

# Digital Government Transformation in Risk-Based Business License

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**Abstract.** The goal of research on the digital government of risk-based business licencing is to explain the change in digital licencing from paper-based sectoral licencing to electronically integrated licencing. Specifically, OSS-RBA was licencing. This change is intended to explain why digital licencing is becoming more prevalent. For this reason, a kind of research known as normative juridical research is utilised. Integrating electronic licencing and sources of authority to issue risk-based business licences is one topic that will be discussed as part of this transformation of digital governance from sectoral licencing to electronic licencing. Issuance of the OSS-RBA Permit as a State Administrative Decree must pay attention to the legality principle regarding the mandate or delegation of authority for the OSS-RBA Permit to be declared to have been issued by an authorised official after it has been issued as a State Administrative Decree.

**Keywords:** Electronically Integrated Licensing, Authority, OSS-RBA, The Principle of Legality

## 1 Introduction

The globe is experiencing the fourth generation of the industrial revolution (industrial revolution 4.0). New disruptive technologies (disruptive technology) have emerged due to industrial revolution 4.0, compelling the corporate sector to adapt rapidly to continue growing and evolving. In his book titled "The Innovator's Dilemma: When New Technologies Cause Great Firms to Fail," Clayton M. Christensen describes how the form of business competition that focuses on information and communication technology innovation has had a significant impact on the ability of much smaller companies to defeat market leaders [1].

In addition to putting pressure on the government to improve the quality of public services, the development and innovation of information and communication technologies have also contributed to the strain. For this reason, the government requires electronic government (e-Government) or electronic-based government, which is essential for all decision-making. For this reason, several governments have begun to abandon conventional government or acknowledge it as paper-based administration. Examining these topics surrounding the change of the traditional government into e-Government policy issues is fascinating. [2]. E-Government is frequently referred to as Digital Government; according to the United Nations (UN), the two terms can be used sequentially because academics, government officials, and practitioners consider there to be no difference between them [3].

Initiatives to develop electronic systems in Indonesia have been ongoing for decades, beginning with the National Management Information System/Simnas (the 1980s), Nusantara

21 (1997), National Information Technology Framework/NITF (1998), Information Infrastructure Development Program/IIDP (1998), National Information System/Sisfonas (2002), and Presidential Instruction Number 3 of 2003 on the National Policy and Strategy for the Development of Electronic-Government (the National Policy and Strategy for the Development of Electronic-Government) (SPBE). The lengthy process of creating the government's electronic system in Indonesia has improved the government's electronic system throughout all disciplines and government agencies [4].

In its explanation of the Electronic-Based Government System (SPBE) on July 3, 2018, the Ministry of State Apparatus Empowerment and Bureaucratic Reform stated that the scope of SPBE services includes services to government institutions (G2G), services to state civil servants (G2E), services to the public (G2C), and services to business actors (G2B). Moreover, e-Licensing is a sort of commercial service [5].

This e-Licensing service is known as Online Single Submission (OSS) and is accessed through a special portal at <https://www.oss.go.id>. OSS was initially created based on Government Regulation 24 of 2018 on Electronically Integrated Business Licensing Services, but later changed to Online Single Submission - Risk Based Approach (OSS-RBA) based on Government Regulation Number 5 of 2021 on Implementation of Risk-Based Business Licensing.

## **2 Method**

This study employs a normative legal research methodology. Normative legal research is also known as doctrinal legal research, library research, or document study. This doctrinal legal investigation is limited to written regulations and other legal sources. As library research or document study, most of this research [6] is conducted on secondary data in the library.

The normative juridical method is a research strategy that refers to legal standards. This normative legal methodology employs a legislative, conceptual, and analytical approach to study. Research resources may include primary, secondary, and tertiary legal documents obtained from a literature review [6] and assessed through grammatical and systematic interpretation [6].

## **3 Finding and Discussion**

### **3.1 Digital Government Transformation: From Sectoral Licensing Towards Electronic Licensing Integration**

The DPR RI Plenary Meeting on October 5, 2020, has agreed on Omnibus Law, the Draft Law (RUU) on Job Creation into law [7], which was ratified by the President on November 2, 2020, become Law Number 11 of 2020 concerning Job Creation, known as Job Creation Bill.

