

Omnibus Bill on Job Creation: Simplification of Business Licensing

Finally signed by President Joko Widodo on 2 November 2020, the Job Creation Law was formed by upholding the goal of advancing Indonesia, in which the primary purposes are to boost national economic growth by increasing investment, easing of doing business in Indonesia, and enlarging the job opportunities of Indonesian workers.



As the first cluster, which contains simplification of business licensing cluster focuses on the Centralization of Government Policy and Authority, the new concept of the implementation of Risk-Based Approach (“RBA”) to the 15 (fifteen) business sectors, the Location Permit and Spatial, the Environmental License, and the Building Approval (*Persetujuan Bangunan Gedung* or “PGB”) and the Certificate of Worthiness (*Sertifikat Laik Fungsi* or “SLF”).

These are several essential points in Cluster 1 that we would want to address:

A. The Re-arrangement of Business Licensing Authorities between the Central and Regional Governments

The central government will have the authority to establish and set the norms, standards, procedures, and criteria (*Norma, Standar, Prosedur, dan Kriteria* or “NSPK”) in carrying out the concurrent government affairs (including the business licensing issuance). This NSPK will become the implementing rules in administering government affairs under the central government's authority and those under the regional governments’ control. Thus, the regional governments will be obligated to provide the business licensing services according to the NSPK.

For synchronization, the regional governments must also use the integrated electronic (online) system managed by the central government (Online System Submission or “OSS”) to issue the business licenses. The regional governments may also develop supporting systems for the implementation of the OSS provided that it is in accordance with the central government’s standard.

The central government will also have the authority to supervise the regional governments’ performance in issuing business licensing. If the regional governments do not implement or exercise their authorities following the applicable laws and

NSPK, the central government can take over the business licensing issuance authority.

Under this Job Creation Law, the stipulation of the NPSK must be conducted within 2 (two) years as from the enactment of government regulation regarding the implementation of concurrent government affairs.

B. Implementation of RBA

Under this Job Creation Law, business licensing will be classified based on each business activity’s potential risks level. The risk level herein is basically divided into 3 (three) classification: high, medium, and low risks, which are determined by the potential risk to the health, safety, environment, natural resources exploitation, the volatility risk, and/or other relevant aspects in each sector.

Low Risk	Medium Risk	High Risk
Business Identification Number (Nomor Induk Berusaha or “NIB”) as the business license	Medium-Low NIB, statement of standard certification from the business actor, and certification of product standard (if needed). Medium-High NIB, certification of business standard, and certification of product standard (if needed).	NIB and license as the business license certificate for the business standard and products from the central government

The business licensing must be obtained by the business actors before conducting their business activities.

In contrast to the previous provisions of the Business Licensing, in addition to NIB, business actors must also obtain business licensing consisting of (i) Business Permit (*Izin Usaha*); and (ii) Commercial or Operational License (*Izin Komersial atau Operasional*) to conduct their businesses. By applying this RBA concept, NIB will be part of the business licensing, and activities that are categorized low and medium risk would not require other licenses except for certification of standard, if needed. The implementation of the business licensing process is expected to be more effective and simpler; hence it will support the ease of doing business in Indonesia. Further details on the RBA implementation will be further regulated in a government regulation.

The 15 (fifteen) sectors that affected by the implication of the RBA implementation are as follows:

- a. marine and fisheries;
- b. agriculture;
- c. forestry;
- d. energy and mineral resources;
- e. nuclear power;
- f. industry;
- g. trade, legal metrology halal product assurance, and standardization of conformity assessment;
- h. public works and housing;
- i. transportation;
- j. health, medicine, and food;
- k. education and culture;
- l. tourism;
- m. religious;
- n. post, telecommunication, and broadcasting; and
- o. defense and security.

It is worth noting that pursuant to the Job Creation Law, the provision for the business licenses that have been issued and ongoing license applications are as follows:

- a. Business licensing that have been issued are still valid until the expiration of such business licenses;
- b. Business licensing and/or sectoral permits that have been issued before the enactment of the Job Creation Law may apply in accordance with this Job Creation Law; and

- c. Business licensing which is currently in the application process, will be adjusted to the provisions of this Job Creation Law.

C. Suitability of Spatial Layout

Prior to starting a certain line of businesses in Indonesia, the investors/business actors must check their targeted project's location in the Spatial Layout Plan (*Rencana Detail Tata Ruang* or "RDTR") manually to the relevant regional government. Under this the Job Creation Law, each regional government is required to provide a standardized RDTR in the form of digital ("digital RDTR"), and the central government is obliged to integrate the digital RDTR with the OSS. The investors/business actors will obtain clear information about the suitability of the spatial layout by inserting the location coordinate of their project location in the OSS.

D. Environmental Approval

The environmental permit will still be one of the requirements to obtain a business license for high-risk activities to the environment, but the term has been changed into "environmental approval" which consist of: (i) the decision on environmental feasibility which is the fulfillment of the Environmental Impact Analysis (*Analisis Dampak Lingkungan* or AMDAL); and (ii) a statement of capability for environmental management as form of compliance with Environment Management Efforts and Environment Monitoring Efforts (*Upaya Pengelolaan Lingkungan Hidup dan Upaya Pemantauan Lingkungan Hidup* or UKL-UPL) standards. The decision of this environmental approval that previously rests with the regional government is now transferred to the central government.

For business activities that are not considered high-risk to the environment, this environmental approval will be integrated as part of the business licensing to simplify the investors/business actors' licensing stages.

E. Building Approval (PBG) and Certificate of Functionality (“SLF”)

Some of the regional governments’ domains and authorities, including the issuance of Building Approval (PBG) (formerly Building Permit (*Izin Mendirikan Bangunan* or “IMB”), Certificate of Acceptability (SLF), and Building Certificate (SKBG) will be divided between the central government and the regional governments based on the NPSK. The application of the said license and certificates will be processed through the OSS.

Under this Job Creation Law, the buildings that are not proper, potentially impact the environment, non-compliance with the PBG, and non-compliance with the technical plan will be demolished by the central government or regional government according to the NPSK.

New Concept of the Licensing to the Existing Laws and Regulations

Job Creation Law has made significant changes to the existing Indonesian laws, from terminologies to concepts. The readiness of the government of Indonesia in preparing the new implementing regulations; synchronizing the existing regulations; as well as preparing an adequate licensing system that is fully and effectively integrated, to support the latest concepts in this Job Creation Law, in our view, will be the primary keys in achieving the noble goals of the formation of this Job Creation Law.

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