



## ANALYSIS OF BUSINESS LEGAL ASPECTS IN THE RISK-BASED BUSINESS LICENSING PROCESS

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### **Abstract**


*Business law plays a crucial role as a regulatory framework providing legal certainty for economic actors. This regulation encompasses processes related to business permits, protection of intellectual property rights, financial regulations, and provisions related to business competition. The Law Number 8 of 1999 concerning Consumer Protection serves as the legal foundation for business law in Indonesia, establishing various provisions to protect consumer rights and regulate the responsibilities of entrepreneurs. Law No. 8 of 1999 acknowledges the crucial role of business law in ensuring that business activities are conducted orderly, smoothly, and without causing harm to the parties involved. In the Law Number 11 of 2020 concerning Job Creation, there is a focus on enhancing the investment ecosystem and business activities, including the implementation of a risk-based business licensing system. The research aims to explore the dynamics of risk-based business permits, assess the extent of its implementation in Indonesia, and highlight the challenges and opportunities associated with this approach. The study adopts a normative legal research method with an analysis of legal norms found in literature and legislation. The focus is primarily on the business law aspects of the risk-based business permitting process, utilizing a normative legal approach to describe the legal decision-making process. Data is collected through the examination of primary and secondary legal materials, including legislation, literature, and expert opinions. The implementation of risk-based business permits shows significant progress in creating a more efficient and transparent business environment. However, challenges arise from the differing objectives between Law Number 11 of 2020 and Law Number 32 of 2009 concerning Environmental Protection, which may blur risk assessments and hinder the effectiveness of the permitting process.*

**Keywords:** Law, Business, Licensing, Business, Risk

### **INTRODUCTION**

Business law is a normative framework that regulates the procedures or activities in the realm of trade, industry, or finance (Anidjar, 2022). It involves the production and exchange of goods or services by placing money from an entrepreneur at risk in a specific venture, with the expectation of gaining economic profit. Fuady (2018) defines business law as the enforcement of laws governing the procedures or activities of the economy, covering aspects of trade, finance, industry, and everything related to the exchange of goods and services. Business law encompasses not only legal aspects but also reflects how legal norms are applied in everyday economic practices (Mahaputra & Saputra, 2021). It not only determines the rights and obligations of business actors but also outlines conflict resolution mechanisms, consumer protection, and corporate social responsibility (Utari & Arifin, 2020; Harjono, 2021). The importance of business law is evident in its role as a regulatory framework providing legal certainty for economic players. This regulation includes business licensing processes, intellectual property protection, financial regulations, and provisions related to competition (Sihombing & Hamid, 2020).

Law Number 8 of 1999 Concerning Consumer Protection serves as the legal basis for business in Indonesia, establishing various provisions to protect consumer rights and regulate the responsibilities of entrepreneurs. This law emphasizes the importance of understanding and applying business law by entrepreneurs (Idayanti et al., 2019). Law No. 8 of 1999 recognizes that business law plays a crucial role in ensuring that business activities are conducted in an orderly manner and do not harm the parties involved. The importance of mastering business law, as explained in Law No. 8 of 1999, encompasses several aspects. First, business law sets the framework for ethical and responsible business practices. This includes provisions related to honest marketing, consumer rights protection,




and transparency in business practices (Syam et al., 2021). Second, business law also stipulates rights and obligations related to consumers. The Consumer Protection Law emphasizes consumer rights, such as the right to accurate and clear information, the right to safe products or services, and the right to compensation in case of losses due to products or services not meeting promised standards (Garaika, 2020; Erie, 2021). The functions of business law include serving as a useful source of information for business practitioners to understand rights and obligations in business practices, promoting fair, reasonable, healthy, and dynamic business activities, and creating a legal environment conducive to economic growth and development (Arifin et al., 2021; Panggabean & Badriyah, 2023). Business law is an extensive field, encompassing various essential aspects of running a business. One key aspect is corporate organizational law, which determines the structure and governance of a company (Du Plessis et al., 2018). Furthermore, investment law becomes critical for understanding investment regulations, while financing law regulates the financial aspects and sources of company funding (Puig & Shaffer, 2018). Intellectual property law covers copyrights, patents, and trademarks that need protection. Alternative dispute resolution law provides options other than litigation. Consumer protection and industrial relations play a crucial role in safeguarding the rights and interests of involved parties (Carroll & Brown, 2018; Manullang et al., 2022). Tax law governs corporate tax responsibilities, while competition law aims to prevent unhealthy business practices. Business crime law encompasses criminal aspects in the business world. Regardless of the industry, every business must operate in compliance with applicable regulations, and each business sector has specific legal provisions to consider (Sihombing & Hamid, 2020).

