

THE INFLUENCE OF POSITIVE FICTITIOUS PRINCIPLES IN THE ISSUANCE OF BUSINESS LICENCES THROUGH THE ONLINE SINGLE SUBMISSION RISK BASED APPROACH SYSTEM (OSS-RBA)

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Abstract.

This study aims to analyze the mechanism of business issuance licenses issued on the OSS-RBA system and find answers to the extent which positive fictitious principles in the OSS-RBA system affect legality of business. This study uses empirical research, types and legal sources used in this study are primary data in the form of direct field research and secondary data. The method of collecting interview data, observation and literature review, the overall data were analyzed qualitatively and presented descriptively. The results shows that business licenses issued through the OSS-RBA system are determined based on analysis of the level of risk and scale of business that has been applied for. The classification of the risk level in question is the level of low risk, low intermediate risk, high intermediate risk level and high risk level in the form of NIB, standard certificate and/or license. In addition, the influence of positive fictitious principles on the OSS-RBA system does not affect the legality business because legality of business is determined based on an independent statement by business actor so that the issuance of licenses is still binding on them with the provisions of applicable laws and regulations

Keywords: Business Licensing; Online Single Submission Risk Based Approach (OSS-RBA); Positive Fictitious;

INTRODUCTION

The Republic of Indonesia is a constitutional state, based on Article 1 paragraph (3) of the 1945 Constitution, which stands above the law and should be able to guarantee justice for its citizens. Thoughts about the concept of law have long been developed by philosophers from ancient Greece such as Plato (429-374 BC) and Aristotle (384-322 BC). The exercise of power in the state means that it must be based on the rule of law or the supremacy of law with the main objective is how to create a legal order in the

administration of government (Ilmar, 2013). Questioning the government's legal standing (legal standing or legal position, *rechtpositie*) will not only provide clarity on a government's legal policy but also provide legitimacy on the basis of the government's actions or deeds, where so far legal actions by the government have often confused the society (Jurdi, 2015).

The government system in Indonesia places public service as the basis for building bureaucratic relations between the state and society for the sake of mutual prosperity. Thus, public service is one of the embodiments of state functions which are described in the attitude and behaviour of the bureaucratic apparatus. Service is essentially a series of activities so that the service process takes place regularly and continuously and covers all organizational life in society. The process intended to be carried out is related to the activity of fulfilling mutual needs between the recipient and the service provider (Riawan, 2018). Based on Law Number 25 of 2009 concerning Public Service (Public Service Law) Article 1 states that public service is essentially an activity or series of activities in the framework of fulfilling service needs in accordance with statutory regulations for every citizen and resident for goods, services, and/or administrative services provided by public service providers.

Talking about public services is undoubtedly inseparable from the licensing process, licensing or permits (*verguning*) is an approval from the authorities based on laws or government regulations within certain circumstances that deviate from the provisions which prohibited by statutory regulations. Accordingly, in principle, permission is a dispensation or detention/exemption from a prohibition (Adrian, 2011). Licensing is an act of State Administrative Law that is applied in regulations based on the requirements and procedures as stipulated in the legislation. As a form of policy, permits ought to not conflict with laws and regulations and the norms of life that exist in society, both vertically and horizontally (Leo, 2008).

As technology advances, the government is also developing in the field of public services by making improvements in order to realize good effectiveness and efficiency for the community in terms of business licensing with the presence of Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing which is the implementing regulation of Law Number 11 of 2020 concerning Job Creation. This rule is the latest regulation related to the electronic licensing system which was previously regulated in Government Regulation Number 24 of 2018 (Rodding, 2017).

Previously, business licenses were applied through an electronic-based business licensing system, namely Online Single Submission (OSS) version 1.1, then on August 2, 2021 it was renewed through the Online Single Submission Risk Based Approach (OSS-RBA) system following the Letter of the Minister of Investment/Head of BKPM (Indonesia Investment Coordinating Board) Number 1342/A.1/2021 furthermore OSS-RBA arrangements are specifically regulated in the Investment Coordinating Board Regulation Number 4 of 2021 concerning Guidelines and Procedures for Risk- Based

Business Licensing Services and Investment Facilities (Head of Indonesia Investment Coordinating Board Regulation Number 4 of 2021) (Ni Komang Ayu Arniti, 2019).

This structural reform places risk as the main consideration for every business activity, provides business convenience and certainty, also aimed at increasing regional competitiveness (Adrian, *Hukum Perizinan dalam Sektor Pelayanan Publik*, 2017). In accordance with Government Regulation number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing, there are at least three related systems in the OSS-RBA. The first is related to the NSPK (Norms, Standards, Procedures and Criteria) for Risk-Based Business Licensing in OSS which is the sole reference for the Central Government, Regional Governments and Business Actors, this is stated in Article 21 paragraph (2) Government Regulation Number 5 of 2021. Second, the OSS system must be used by Ministries/Institutions (K/L), Regional Governments (Pemda), Special Economic Zone Administrators (KEK), Free Trade and Free Port Zone Concession Agency (KPBPB) and Business Actors. The licensing process is attempted in the OSS System provided by the Ministry of Investment/Indonesia Investment Coordinating Board (BKPM). Third, the OSS system is divided into 3 subsystems, namely: the information service subsystem; business licensing subsystem; and the supervision subsystem as contained in Article 167 Government Regulation Number 5 of 2021.