Job Creation BILL enforces the application of Risk-Based Business Licensing, which is followed up by Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing and followed by the launch of the Online Single Submission Risk Based Approach (OSS-RBA) or OSS Risk Based.

Some of the advantages of OSS-RBA Licensing compared to the previous one are:

1. The paradigm shifts from License Based System to Risk Based System so that not all activities must use Permits and only activities that have high risk must use Permits. Business activities with low and medium risks are sufficient to use NIB and Standard Certificates.
2. Changes in the concept of licensing that are ex-ante (permit requirements are met at the beginning) to become ex-post (verification is carried out after the requirements are met).

The process of digital licensing transformation stages can be explained as follows:

### **3.1.1 Sectoral licensing**

Licensing The OSS-RBA system Licensing Transformation begins with a traditional licensing system that is paper-based and sectoral, i.e., it is dispersed across each sector's legislation and structured according to the hierarchy of local government authorities and central government. In the meantime, Law Number 23 of 2014 on Regional Government categorises government affairs as absolute, concurrent, and general. The licensing authority is included in concurrent government affairs. Therefore its implementation is divided among the Central, Provincial, and Regency/City Governments. In this stage, licensing provisions are still scattered and governed by sector-specific laws and regulations.

### **3.1.2 Integrated Licensing**

The concept of integrated licensing began when the government established the Investment Coordinating Board (BKPM), which stipulated that the Chairman of BKPM received a delegation of authority from the Minister who was responsible for fostering investment in the agricultural, mining, energy, trade, cooperative and manpower sectors for grants. Permit on behalf of the Minister concerned based on the provisions of Article 3 letter l jo. Article 21, paragraph (3), paragraph (5), and paragraph (6) of Presidential Decree Number 33 of 1981 concerning the Investment Coordinating Board.

This integration of licensing to BKPM was reaffirmed by the promulgation of Law Number 25 of 2007 concerning Investment on April 26, 2007, in which Article 1 number 10 stipulates that "One-stop integrated service is the administration of a permit and non-licensing that is delegated or delegated. The authority of an institution or agency that has licensing and non-licensing authority whose management process starts from the application stage to the stage of document issuance, which is carried out in one place."

Article 26 paragraph (3) of Law Number 25 of 2007 concerning Investments orders the making of provisions regarding the procedures and implementation of one-stop integrated services (PTSP) with a Presidential Regulation so that on June 23, 2009, the President stipulates Presidential Regulation Number 27 of 2009 concerning Services. One Stop Services, which has been amended by Presidential Regulation Number 97 of 2014. Article 7 of Presidential Regulation Number 97 of 2014 concerning One Stop Services stipulates that: [8]

- a. In organizing PTSP in the investment sector:
  - 1) The Head of BKPM receives delegation or delegation of authority from Government's affairs in the Investment sector as the technical Minister/ Head of the Institution having Licensing and Non-licensing authority.
  - 2) The Head of BKPM may delegate the authority as long as they have the granted from the technical Minister/Head of Institution with substitution rights to provincial PTSP, regency/city PTSP, Free Trade Zone and Free Port PTSP, or Special Economic Zone Administrator.

- 3) The technical minister/Head of the Institution may assign his/her official at BKPM to receive and sign Licensing and Non-licensing whose authority cannot be delegated in accordance with the provisions of laws and regulations.
- b. Delegation or Delegation of Authority is stipulated through a Technical Ministerial Regulation/Head of Institution.

At the beginning of the implementation of PTSP in the regions, the Minister of Home Affairs enacted Regulation of the Minister of Home Affairs Number 24 of 2006 on Guidelines for the Implementation of One Stop Services, in which Article 6 stipulates that “Regents/Mayors delegate the authority to sign licensing and non-licensing to the Head of PTSP Operator for speeding up the service process.”

### 3.1.3 Electronically Integrated Licensing

On September 22, 2017, the President stipulated Presidential Regulation Number 91 of 2017 on the Acceleration of Business Implementation as a legal basis for the use of information technology implementation through the Electronically Integrated Business Licensing System (Online Single Submission/OSS) – EIBLS OSS.