For example, for construction service providers, specific regulations such as Law Number 2 of 2017 concerning Construction Services are applicable and serve as the main guidelines. This law provides a legal framework regulating business practices in the construction sector, involving aspects of construction project regulations, contractual relationships between involved parties, and compliance with safety and quality standards. Thus, a profound understanding of these legal aspects is key to ensuring the continuity and sustainability of businesses amid the dynamics of various industries (Mahaputra & Saputra, 2021; Zahra et al., 2023).

Every business operation requires specific permits before it can commence, especially when involving foreign capital. These permits serve as controls to ensure that business activities run with guaranteed quality and safety, as well as to protect the interests of the community (Tokson & Waldman, 2021). In Indonesia, this is known as 'Business Licensing,' which is mandatory for business actors to conduct their activities. In the era of information and communication technology, business licensing can be obtained electronically through the Online Single Submission (OSS) service, as stipulated by Government Regulation Number 24 of 2018 concerning the Integrated Electronic Business Licensing Service. Legal provisions related to business licensing and investment have evolved with the enactment of Law Number 11 of 2020 concerning Job Creation (Job Creation Law). The Job Creation Law revised 77 laws to enhance Indonesian labor absorption through ease of doing business and investment. Some revised articles in the Job Creation Law are related to business licensing in various sectors such as maritime, fisheries, agriculture, forestry, and other sectors. Therefore, in conducting business, it is crucial to have up-to-date information on the latest legal provisions that can impact business sustainability and investment.

#### RESEARCH METHOD

This study adopts a normative juridical research method that relies on the analysis of legal norms found in literature and legislation. Focusing on the legal aspects of business licensing processes, the normative legal research approach is directed towards legal principles, synchronization of legislation, legal systematization, and an inventory of positive law. This methodology views normative legal research as a practical normative science capable of depicting the process of legal decision-making. The objective of this research is to explain ambiguous norms, fill legal gaps, and discover legal rules that can be used as responses to concrete events requiring legal resolution. The research process involves the examination of primary and secondary legal materials. Primary legal materials include legislation directly related to the legal aspects of business licensing processes, while secondary legal




materials provide explanations and interpretations of primary legal materials. The legislative approach, or statute approach, is considered a relevant and important approach in this research because it relies on existing legal materials. The primary data collection tool is documents or literature, including legislation, literature, writings, articles, and views from legal experts that have been published, especially those related to the legal context of business licensing processes. This methodology provides a solid foundation for delving into a comprehensive understanding of business law and licensing processes, ensuring that this research can make a significant contribution to the understanding of economic law and business regulations in Indonesia.

### SIMPLIFICATION OF BUSINESS LICENSING

One strategic step to enhance the investment ecosystem in Indonesia has been taken through the simplification of licensing processes. The Indonesian government, aiming to boost economic growth and provide incentives for business players, has implemented this policy (Siregar, 2020). In Law Number 11 of 2020 concerning Job Creation, business licensing is defined as the legality granted to business players to initiate and conduct business activities. This licensing is divided into business permits and commercial or operational permits. Business permits are granted after business players register and are valid from registration until before the commercial or operational phase begins (Sudarmanto et al., 2021). Meanwhile, commercial or operational permits are granted after business players obtain business permits and allow them to engage in commercial or operational activities, with a duration according to the provisions in the legislation regulating each type of permit (Setyawan, 2020; Novanto & Herawati, 2022).

In the substance of Law Number 11 of 2020 concerning Job Creation, there is a significant transformation in the licensing requirements system. One major aspect of this change is the consolidation of various licensing requirements that were previously scattered into a single entity, namely business licensing. In the previous era, business players had to deal with the complexity of fulfilling different licensing requirements in various business sectors (Darongke et al., 2022). However, with the enactment of the Job Creation Law, business licensing is integrated into a single business license, replacing many specific sectoral licenses that existed before. This change aims to create a more efficient, transparent, and easily accessible licensing process for business players. The consolidation of these licenses is also expected to reduce excessive bureaucracy and enhance Indonesia's competitiveness as an investment destination (Sanduan, 2022). Business players no longer have to go through the hassle of obtaining various licenses from different agencies; instead, they can fulfill all their licensing requirements through one platform, namely the Online Single Submission (OSS). Moreover, this can provide legal certainty and reduce the risk of errors in meeting licensing requirements. This transformation reflects the Indonesian government's commitment to creating a more conducive business climate and supporting sustainable economic growth (Assegaf et al., 2019; Maulana & Firmansyah, 2023).