With these three subsystems, the implementation of OSS before and after the Job Creation Law underwent quite significant changes, where previously the OSS system was only used to arrange business licensing as stated in Article 91 paragraph (1) Government Regulation Number 24 of 2018, where licensing arrangements are scattered and uncoordinated and NSPK permits are attempted to be regulated by each K/L in ministerial regulations/ agency regulations which often overlap. Thus, it is expected with the enactment of Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing can overcome this problem and also provide convenience, especially for business actors to obtain business legality.

The implementation of risk-based business licensing presents innovation in the form of a positive fictitious principle. Government Regulation Number 5 of 2021 explains that ministers/heads of institutions, governors, regents/mayors, administrators of special economic zones, and/or heads of KPBPB concessions in accordance with their respective authorities in conducting examinations of Business Licensing requirements must comply with the time period and provide Business Permit must be in accordance with the validity of period. Appendix I comprehensively described the time limits related to the inspection process and issuance of business licenses. Through the implementation of this principle, it is hoped that the process of issuing business licenses can be carried out according to the right procedure and time so that it doesn't obstruct regional investment.

However, in reality, the application of risk-based business licensing depends on regional readiness and follow-up, especially on policies, institutions (organizations and human resources), and digital service instruments (facilities, infrastructure, and internet

networks). These three components are the main variables to see an overview of regional readiness in implementing the new regulatory regime. Another problem is the amendment of Law number 30 of 2014 concerning Government Administration in article 53 paragraph (4) the authority of the State Administrative Court (PTUN) regarding filing a follow-up lawsuit from the decision/action of the local government on the application for business licensing is removed so that legal certainty and legal protection for applications through the OSS-RBA system are cannot be sued through the State Administrative Court (Helmi, 2015).

Legal certainty regarding business licensing through the OSS-RBA system is also weakened by the Constitutional Court decision number 91/PUU-XVIII/2020 Rule of Decision number 7 which states to suspend all actions that are strategic in nature and have broad implications, and it is also not justified to issue new implementing regulations relating to Law Number 11 of 2020 concerning Job Creation. Therefore in this case, the government cannot issue laws and regulations related to follow-up business licensing verification. While the community, in this case business actors, can only wait until the issuance of business licenses is issued automatically through the OSS-RBA system or wait for verification from the government ministries/agencies/authorized area (Suparman, 2021).

METHODS

This research is an empirical legal research, namely a research method based on findings and observations supported by additional data or empirical elements (Irwansyah, 2021). This study examines and analyses how the positive fictitious principle influences the issuance of risk-based business licenses in the Online Single Submission Risk Based Approach (OSS-RBA) system. This research was also conducted by analysing the relevant laws and regulations and their application in society. The research locations chosen by the researchers were the Investment and One-Stop Integrated Service Office of South Sulawesi Province, the Pangkep Regency One-Stop Investment and Integrated Services Service, the Barru Regency One-Stop Investment and Integrated Services Service, and the City Investment and One-Stop Service Office of Parepare. The selection of the research location was based on the researcher's consideration that at that location there is data or information needed by the researcher in conducting the research.

The source of the research is in the form of legal materials, namely materials that can be traced to legal materials (formal) and can be used with the aim of analysing applicable laws, which consist of Primary legal materials that are authoritative (have authority) or consist of legislation. , official records or treatises on making statutory regulations and judges' decisions, secondary legal materials in the form of publications on laws that are not official documents including textbooks, legal dictionaries, legal journals and comments on court decisions . The types and sources of legal data used in this study include Primary data, or often also called document data, is data obtained from the first

source through an interview process with informants. Data obtained or collected by research directly from legal sources, research must collect directly on the topic of the research problem. Secondary data is data that serves to complement primary data as needed in research, this data is in the form of results of analysis of problem topics and also the results of interviews and questionnaires that have been distributed related to risk-based business licensing. Legal materials are data that serves to complement primary data and secondary data. The data needed in this study were obtained by studying library materials in the form of laws and regulations, other literature related to the issues discussed. The legal materials are divided into 2 data sources, namely primary legal materials, namely binding legal materials consisting of: Law no. 11 of 2020 Job Creation which has been revoked and replaced by Government Regulation in Lieu of Law (PERPPU) No. 2 of 2022 concerning Job Creation, Government Regulation No. 5 of 2021 concerning the Implementation of Risk-Based Business Licensing, secondary legal materials, namely legal data that provides an explanation regarding primary data obtained from library studies in the form of books, literature related to research objects, tertiary legal materials, namely legal materials that is a complement in nature to provide additional instructions or explanations to primary and secondary legal materials such as legal dictionaries, Big Indonesian Dictionary (KBBI), etc.