Article 31 of Presidential Regulation Number 91 of 2017 concerning Acceleration of Business Implementation stipulates that:

- 1) All Business Licensing under the authority of the Minister/head of institution, governor, and regent/mayor must be carried out through an EIBLS OSS.
- 2) The EIBLS OSS, as referred to in paragraph (1), becomes the main reference (single reference) in the implementation of the applicable Business Licensing as long as it has not been regulated or does not contrary to the laws and regulations.
- 3) The EIBLS OSS, as referred to in paragraph (1), is integrated with the existing government service system, at least including Population Identification Number, ratification of the establishment of a business entity, Indonesia National Single Window, PTSP, and the system of other relevant ministries/agencies.

The EIBLS OSS since the promulgation of Presidential Regulation Number 91 of 2017 concerning Acceleration of Business Implementation and trials carried out no later than January 1, 2018 [9]. And legally, the EIBLS OSS was launched on dated June 21, 2018, by the Government by issuing Government Regulation Number 24 of 2018 on Electronically Integrated Business Licensing Services. From this, OSS Licensing, which finally gave birth to the OSS-RBA Licensing through Job Creation Bill, the implementation of Risk-Based Business Licensing, and Government Regulation on The Implementation of Risk-Based Business Licensing.

Furthermore, the transformation of digital licensing is seen in the following table:

**Table 1.** Transformation of Digital Licensing

----->	<b>Sectoral Licensing</b>	<b>Licensing Integrated</b>	<b>Licensing Electronic Licensing</b>
Laws	Constitution & Sectoral Regulations 1	Sectoral Constitution, Constitution No.25/2007,	Sectoral Constitution, PP No.24/2018, UU No.11/2020 & PP

----->	Sectoral Licensing	Licensing Integrated	Licensing Electronic Licensing
		Presidential Regulation No.97/2014	No.5/2021
Licensing System	<ul style="list-style-type: none"> <li>• Licensed Based System</li> <li>• Paper based</li> <li>• Ex -ante</li> </ul>	<ul style="list-style-type: none"> <li>• Licensed Based System</li> <li>• Paper based</li> <li>• Ex -ante</li> </ul>	<ul style="list-style-type: none"> <li>• Risk Based System</li> <li>• Digital (paperless)</li> <li>• Ex –post</li> </ul>
Authority	Regent/Mayor, Governor & Minister of Technical	Regent/Mayor, Governor & Minister of Technical	Regent/Mayor, Governor & Minister of Technical
Permit Application Recipient Institution	Regent/Mayor, Governor & Minister of Technical	One Stop Services (PTSP)	National Online Single Submission Portal (OSS)
Licensing Agency	Regent/Mayor, Governor & Minister of Technical	Regency/City PTSP, Provincial PTSP & BKPM	Regency/City DPMPTSP, Provincial DPMPTSP & OSS BKPM
Implications	<ul style="list-style-type: none"> <li>• All business activities must have a permit</li> <li>• All licensing requirements must be met at the beginning of the permit application Permit</li> <li>• decision in the form of uk paper documents</li> </ul>	<ul style="list-style-type: none"> <li>• All business activities must have a permit</li> <li>• All licensing requirements must be met at the beginning of the permit application The permit</li> <li>• decision is in the form of a paper document</li> <li>• There is a delegation of authority to issue permits</li> </ul>	<ul style="list-style-type: none"> <li>• Only activities that have risks that must have a permit</li> <li>• Verification of new applications is carried out after all licensing requirements are met</li> <li>• Permit decisions in the form of electronic documents</li> <li>• There is a delegation of authority for granting permits</li> </ul>

### 3.2 Source of Authority for Issuing OSS-RBA

Permits Licensing enacts the regulatory and controlling functions of the government over community activity. By granting permission, the authorities permit the applicant to engage in illegal behaviours to safeguard the public interest, which requires oversight [10].

Government Administration Decrees, also known as State Administrative Decrees or State Administration Decrees, are written decisions issued by Government Agencies and Officials in government administration [1].

A permit is a decision by a competent government official granting community members' requests in line with the law [1].

Implementation Administration of the government based on legality [15]. According to the legality principle, or the *rechtmatigheid van bestuur*, all government actions must be founded on the law. As a reflection of the acknowledgement and respect for the sovereignty of the people, every state administrative body or official activity must be founded on a formal law as a result of this principle. When coupled with government activities that impose specific duties or obligations on the populace [11], authority attribution has a greater significance.

In the transformation of licencing to OSS-RBA licencing, there are usually additional arrangements about the delegation or delegation of licencing authority from the technical Minister/Head of Institutions to BKPM as a source of authority in providing OSS-RBA licences.