Government Regulation Number 24 of 2018 concerning Integrated Electronic Business Licensing Services introduces the idea of commitment in licensing, which differs from the previous licensing process. This concept refers to statements from business actors committing to comply with the requirements of business permits and/or commercial or operational permits (Nirboyo, 2021). Through Government Regulation No. 24 of 2018, the government is committed to providing easy access and expediting the licensing process in various business sectors. The electronic-based licensing system implemented is a proactive step to reduce bureaucratic obstacles and minimize the time required by business players to fulfill licensing requirements. By leveraging technology, the government aims to create a more efficient, transparent, and investment-friendly business environment (Fitri & Sheerleen, 2021; Jamil, 2022). This decision is not only directed at providing administrative convenience but also supporting the growth of the business and investment sectors in Indonesia as a whole. The implementation of this electronic-based licensing system reflects the government's commitment to creating a conducive investment climate, making Indonesia an attractive destination for investors (Rahayu et al., 2021).



Before the existence of the Online Single Submission (OSS) system, new licenses could only be issued after all requirements were met, documents were verified, and technical reviews were conducted. This process often caused significant delays before a business could operate (Setiadi et al., 2021). With OSS, permits can be issued first with a commitment from business players to fulfill the required conditions in the future. Additionally, OSS uses information technology to create an integrated system, allowing the licensing process, which previously involved various paths and government agencies, to be consolidated into a single portal (Sakti, 2021). The laws that form the basis of the licensing system are continually evolving in line with societal needs. Recent changes are reflected in the Job Creation Law, which aims to create a more business-friendly and investment-friendly environment. Other future changes may also occur based on emerging needs.

### **BUSINESS LICENSING BASED ON RISK**

In Law Number 11 of 2020 concerning Job Creation, there is an aspect of enhancing the investment ecosystem and business activities, including the implementation of a risk-based business licensing system. The Job Creation Law explains that the implementation of risk-based business licensing is carried out by considering the determination of the risk level and the scale rating of business activities (Harjono, 2021). The evaluation of risk level and business scale is based on an assessment of the danger level and the potential for risks in aspects such as health, safety, environment, as well as the utilization and management of resources (Sihombing & Hamid, 2020; Arifin et al., 2021). In Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing, the process of assessing the danger level involves factors such as the type of business activity, criteria for business activities, the location of business activities, resource limitations, and volatility risk. The danger level is then categorized into 4 (four) categories, namely almost impossible to occur, low likelihood of occurring, possible to occur, and almost certain to occur. By considering the assessment of danger level and potential occurrences, each business activity is then assigned a risk level and business scale status, namely low-risk business, medium-risk business, or high-risk business (Nirboyo, 2021; Maulana & Firmansyah, 2023).

#### **1. Low-Risk Business Activities**

For low-risk business activities, it is mandatory to obtain the Business Identification Number (NIB), which serves as the legality for conducting business activities. The NIB is the identity mark for business actors issued after the registration process. It is an official proof of business actor registration that allows them to carry out business activities and records the identity related to the implementation of those activities (Fatchullah et al., 2022).

#### **2. Medium-Risk Business**

Business activities with medium-level risks are categorized into low and high risk. Every medium-risk business must obtain the NIB and a standard certificate. If product standardization is required for specific business activities, the product standard certificate is issued by the Central Government based on the verification results of the standards that must be met before product commercialization can begin. The standard certificate for low-risk medium business activities is a statement that the business actor complies with business standards to conduct business activities, while the standard certificate for high-risk medium business activities is a business standard certificate issued by the central or local government to verify compliance with implementation standards (Nainggolan, 2022).

#### **3. High-Risk Business Activities**

For high-risk business activities, ownership of the Business Identification Number (NIB) and a permit is required. The permit is an approval granted by the Central Government or Local Government to carry out business activities, and business actors are obligated to fulfill this permit before commencing their business activities (Amir et al., 2021).