The data collection technique was carried out by means of interviews conducted to obtain information or data directly in the field. Interviews were conducted with parties who had capacity at the Investment and One-Stop Service Office of Barru Regency and technical agencies related to the research topic, observations were made to obtain images or data related to the positive fictitious principle and issuance of risk-based business permits. This is to complement the data needed by the author in the research process. This data collection technique is carried out by analysing laws and regulations, important documents, and other scientific works related to legal protection against the issuance of risk-based business permits. In this study, a qualitative analysis was carried out and presented descriptively to provide an overview and detailed information on how to apply or carry out the issuance of risk-based business licenses in the OSS-RBA system.

RESULTS AND DISCUSSION

Influence of the Positive Fictional Principle in Business Legality through the Online Single Submission Risk Based Approach (OSS-RBA) system

One of the policies contained in the Job Creation Law is to provide legal certainty for users of public services. In practice, public service providers are often unwilling or negligent in carrying out their obligations even though business actors and/or the community have submitted applications for business permits to them in accordance with the applicable standard operating procedures. For this reason, in order to improve public services, the concept of silence (Silence Procedure) is permitted in government administration. This silence can give rise to two possibilities, namely being considered as rejecting or being considered as granting.

Therefore, it is necessary to regulate the time limit for the government to issue a government act (*bestuurshandelingen*), both decisions and factual actions requested by members of the public. If the time limit has passed, the implication is that the application must be considered granted or rejected (Muhammad Adiguna Bimasakti, 2021). This form of rejection or acceptance is formed by the existence of the concept of fictitious decisions, namely it is considered as if the government issued a decision to grant or refuse when in fact it did not issue anything.

This adopts the principle of legal fiction, namely an assumption that something has happened when in reality it did not happen (fictitious) and that is why the concept of fictieve beschikking or implicit decisions is known. For a fictitious decision that contains legal acceptance, it is called a positive fictitious decision, while a fictitious decision that contains legal refusal is called a negative fictitious decision.

The term "Fictitious Decision" is actually unknown in positive law in Indonesia, but this nickname was born among academics and practitioners to describe decisions that appear to have been issued as a result of the government's silence on requests from citizens based on existing laws and regulations. This terminology emerged from one of the paragraph titles in *Algemene wet Bestuursrecht* (the General Administrative Law in the Netherlands which was first enacted in 1992 and has been amended several times) which was then used by practitioners and academics in Indonesia, namely *Positive Fictieve Beschikking* which is translated as Positive Fictitious Decision (Ridwan, 2018).

1. Business Legality

Licensing to start a business is the process of arranging and obtaining all legal documents as a legal basis for an activity trying to start a business. This stage is very crucial for business actors because it determines the next stage, both to the operational stage of the business and in obtaining guarantees for capital protection, access to capital, and/or obtaining facilities from the government. In the OSS-RBA era (Job Creation Law and PP Number 5 of 2021), the legality of starting a business for MSE actors follows the level of business risk. If the risk is low, MSEs only take care of the NIB. Meanwhile, if the risk is medium or high, MSEs are required to take care of standard certificates other than NIB.

For low-risk MSE business actors, NIB is a sign of business actor identity as well as legality to carry out business activities. For UMK, NIB also plays a role in fulfilling the criteria of the Indonesian National Standard (SNI) and/or a statement of halal assurance in accordance with statutory provisions. NIB contains among others:

- a. profile;
- b. business capital;
- c. tax ID number;
- d. Indonesian Business Field Standard Classification code (KBLI); and
- e. business location.

Meanwhile, for MSEs at medium-low risk, NIB and Standard Certificates are identity and legal basis for starting and running business activities (operational and commercial). Standard certificate is the legality to carry out business activities in the form of a statement by Business Actors to meet business standards in order to carry out business activities provided through the OSS system. Meanwhile, for medium and high MSEs, standard certificates need to be verified so they can carry out operational and commercial activities. After obtaining the NIB, the MSE actor concerned must make a statement through the OSS System to meet the standards for implementing business activities in the framework of carrying out business activities and the ability to be verified by the Central Government or Regional Government according to their respective authorities. This statement forms the basis for the OSS-RBA to issue unverified standard certificates.

Prior to the promulgation of Law No. 11 of 2020 concerning Job Creation, the paradigm regarding positive fictitious decisions in the legal system in Indonesia according to Article 53 of Law no. 30 of 2014 concerning Government Administration is requiring the silence of the body and/or officials at the community's request to result in being legally granted by having to pursue an application at the State Administrative Court in order to obtain follow-up, namely in the form of the decision and/or action being requested. However, after the amendment of Article 53 of Law no. 30 of 2014 concerning Government Administration through Article 175 Number 6 of Law no. 11 of 2020 concerning Job Creation, the paradigm for positive fictitious decisions in the legal system in Indonesia has changed. The indicators that influence the application of the positive fictitious principle are the legality of doing business and the ease of doing business received by business actors in carrying out their business activities.

