions and OSS Organizers, hereinafter referred to as OSS Institutions, are non-ministerial government institutions that administer government affairs in the field of investment coordination. The Company Registration Number, hereinafter abbreviated as NIB is the identity of the Business Actor issued by the OSS Institution after the Business Actor registers, which includes the registration of business and / or activities by the Business Actor through OSS.

Company Registration Certificate hereinafter abbreviated as TDP is a letter of approval issued by the OSS Institution to Business Actors who have registered. The OSS Institution issues NIB after the Business Actor registers through filling in the complete data and obtaining the Tax Identification Number. This NIB is a business identity and is used by Business Actors to obtain a Business License and Commercial or Operational Permit, including the fulfillment of the requirements for Business Licenses and Commercial or Operational Permits. NIB is valid as long as the Business Actor runs his business and / or activities in accordance with the provisions of the legislation.

The NIB also applies as a Company Registration Certificate (TDP) as referred to in laws and regulations in the field of company registration certificate (as stipulated in the Law Number 3 of 1982 concerning the Company Registration Requirement). The NIB is an endorsement of the TDP valid for the term of the NIB. NIB also applies as an API as referred to in laws and regulations in the field of trade, and the NIB also applies as customs access rights as referred in legislation in the customs sector.

Business licenses must be owned by business actors who have obtained NIB, in accordance with applicable regulations. NIB can be revoked and declared invalid by OSS Institutions in case: Business Actors conduct business and / or activities that are not in accordance with NIB, and / or declared null or

invalid based on a court decision that has permanent legal force.

The types of business licenses consist of: Business Licenses, and Commercial or Operational Licenses. Applicants for Business Licensing are submitted by: Individual Business Actors and Non-Individual Business Actors.

Compared to individual businesses, business activities in the form of business entities will be easier to develop with greater capital support, because it involves several parties. The number of traders as an individual company that aims to obtain profits that are generally used to fulfill their daily living decreases annually compared to companies such as Limited Liability Company, Cooperatives, Limited Partnership and General Partnership. This shows that the establishment of an individual company is not so passionate compared to the establishment of a business entity. (Hasbi, 2016) Business entities that carry out business activities in the economic field have certain forms, such as trading companies, General Partnership, Limited Partnership, Limited Liability Companies, Public Companies, cooperatives. (Kansil, 1996)

In carrying out a business, entrepreneurs need a place to be able to act in legal actions and interact. The choice of type of business or legal entity that will be used as a means of business depends on the needs of its founders. (Amanda et al., 2018)

Establishment of Business Entity & NIB

To be able to access the OSS in order to obtain an NIB, the business form that is established must be authorized and / or registered electronically (on Line) through SABH to ratify the establishment of a legal entity business entity or SABU to register the establishment of a business entity rather than a legal entity at the Public Law Administration Director General of the Ministry of Law and Human Rights. Ratification of the establishment of a Legal Entity Company such as a Limited Liability Company (PT) based on the provision of law which regulates the form of business concerned through the Legal Entity Administration System (SABH) at the Public Law Administration Director General of the Ministry of Law and Human Rights. Whereas registration of establishment of a business entity which is not a legal entity such as

Limited Partnership, General Partnership and Civil Partnership is submitted by the Applicant to the Minister through the Business Entity Administration System (SABU) at the Public Law Administration Director General of the Ministry of Law and Human Rights.

Both the establishment and amendment to the articles of association must be stated in a notary deed, and an approval for a legal entity company or registration for a company that is not a legal entity which is submitted to the Ministry of Law and Human Rights through an electronic system (on line). The form of a partnership in Indonesia has not yet been considered a legal entity (Hadhikusuma, 1996), so the founding process does not require endorsement, but rather registration.

The Limited Partnership (*commanditaire vennootschap*) is a Limited Partnership that has been registered with the Central Government. Registration of Limited Partnership (*commanditaire vennootschap*) to the Government includes registration of deed of establishment, amendment to the articles of association and dissolution of the Limited Partnership (*commanditaire vennootschap*) by the ministry that administers legal affairs.

General Partnership (*venootschap onder firma*) is a General Partnership (*venootschap onder firma*) that have been registered to the Central Government. Registration of General Partnership (*venootschap onder firma*) to the Central Government includes registration of deed of establishment, amendment to the articles of association and dissolution of the General Partnership (*venootschap onder firma*) by the ministry that administers legal affairs.

The civil partnership is a civil partnership which has been registered to the Central Government. Registration of a civil partnership to the Central Government includes registration of a civil partnership deed, amendment to the constitution of a civil partnership, and the dissolution of a civil partnership by the ministry that administers legal affairs.