Risk-based regulations require regulators to explicitly define the objectives of the regulations. The Omnibus Law format of the Job Creation Law, or UU Cipta Kerja, clearly states its four main objectives (Erlina & Krisnanto, 2022). First, its aim is to create and enhance employment by providing facilitation, protection, and empowerment to cooperatives, micro, small and medium enterprises



(UMKM), as well as national industries and trade, in an effort to optimize the absorption of Indonesian labor while considering the balance and progress between regions in the national economic unity (Siregar, 2020). Second, this law aims to ensure that every citizen obtains employment and receives fair and decent remuneration and treatment in employment relationships (Carroll & Brown, 2018). Third, its focus is on adjusting various regulatory aspects related to bias, strengthening, and protection for cooperatives, UMKM, and national industries (Manullang et al., 2022). Fourth, its objective is to adjust various aspects of regulation related to improving the investment ecosystem, ease, and acceleration of national strategic projects oriented toward national interests, based on national science and technology with guidance from the Pancasila ideology (Garaika, 2020).

Issues arise when considering that the Omnibus Law format of the Job Creation Law also includes Law Number 32 of 2009 concerning Environmental Protection. Law Number 32 of 2009 has different objectives than the Job Creation Law. The main focus of Law No. 32 of 2009 involves protecting the territory of the Unitary State of the Republic of Indonesia from pollution and/or environmental damage, ensuring the safety, health, and life of humans, as well as ensuring the survival of living beings and the sustainability of ecosystems (Santoso, 2021). Additionally, the law aims to preserve the functions of the environment, achieve harmony, balance, and environmental balance, as well as ensure justice for the present and future generations (Kurniawan, 2022). Besides protection, Law No. 32 of 2009 also seeks to guarantee the fulfillment and protection of the right to the environment as part of human rights, control the wise utilization of natural resources, realize sustainable development, and anticipate global environmental issues (Chandranegara, 2020; Sanduan, 2022). The difference in objectives between these two regulations can complicate regulators' efforts to determine risks and assess business activities because it is unclear which objective should be used as a guide. The lack of clarification in the objectives of regulations can lead to subjectivity in risk assessment, which, in turn, can hinder the effectiveness of implementing risk-based business licensing in Indonesia due to subjective risk assessments that require abundant data (Maulana & Firmansyah, 2024).

It cannot be ignored that risks are not always fixed. If a business activity is initially categorized as high risk, it requires compliance with various complex licensing requirements compared to low-risk business activities (Harjono, 2021). However, over time, the risk of that business activity may shift categories to become low risk. Thus, that business activity no longer requires the previously mandated licensing documents. To address this dynamic, provisions related to periodic reviews of risk classifications need to be formulated (Sudarmanto et al., 2021; Siregar, 2020). The aim is to ensure that every classification of business activities based on its risk level remains relevant over time. When assessing risks, it is not enough to consider them within a narrow framework. Certain risks may show low levels of danger and potential individually (Carroll & Brown, 2018; Manullang et al., 2022). However, when viewed comprehensively, these risks can have significant impacts. One type of such risk is known as cumulative risk. The Job Creation Law currently does not explicitly account for cumulative risks as illustrated above. Therefore, an activity might be classified as low risk if only considered from the perspective of a single business entity implementing it, whereas if performed by many business entities, the activity could become high risk.

## CONCLUSION


This study delineates the significance of business law in the context of risk-based business licensing in Indonesia, focusing on the implementation of Law Number 11 of 2020 concerning Job Creation. The concept of risk-based business licensing involves assessing the level of risk and the scale of business activities, allowing for the classification of business activities as low, medium, or high risk. The success of implementing risk-based business licensing is based on clear objectives stipulated in the law, including job creation, worker protection, strengthening cooperatives, micro, small, and medium enterprises (UMKM), and the national industry, as well as enhancing the investment ecosystem. However, challenges arise due to differing objectives between Law Number 11 of 2020 and Law Number 32 of 2009 concerning Environmental Protection, which may blur risk assessments and hinder the effectiveness of risk-based business licensing. Therefore, further clarification



regarding regulatory objectives and periodic reviews of risk classifications to ensure their relevance over time is recommended. Additionally, it is essential to consider cumulative risks that may arise when many businesses engage in similar activities. This research provides valuable insights into understanding the dynamics of business law and business licensing in Indonesia, emphasizing the need for careful coordination among various relevant regulations.

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