The silence of the Agency and/or Officials regarding requests from members of the public results in the application being considered legally granted and then receiving follow-up on the considered granting of the request, so members of the public do not need to submit an application in court because of provisions that specifically regulate the authority of the court in Article 53 of the Law. No. 30 of 2014 concerning Government Administration has been removed based on Article 175 number 6 of Law no. 11 of 2020 concerning Job Creation (Ahmad, 2017). As for applications that require verification of licensing requirements, they are the main challenge for local governments as a form of providing legal certainty to business actors by the government. The verification process is carried out both through a verification mechanism by the technical team and verification through a fictitious positive mechanism as a form of government support for accelerating regional investment.

Based on the research that has been carried out, it is found that the number of applications for business licenses that have not been verified is quite large and there are even applications that have not been verified since 2021. The unpreparedness of human resources in local governments is the main reason for not verifying business licensing requirements. From an institutional standpoint, the Central Government needs to assist the regions in preparing competent human resources to become Technical Assessment Teams by accelerating the process of certification and technical guidance (bimtek) and

assisting in the preparation of a complete RDTR through mapping synchronization. For the Regional Government, this study recommends accelerating the preparation and issuance of regional regulations in accordance with the spirit of the Job Creation Law regarding licensing services and accelerating the preparation of the RDTR as a starting point in the basic requirements for business licensing.

In addition, the regional government also needs to increase the capacity of human resources both in quantity and quality by participating in training related to business licensing competence. Regional governments are also advised to form a Task Force for the Acceleration of RBA OSS Implementation which is responsible for systematic planning, monitoring and evaluation, as well as carrying out vertical (to the central government) and horizontal coordination (regional apparatus organizations and business actors/communities) (Budiman, 2013).

Table I

Business Permit Applications That Have Not Been Verified

No	District/City/Province	Application		Total
		Verify	No Verification Done	
1	Barru Regency	55	33	88
2	Pangkep Regency	85	33	118
3	Pare-Pare City	28	88	116
4	South Sulawesi Province	101	322	423

Source: DPMPSTP Data Request District and South Sulawesi Province (Selatan, 2022)

Issuance of Business Permits issued automatically through the OSS-RBA system does not affect the legality of doing business, one of the basic principles of OSS-RBA is "trust but verify" which means the government gives trust to business actors to carry out business activities according to predetermined standards, but the government still has the authority to carry out verification (inspection) of the implementation of said business activities. The trust given by the government is the key to the legality of these business licenses, this is because before the issuance of business licenses the business actor must declare his willingness to fulfill the obligations and/or requirements truthfully and be fully responsible for the business data that has been applied for (Kurniawan, 2016).

Meanwhile, community claims related to requests for administrative efforts to court are automatically deemed granted, and the regional government and central government are required to follow up on requests for administrative efforts within 5 (five) working days. The implementation of the positive fictitious principle in issuing business permits through the OSS-RBA system according to Has'ady Ichsan Haeruddin as the DPMPSTP Investment Examiner for South Sulawesi Province stated that: (Haruddin, 2022).

"Actually, the positive fictitious decision has not yet been effectively implemented, until now the Provincial DPMPSTP also does not know when it will be enforced. We are also still waiting for regulations from the center, the Ministry of Investment/BKPM is the one in control regarding the system and regulations, so let's just wait because currently business licensing is only centralized through one system, namely the OSS-RBA system.

Based on the results of the interview, it was emphasized that the issuance of business licenses automatically through a positive fictitious principle mechanism, until now the implementation has not proceeded as it should. In terms of the system, a business license that has not been verified within a certain period of time, the application for a business license is considered granted according to article 175 paragraph (4) the government administration section of the Job Creation Law. Although in principle business actors are actually allowed to carry out business activities, because the physical documents for business permits in the form of permits or standard certificates have not been issued yet, business actors and/or the public can only wait until the business permit documents are issued through the OSS-RBA system.

In the public service perspective, State Administrative Decrees are positioned as a form of administrative public service product (for example certificates and permits), so their implementation should comply with the provisions of public service standards, including the service completion period, as well as service systems, mechanisms, procedures. The provision of public services to the community must be interpreted as a form of fulfilling service needs which are nothing but rights, so in this context public service providers are not justified in being 'silent' but must respond as a form of carrying out their obligations as public servants.

However, apart from the legal basis for the positive fictitious existence after the Constitutional Court Decision Number 91/PUU-XVIII/2020 the review of the Job Creation Law, the existence of the concept of 'fictional' itself which exists as a result of the silence of public service providers/executors, is something that should not have happened and should be given a consequence. A positive fictitious designation as a decision that presumes to be granted will also eventually add another series of procedures until a decision and/or action is issued. So that this goes too far from the essence of providing efficient services to the community, while every public service provision should have a procedure for how service requests are received until they are resolved.

Another thing is that the 'silence' attitude of public service providers/executors regarding a service request is clearly an act of maladministration, so that the Ombudsman as a state institution whose one of its duties is to receive and examine allegations of maladministration in the delivery of public services must pay more attention. The Public Service Law has provided for sanctions for public service implementers who do not carry out their obligations ranging from a written warning to release from office, so that in the future it is hoped that what will materialize is an increase in the provision of services

according to the procedure timeframe for the community, not even the birth of positive fictitious products.