Application for registration of establishment of Limited Partnership, General Partnership, and Civil Partnership is submitted by the Applicant to the Minister through the Business Entity Administration System (SABU), by first ordering the name of the and making a deed of establishment.

Limited Partnership, General Partnership, and Civil Partnership that have been registered in the District Court based on laws and regulations, within 1 (one) year after the enactment of this Ministerial Regulation is obliged to register the registration in accordance with the provisions of this Ministerial Regulation. Registration of the registration is allowed to use a name that has been used legally by the Limited Partnership, General Partnership, and Civil Partnership that has been registered in the Business Entity Administration System.

From the description of business establishment before the issuance of the regulation on business licensing through OSS, the obligation to enter company data when filing approval through the Public Law Administration Director General of the Ministry of Law and Human Rights only applies to business entities with legal entities, especially Limited Liability Companies, but with the implementation of licensing services that are integrated through OSS. The establishment of a company that is either a legal entity or not a legal entity such as a partnership must enter company data specifically in the business field in accordance with KBLI 2017 at the Public Law Administration Director General of the Ministry of Law and Human Rights. This is so that the data on the business sector of the company can be accessed and integrated through the OSS Institution when submitting a licensing application to determine the type of permit needed and obtain the Company Registration Number (NIB).

With this business licensing service through electronic or online, the business actor in registering his business and obtaining a Company Registration Number (NIB) does not need to deal with several licensing agencies that have been valid, but enough to put data through an application provided by the OSS Institution, following the commitment to fulfill business licenses according to their business fields.

In some countries, licensing involves various parties and agencies, such as in the state of Israel. According to the 1968 Business Licensing Law and bylaws enacted, any legal entity defined as "Business" can't operate without a license issued by an official authority. Granting a business license involves several national government agencies: the police department, the Ministry of Health, fire and rescue services, the Ministry of the Environment, the Ministry of Labor and other organizations. Each business must receive approval from relevant government agencies in order to obtain a business license. (Friedberg et al., 2004)

With this integrated licensing service, licensing is simpler, more effective and efficient, so that it makes it easy for businesses to immediately carry out their business activities. Thus business activities will be more developed and by itself improve the economy and the welfare of the community.

3.2 Determine the Business Field of Business Activities Carried Out in the Process of Establishing a Business

The business actor when establishing a company must determine in advance the business activities that will be carried out, then from the business activities look for the list of KBLI 2017 regarding any business fields that are in line with the business activities to be carried out in the deed of establishment and put in place at the time registration or endorsement of the Public Law Administration Director General.

The line of business carried out must be in accordance with KBLI 2017. In the establishment and / or amendment to the articles of association the company must include the company's goals and objectives, covering business fields and activities by adjusting to Regulation of the Head of the Central Bureau of Statistics number 95 of 2015 Jo. number 19 of 2017 concerning the Indonesian Standard Industrial Classification (KBLI 2017). At least, it states the business fields listed in the two-digit numbers on the ISIC, and business activities listed in the five-digit number in KBLI 2017. The mention of business fields that are in accordance with the activities carried out is included in the deed of establishment and put on the system on line to the Data from the Public Law Administration Director General of the Ministry of Law and Human Rights when registered or at the time of ratification depends on the legal status of the established company requiring approval or it is sufficient with a registration.

The data on business sectors that has been put in the Public Law Administration Director General of the Ministry of Law and Human Rights that will later be connected in an integrated manner with the OSS Institution when registering the licensing application to obtain the Company Registration Number (NIB). With such procedures, there are fundamental differences in the procedures for establishing a company. In relation to the business sector, the business actor must first determine what business activities will be carried out, then look for business data in the list of ISIC 2017 to find out what business sectors are in line with the business activities to be carried out.

Whereas, regarding to the establishment procedure by establishing a deed of establishment, all business forms must be registered or ratified according to the form of business in the Ministry of Law and Human Rights by including data on business fields to be integrated with OSS Institutions when

registering business license applications to obtain NIB. In the previous provisions, ratification through the Ministry of Law and Human Rights was only a business entity with a legal entity such as a Limited Liability Company, while a business entity that is not a legal entity was registered with the local District Court, such as Civil Partnership, General Partnership and Limited Partnership.