Even OSS licencing has been questioned regarding the concept of "Mandate," which is mentioned in Article 1 point 5 jo. Article 19, paragraph (2) of Government Regulation 24 of 2018 concerning Electronically Integrated Business Licensing Services states that licences issued by the OSS institution are "for and on behalf of the minister." With "for and in the name of," the OSS institution's authority is in the form of a "mandate," which, according to Article 1 number 24 of Law Number 30 of 2014 concerning Government Administration, is the delegation of authority from higher government agencies and officials to lower government agencies and officials, with responsibility and accountability remaining with the mandate giver. This "mandate" authority means that responsibility and accountability remain with the local government (the regent/mayor as the mandate giver). However, in OSS, local governments cannot freely oversee issuing business licences and permits, such as trading business permits. Transactional or commercial activities. Then, what about the source of authority regulation under Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing ("PP No. 5/2021") regarding the issuance of OSS-RBA permits?

Article 15 paragraph (2) of PP No. 5/2021 states that a Business Permit in Business Licensing is the approval of the Central Government or Regional Government to carry out business activities that must be fulfilled by Business Actors before carrying out activities. Furthermore, Article 22 paragraph (2) of PP No.5/2021 states that the implementation of the issuance of Business Licensing is carried out by:

- a. OSS Institutions.
- b. OSS Institution on behalf of the minister/head of the institution.
- c. The head of the provincial DPMPSTSP on behalf of the governor.
- d. The head of the district/city DPMPSTSP on behalf of the regent/mayor.
- e. KEK administrator.
- f. Head of the KPBPB Concession Board.

In the provisions of Article 22 paragraph (2) letter b, letter c, and letter d of PP No. 5/2021 above, it still mentions the phrases "on behalf of the minister/head of the institution," "on behalf of the governor," and "on behalf of the regent/ mayor."

The definition of a Mandate is the delegation of authority from a higher Government Agency and/or Official to a lower Government Agency and/or Official, with responsibility and accountability remaining with the mandate giver [1].

However, of course, the provisions of Article 22 paragraph (2) letter b, letter c, and letter d of PP No. 5/2021 above cannot be enforced because the attribution of licensing authority owned by the minister, governor, and regent/mayor is given by a regulation of the same level. Laws that cannot be overridden by regulations at the level of government regulations.

The process of granting a mandate or delegation of authority must be done in writing. For example, the Minister of Agriculture issued Regulation of the Minister of Agriculture Number 08 of 2020 concerning the Delegation of Authority for Issuing Business Licensing for the Agricultural Sector to the Investment Coordinating Board, and the Regent of Ogan Komering Ilir issued Regent Regulation Number 2 of 2017 concerning Delegation of Authority in Licensing and Non-Licensing to the Head of the Agency. Investment and One-Stop Service in Ogan Komering Ilir Regency.

That the process of granting a mandate or delegation of authority must comply with the provisions stipulated in Law Number 30 of 2014 concerning Government Administration so that the OSS-RBA Permit can truly be declared to have been issued by an authorized official.

#### **4 Conclusion**

The author can conclude, based on the preceding discussion, that digital government in the licencing sector occurs in stages, from paper-based licencing to electronically integrated licencing (OSS-RBA licencing), and that the process of granting a mandate or delegation of authority must comply with the requirements of Law No. 30 of 2014 on Government Administration (Government Administration Law) so that the OSS-RBA Permit can be declared to have been issued by an authorised office.

In order to comply with the provisions outlined in the Government Administration Law, the author proposes researching administrative law surrounding obtaining the OSS-RBA Permit.

In general, however, the transition of digital licencing has facilitated business in Indonesia. According to the most recent World Bank report on the ease of doing business (Ease of Doing Business) 2019, there are five areas that the government has successfully addressed, resulting in an improved rating for Indonesia. Furthermore, one of these indicators is launching a business associated with deploying Online Single Submission (OSS) [12].

Even in 2020, Indonesia ranks 88th on the United Nations' E-Government Development Index (EGDI). Since 2016, when it was rated 116th on the EGDI, Indonesia's position has steadily risen each year. Indonesia's position is significantly lower than that of other ASEAN nations, including Singapore (11th), Malaysia (47th), Brunei Darussalam (60th), Thailand (57th), the Philippines (77th), and Vietnam (88th) [13].

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