Public service providers have an obligation to compile, stipulate, and implement service procedures, including the timeframe for completing applications, managing how the service should run from the receipt of the application to the final result in the form of a decision and/or action on the application. Through upholding the application of these service standards, there should not be a 'silent' attitude from state administrative officials as executors of public services regarding services being accessed/requested by the public. The community has the right to obtain clear and clear final results from each service requested, whether accepted or rejected.

Based on this research, it found various breakthroughs made by the Regional Government in South Sulawesi Province, namely in addition to implementing the OSS version of PP 24/2018, DPMPTSP South Sulawesi has also developed a regional online system to support the acceleration of business licensing services such as SIMAP, the New Normal Innovation Campus Online Information System. (NENI SI LINCA), Investment Map, and Maritime and Fisheries Sector Licensing Counter (GESIT-19). In fact, GESIT-19 won an award as Top Innovation for South Sulawesi Province in 2021. From a regulatory standpoint, South Sulawesi is currently drafting a Governor Regulation (Pergub) regarding the implementation of licensing and non-licensing. This draft is a response to the follow-up to the Job Creation Law and a number of its derivative regulations (PP and Presidential Regulations/Perpres). Prior to the existence of the Job Creation Law, South Sulawesi already had Governor Regulation Number 26 of 2019 concerning the Implementation of One-Stop Integrated Licensing and Licensing. This regulation is a follow-up to Governor Regulation Number 85 of 2016 concerning the Position and Organizational Structure of DPMPTSP Work Procedures (SOTK). The existence of this regulation actually shows South Sulawesi's commitment to providing institutions/bureaucracy capable of providing effective and efficient (easy, fast, and simple) licensing services. By encouraging investment acceleration, South Sulawesi also has Regional Regulation Number 3 of 2021 concerning Provision of Incentives and/or Ease of Doing Business. This regulation makes fiscal facilities (regional taxes and fees) and ease of doing business to attract investment while opening access to partnerships with MSME actors and protecting the environment in South Sulawesi.

From an institutional standpoint, the Central Government needs to assist the regions in preparing competent human resources to become Technical Assessment Teams by accelerating the process of certification and technical guidance (bimtek) and assisting in the preparation of a complete RDTR through mapping synchronization. For the Regional Government, this study recommends accelerating the preparation and issuance of regional regulations in accordance with the spirit of the Job Creation Law regarding licensing services and accelerating the preparation of the RDTR as a starting point in the basic requirements for business licensing. In addition, the regional government also needs to increase the capacity of human resources both in quantity and quality by participating in training related to business licensing competence. Regional governments

are also advised to form a Task Force for the Acceleration of RBA OSS Implementation which is responsible for systematic planning, monitoring and evaluation, as well as carrying out vertical (to the central government) and horizontal coordination (regional apparatus organizations and business actors/communities).

2. Ease of Doing Business

In licensing to start a business, the presence of the OSS-RBA makes it easy for MSEs to get business legality. MSEs get NIB and standard certificates very easily. Through DPMPSTSP and/or Dinkop UMKM, the local government also facilitates SMEs to access and obtain these documents. Meanwhile, with regard to building permits, practices in the regions are still varied and generally still use regional systems and SOPs. The presence of multi-systems (OSS-RBA, SIMBG, Gistaru, and Amdalnet) keeps services fragmented so that regions use their own systems to continue providing PBG services.

The implementation of OSS-RBA in the regions still faces a number of obstacles. At the Central level, the incompleteness of substance in PP and the unpublished technical regulations has created uncertainty in the regions in designing regional policies and providing business licensing services. In addition, the OSS-RBA system has not yet been integrated with other ministries/institutions' systems, adding to procedures and time in licensing services.

Meanwhile, the regions are facing a number of problems, including: limited human resources capacity (lack of certified staff) and regional policies that are not optimally prepared to make the regions use mixed methods (OSS-RBA and SOP prior to OSS-RBA and/or regional systems); drafting or revising the legal umbrella regulations for the implementation of permits through OSS; there is still a discrepancy between the digital map which is used as a reference for granting permits and the map owned by the Regional Government; The local government is still having problems preparing the RDTR, mainly due to the budget and also the preparation techniques; limited availability of human resources for the building approval technical assessment team (PBG).

To encourage investment acceleration, South Sulawesi actually has Regional Regulation Number 3 of 2021 concerning Provision of Incentives and/or Ease of Doing Business. This regulation creates fiscal incentives (regional taxes and fees) and easy business facilities to attract investment while opening access for partnerships with MSMEs, as well as maintaining environmental sustainability in South Sulawesi. The existence of this regulation is also strengthened by Regional Regulation Number 2 of 2021 concerning Implementation of Corporate Social and Environmental Responsibility.