Limited liability companies as legal entities are affirmed in Law number 40 concerning Limited Liability Companies, in article 1 number 1, among others, it is stated that Limited Liability Companies are legal entities which are capital alliances. As a legal entity, Limited Liability Company has the legal subject position. This position has legal consequences that Limited Liability Company becomes a supporter of rights and obligations in legal traffic.(Budiyo, 2011)

For companies that have been established before the OSS is applied, they must adjust their activities according to the business fields listed in KBLI 2017 by amending their articles of association specifically concerning their purpose and objectives and putting business data into the Public Law Administration Director General of the Ministry of Law and Human Rights' system and registering to OSS Institution to obtain a Company Registration Number (NIB). This is as regulated in Government Regulation Number 24 of 2018 concerning Electronic Integrated Business Licensing Services (OSS) and Minister of Law and Human Rights Regulation Number 17 of 2018 concerning Registration of Limited Partnership, General Partnership and Civil Partnership, as well as Limited Liability Companies.

In the event that registration of licenses to obtain a NIB is not carried out, it will be suspended (freezing) or revocation of business licenses (Article 81 Government Regulation number 24 of 2018). This is important and must be fulfilled because business activities that do not have permits can be subject to administrative sanctions and even criminal acts (for example article 106 of Law Number 7 Year 2014 concerning Trade).

4 CONCLUSIONS

1. Enforcement of integrated business licensing services through on line or OSS has an effect, that every company establishment must enter company data specifically in the business sector to the Public Law Administration Director General of the Ministry of Law and Human Rights, through the process of ratification or

- registration, namely for legal entities with endorsement, while business entities which is not a legal entity is through registration.
2. Business actors in determining business fields for business activities carried out in the business establishment process, must adjust to the Indonesian Standard Industrial Classification (KBLI) as stipulated in the Regulation of the Head of the Central Bureau of Statistics.
 3. For companies that have been established before the OSS is applied, they must adjust their activities in accordance with the business fields listed in KBLI 2017 by amending their articles of association, specifically concerning their business objectives and inputting business data into the Public Law Administration Director General of the Ministry of Law and Human Rights' system and register to the OSS Institution to obtain a Company Registration Number (NIB). In the event that registration of licenses to obtain a NIB is not carried out, it will be suspended. of your submission.

- Sutantya R. Hadhikusuma, 1996. *Pengertian Pokok Hukum Perusahaan, Bentuk-Bentuk Perusahaan Yang Berlaku Di Indonesia*, Rajawali Pers, Jakarta 1996, pp 33
- Asher Friedberg, Robert Schwartz, Shuki Amrani, 2004. *Oversight Ethics: The Case of Business Licensing*, Journal of Business Ethics 53, Kluwer Academic Publishers. Printed in the Netherlands, pp 372373
- Tri Budiyono, 2011. *Hukum Perusahaan, Telaah Yuridis Terhadap Undang-Undang No. 40 Tahun 2007 Tentang Perseroan Terbatas*, Graha Media, Salatiga. Pp 58

REFERENCES

- Himawan Estu Bagijo, 2010. *Sistem Pelayanan Perijinan Ho (Hinder Ordonnantie) Untuk Kegiatan Usaha Mikro, Kecil Dan Menengah (Ukm)*, PERSPEKTIF Volume XV No. 1 January Edition. Pp 22
- Munir Fuady, 1996. *Hukum Bisnis Dalam Teori dan Praktek*, PT Citra Aditya Bakti, Bandung. Pp 131-132
- Rudhi Prasetya, 1995. *Kedudukan Mandiri Perseroan Terbatas, Disertai dengan ulasan Undang-Undang nomor 1 Tahun 1995*, PT Citra Aditya Bakti, Bandung. Pp 46
- Susanna Poppleston, *Licensing reforms in England and Wales and their likely impact on business and property*, HENRY STEWART PUBLICATIONS 1471-549X Journal of Leisure Property VOL .1 NO.3. pp 234
- Toder-Alon et al., License to Kill: Examining Licensing Effect in the Context of Corporate Social Responsibility and Tax Reporting from the Consumers' Perspective, https://doi.org/10.1007/978-3-319-63480-7_12. pp 232
- Ghassan Niko Hasbi dkk, 2016. *Analisis Perizinan Pendirian Alfamart Dan Dampak Negatif Terhadap Perusahaan Perorangan Di Sekitarnya*, Varia Justicia Vol 12 No. 1 Maret. pp 72-77
- Kansil, C.S.T & Christine S.T. Kansil, 1996. *Hukum Perusahaan Indonesia (Aspek Hukum Dalam Ekonomi)*, PT Pradnya Paramita, Jakarta. pp 2
- Ririen Tri Amanda, Aminuddin Ilmar, Harustiati A. Moein, 2018. *Perubahan Bentuk Badan Hukum Perusahaan Daerah Bank Perkreditan Rakyat (PD BPR) Menjadi Perusahaan Perseroan Terbatas*, Nagari Law Review, Volume 1 Number 2, April. Pp 116