In the institutional (bureaucratic) space, DPMPSTSP has the role of OPD which is authorized to serve business licensing as part of the affairs of organizing and implementing investment policies in South Sulawesi. This OPD was formed based on Governor Regulation Number 85 of 2016 concerning Position and SOTK DPMPSTSP. Since the existence of the Governor Regulation, DPMPSTSP has made many

improvements on the institutional side, especially initiating policies and innovations for easy and fast licensing services.

Table II
Business Actors' Responses to The RBA OSS Mechanism

No	Substance	Perpetrator's Response			
		Don't Know	Agree	Disagree	
1	Ease in Fulfilling Business Licensing Requirements	0	16	4	20
2	Reducing Costs/Tariffs in Obtaining Business Permits	0	18	2	20
3	The Requirements Requested in the OSS-RBA System are in Accordance with the NSPK	1	15	4	20
4	Speed of Time in Providing Services Related to Business Licensing	0	19	1	20
5	The Certainty of the Period for Verification of Business Licensing Requirements by the Competent Authority	0	6	14	20
6	Ease in Making Complaints About the	4	11	5	20

	Services Provided				
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Source: Respondents Result of Questionnaire Distribution of Business Actors

The regions have carried out structural reforms to increase the ease and certainty of doing business. These reforms are part of the follow-up of the national priority program as well as the realization of regional autonomy in administering and managing government affairs under its authority. These reforms can be seen in the formation and drafting of regulations (Perda/Perkada), institutional arrangements, and the development of regional service platforms to create simple, easy and fast licensing services.

After the enactment of Law No. 11 of 2020 concerning Job Creation which was later revoked, and a Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation, the provisions of Article 53 of the UUAP are amended, these changes include the stipulation deadline which was originally a maximum of 10 days to 5 days, and the elimination of the role of the Administrative Court in handling cases of positive fictitious decisions. When referring to Article 175 point 7 of the Job Creation Perppu regarding changes to Article 53 UUAP, the determination of positive fictitious decisions is no longer left to the Administrative Court, but will be further regulated in a Presidential Regulation. This indicates that the application for a positive fictitious decision is no longer the absolute competency of the Administrative Court.

Government Regulation in Lieu of Law (Perppu) is a legal product issued by the president with procedures outside normal conditions. It is said that because the Perppu is a product issued by the executive, but its position is equal to the law. In fact, in the theory of separation of powers, legislative power resides with the legislature. However, in this case it is the president who leads the issuance of a legislative product, which does not involve the legislature in its formation process.

In several countries with a presidential system, Perppu is part of the President's powers in the field of legislation. Other terms for this Perppu include constitutional decree authority, executive decree authority, or presidential decree authority. Included in this power group is in the case of filing bills, as well as in the case of a veto on a draft law. In addition, there are also legal regulations issued by the president such as government regulations or presidential regulations.

In a presidential system, there is a very close relationship between the issuance of Perppu and the condition of divided government. This condition occurs because of the weakness of the presidential system which gives people's power to the executive and legislature so that it is very possible for a minority government to occur. That is, the executive does not get enough support from the legislature resulting in government instability. One of the impacts was the birth of the Perppu from the hands of the president. In Indonesia,

perppu are regulated in Article 22 of the 1945 Constitution of the Republic of Indonesia. In this article, the criteria related to perppu issued by the president are regulated. First, there is the matter of compelling urgency. Second, the Perppu is temporary until the DPR gives approval to the Perppu. If the DPR agrees, the Perppu will become law. However, if the DPR does not agree, then the Perppu must be revoked (Budi, 2007).

Thus the issuance of Perppu Number 2 of 2022 Concerning Job Creation must meet the following 3 (three) requirements:

1. The condition is that there is an urgent need to resolve legal issues quickly based on the law.

An urgent condition arises from MKRI Decision No. 91/PUU-XVIII/2020 which states that Law Number 11 of 2020 Concerning Job Creation is unconstitutional conditional and orders the legislators to make improvements within a maximum period of two years since the decision was pronounced and if it is not heeded it is declared permanently unconstitutional and orders the Government to suspend any actions or policies that are strategic in nature and have broad impacts and it is also not justified to issue new implementing regulations relating to Law Number 11 of 2020 concerning Job Creation.

If these conditions are not fulfilled immediately, the Job Creation Law will become permanently unconstitutional so that the President and also the DPR can be considered to have committed an act that violated the law, there is legal uncertainty over the implementation of the Job Creation Law and the cessation of government policies that are strategic in nature and of course affect the national economy.

2. The condition that there is an Act (Employment Creation Act) is not sufficient.

Verdict No. 91/PUU-XVIII/2020 has an impact on the Job Creation Law as the current law is inadequate and needs to be amended immediately. One of the efforts related to the Omnibus Law method in forming regulations has been accommodated in Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. Likewise, Perppu Number 2 of 2022 concerning Job Creation has carried out synchronization and changes in substance which are considered to be wrong according to the mandate of Decision No. 91/PUUXVIII/2020.

3. The terms of the legal vacuum cannot be overcome by making laws in the usual way because it will take quite a long time, while the urgent situation requires certainty to be resolved.

Since MKRI Decision No. 91/PUU-XVIII/2020 has stated that the Job Creation Law is formally flawed and states that it is prohibited to take strategic actions, so in fact there is a legal vacuum for the government to take actions to realize citizens' constitutional rights, therefore the Job Creation Law needs to changes have been made, but because procedurally changing laws require quite long stages and time,

taking into account the substantial interests of the nation and the constitutional rights of citizens, this requirement is fulfilled.

Referring to Article 22 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia, this Perppu must obtain approval from the House of Representatives in the following session, but if it does not receive approval, then the Government Regulation must be revoked. This is where control for the DPR is carried out over the issuance of this PERPPU as a form of implementing people's sovereignty as the highest authority.

PERPPU Number 2 of 2022 Concerning Job Creation which was issued on December 30, 2022 by Joko Widodo (Jokowi) as the President of the Republic of Indonesia has fulfilled the requirements for an urgent need to resolve legal issues quickly. This can be seen in the 7 (seven) reasons for the issuance of PERPPU Cipta Kerja as a preamble considering PERPPU Number 2 of 2022, namely:

- 1) that in order to realize the goal of establishing the Indonesian State Government and realizing a prosperous, just and prosperous Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the State needs to make various efforts to fulfill citizens' rights to work and a decent living for humanity through work creation;
- 2) that by creating jobs, it is expected to be able to absorb the widest possible Indonesian workforce in the midst of increasingly competitive competition and demands for economic globalization as well as challenges and global economic crises that can disrupt the national economy;
- 3) that to support job creation, it is necessary to adjust various regulatory aspects relating to facilitation, protection and empowerment of cooperatives and micro, small and medium enterprises, improvement of the investment ecosystem, and acceleration of national strategic projects, including increasing the protection and welfare of workers;
- 4) that regulations related to facilitation, protection and empowerment of cooperatives and micro, small and medium enterprises, improvement of investment ecosystems, and acceleration of national strategic projects, including increasing the protection and welfare of workers spread across various sectoral laws are not currently able to meet legal requirements for the acceleration of work creation so that changes need to be made;
- 5) that efforts to change regulations relating to facilitation, protection and empowerment of cooperatives and micro, small and medium enterprises, improvement of the investment ecosystem, and acceleration of national strategic

projects, including increasing the protection and welfare of workers are carried out through changes to sector laws that have not yet supported the realization of synchronization in guaranteeing the acceleration of copyright work, so that breakthroughs and legal certainty are needed to be able to resolve various problems in several laws into one law in a comprehensive manner using the omnibus method;

- 6) that in order to implement the Constitutional Court Decision Number 9 I/PUU-XVIII/2020, it is necessary to make improvements through replacing Law Number 11 of 2020 concerning Job Creation;
- 7) whereas the global dynamics caused by rising energy and food prices, climate change, and supply chain disruptions have caused a decline in world economic growth and an increase in inflation which will have a significant impact on the national economy which must be responded to with policy mix standards to increase national competitiveness and attractiveness for investment through economic transformation contained in the Law on Job Creation.
- 8) The elimination of the role of the Administrative Court in handling cases of positive fictitious decisions according to the author can be said to be a legal setback because it eliminates the control mechanism of the judiciary over the actions of government agencies/officials who ignore a request submitted to them. The control function of the judiciary is basically important, because it aims to realize the principle of checks and balances so that there is no arbitrariness by the authorities towards society. This is also in line with the opinion of Surya Mukti Pratama in the journal *Rechtsvinding* which states that the elimination of PTUN's involvement in deciding a fictitious positive decision, as if making this positive fictitious type of decision "half-life", because its existence is acknowledged but left alone without proof of legality clear, of course this will lead to uncertainty in the execution so that it will harm the community

CONCLUSION

The implementation of Business Licensing issued through the OSS-RBA system has been carried out by the Investment Board and One-Stop Integrated Service (DPMPTSP) in Regencies and Cities throughout South Sulawesi. The implementation of risk-based business licensing has been carried out simultaneously since August 8, 2021 to date through the OSS-RBA system. As for the issuance of business licenses is determined based on an analysis of the level of risk and business scale that has been applied for, by business actors and/or the public. Based on this matter, a business activity will be

classified into low-risk level, low-intermediate-risk level, intermediate-high-risk level and high-risk level. These levels of risk and business scales are outlined in Appendix I of Government Regulation number 5 of 2021 according to their sectors, KBLI (Standard Classification of Indonesian Business Fields), and their respective business fields. Hereby, it means that all KBLI have a risk level that is determined based on a risk analysis by the central government. The implementation of risk-based business licensing services was also followed up with a circular letter from the Ministry of Home Affairs which emphasized that regional governments can no longer issue permits other than the OSS-RBA system. Therefore, Business Place Permits (SITU) and Business Certificates (SKU) can no longer be issued by the regency/municipal government. The existence of the concept of 'fictitious decisions' begins with the Law on State Administrative Courts which considers the non-issuance of decisions by state administrative bodies or officials as a form of rejection or negative fiction. However, through the Job Creation Act, the concept of positive fiction has become even easier by no longer need to apply to the court to obtain a decision on accepting applications and the duration of time is also shorter when compared to the two previous laws. The issuance of Business Permits that automatically issued through the OSS-RBA system does not affect the legality of doing business, one of the basic principles of OSS-RBA is "trust but verify" which means the government gives trust to business actors to carry out business activities according to predetermined standards, but the government still has the authority to carry out verification (inspection) of the implementation of said business activities. The trust given by the government is the key to the legality of these business licenses, this is because before the issuance of business licenses the business actor must declare his willingness to fulfill the obligations and/or requirements truthfully and be fully responsible for the business data that has been applied for. Problems that arises then is that public service providers have an obligation to compile, stipulate, and carry out service procedures, including the timeframe for completing requests, managing how the service should run from the receipt of the request to the final result in the form of a decision and/or action on the request. The community has the right to obtain clear and evident final results from each service requested, whether the application submitted is accepted or rejected. Thus, in the presence of concrete actions and/or decisions from public service providers in responding to every request for public services, therefore the concept of 'fictional' should not be necessary.

Investment Board and One-Stop Integrated Service (DPMPTSP) as a public service provider has its own challenges to continue to conduct dissemination related to the administration of business licensing through the OSS-RBA system in order to increase investment and accelerate economic growth. However, the government, in this case ministries, agencies, and local governments, must endeavour for the ease of administering business licensing through the OSS-RBA system can be accounted, in accordance with applicable laws and regulations while continuing to supervise business licenses that have been issued either automatically or through verification by the relevant technical team according to their authority. And also The central government, in this case the Ministry of Investment/Indonesia Investment Coordinating Board (BKPM), should work on how this positive fictitious mechanism can apply effectively as a

guarantee of legal certainty and transparency to business actors/community related to applications that have been filed in the OSS-RBA system.

REFERENCES

- Adrian, S. (2011). *Hukum Perizinan dalam Sektor Pelayanan Publik*. Jakarta: Sinar Grafika.
- Adrian, S. (2017). *Hukum Perizinan dalam Sektor Pelayanan Publik*. Jakarta: Sinar Grafika.
- Ahmad. (2017). Konsep Fiktif Positif: Penerapannya di Pengadilan Tata Usaha Negara. *Jurnal Hukum Replik*, 141-56.
- Budi, W. (2007). *Kebijakan Publik, Teori dan Proses*. Yogyakarta: Media Pressindo.
- Budiman, R. (2013). *Kebijakan Publik: Membangun Pelayanan Publik yang Responsif*. Bandung: Hakim Publishing.
- Haruddin, H. I. (2022, December 12). Periksa Penanaman Modal DPMPTSP Provinsi Sulawesi Selatan. (S. W. Amalia, Interviewer)
- Helmi. (2015). Sistem Pelaksanaan Perizinan di Indonesia. *Jurnal Penelitian Hukum Vol. 9 No.1*, 47.
- Ilmar, A. (2013). *Hukum Tata Pemerintahan*. Jakarta: Prenada Media.
- Irwansyah. (2021). *Legal Research: Choices of Article Writing Methods and Practices*. Yogyakarta: Mitra Buana Media
- Jurdi, F. (2015). *Hukum Acara Peradilan Tata Usaha Negara*. Yogyakarta: Rangkang Education.
- Kurniawan, M. P. (2016). *Kewenangan Badan Penanaman Modal dan Perizinan (BPMP) Kota Bandar Lampung Dalam Mengeluarkan Izin di Bidang Kepariwisata*. Lampung: Universitas Lampung.
- Leo, A. (2008). *Dasar-Dasar Kebijakan Publik*. Bandung: Alfabeta.
- Muhammad Adiguna Bimasakti, S. d. (2021). *Aspek-Aspek Hukum Dalam Pelayanan Publik Pasca Undang-Undang Cipta Kerja*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia.
- Ni Komang Ayu Arniti, A. A. (2019). Penyelesaian Permohonan Fiktif Positif Untuk Mendapatkan Keputusan di Pengadilan Tata Usaha Negara. *Jurnal Analogi Hukum*, 65-70.
- Riawan, T. (2018). *Hukum Administrasi Negara*. Jakarta: Sinar Grafika.
- Ridwan, D. H. (2018). Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara dalam Undang-Undang Administrasi Pemerintahan. *Jurnal Ius Quia Iustum*, 339-58.
- Rodding, B. (2017). Keputusan Fiktif Negatif dan Fiktif Positif Dalam Peningkatan Kualitas Pelayanan Publik. *Tanjung Pura Law Review*, 26-37
- Selatan, D. K. (2022). *Permohonan Perizinan Berusaha Yang Tidak Dilakukan Verifikasi*. Sulawesi Selatan: DPMPTSP.
- Suparman, H. N. (2021). *Implementasi OSS RBA di Daerah Tantangan dan Kebutuhan Pemda*. Jakarta: KPPOD.