

Omnibus Law

Legal Insight

The Implementation of Risk-Based Business Licensing

As mandated by Law No. 11 of 2020 concerning Job Creation (“**Job Creation Act**”), specifically in the business licensing sector, the Government of the Republic of Indonesia enacted Government Regulation No. 5 of 2021 concerning the Implementation of Risk-Based Business Licensing (“**GR 5/2021**”) and Government Regulation No. 6 of 2021 concerning Implementation of Business Licensing in the Regions (“**GR 6/2021**”) on 2nd February 2021. One of the objectives of the Job Creation Act is to simplify the provisions on business licensing in Indonesia and shift the approach from business licensing based on a business license for each business activity to business licensing based on the risk category for each business activity (“**Risk-Based Business Licensing**”).

GR 5/2021 repeals and replaces the business licensing regulatory framework which had been put in place by Government Regulation No. 24 of 2018 on Electronically Integrated Business Licensing Services. The implementation of Risk-Based Business Licensing under GR 5/2021 will come into effect 4 (four) months from the enactment of GR 5/2021.

In essence, GR 5/2021 contains the following provisions in respect of the implementation of Risk-Based Business Licensing:

- Risk-Based Business Licensing arrangements;
- Norms, standards procedures and criteria (*norma, standar, prosedur dan kriteria*) (“**NSPK**”) for Risk-Based Business Licensing;
- Risk-Based Business Licensing through the electronically integrated business licensing (Online Single Submission/“**OSS**”) system;
- Risk-Based Business Licensing supervision procedures;
- Evaluation and reform of Risk-Based Business Licensing policies;
- Risk-Based Business Licensing funding;
- Settlement of disputes and obstacles involving Risk-Based Business Licensing; and
- Sanctions.

Pursuant to GR 5/2021, the implementation of Risk-Based Business Licensing covers the following business sectors:

1. Maritime Affairs & Fisheries; 	9. Transportation; 
2. Agriculture; 	10. Health, drugs, and food; 
3. Environment & Forestry; 	11. Education and culture; 
4. Energy & Mineral Resources; 	12. Tourism; 
5. Nuclear Power; 	13. Religion; 
6. Manufacturing; 	14. Post, telecommunications, broadcasting and electronic systems and transactions; 
7. Trade; 	15. Defense and security; 
8. Public Works & Public Housing; 	16. Manpower. 

The Concept of Risk-Business Licensing

In essence, Risk-Based Business Licensing is based on (i) the determination of the risk level; and (ii) the rating scale of business activities, including micro, small, and medium enterprises (*Usaha Mikro Kecil dan Menengah/UMKM*) and/or large scale.

The risk level is determined by the results of the risk analysis conducted by the Central Government of Indonesia by way of:

- a. Identification of business activities;
- b. Hazard level assessment;
- c. Assessment of potential hazards;
- d. Determination of risk level and business scale rating;
- e. Determination of the business licensing type.

Based on the risk analysis, business activities are classified into the risk level and the types of business licensing required in performing the business activities, which are outlined as follows:

Risk Level	Business Licensing
Low Risk	<p>Business Registration Number (Nomor Induk Berusaha or “NIB”).</p> <p>For business activities that are categorized as having low levels of risk, the NIB, as well as serving as the identification of the business, will also be deemed the permit to perform the business activities.</p>
Medium-Low Risk	<ol style="list-style-type: none"> a. NIB; and b. Standard certificates, in the form of a statement that the business will comply with business standards in order to carry out the relevant business activities provided through the OSS system. <p>The above-mentioned business standards must be fulfilled by the business in carrying out the relevant business activities.</p>
Medium-High Risk	<ol style="list-style-type: none"> a. NIB; and b. Standard certificates for the implementation of business activities issued by the Central or Regional Government in accordance with their respective competencies based on the verification of the business’s compliance with implementation standards. <p>The NIB and verified standard certificates issued by the Central or Regional Government will be deemed permits for the business to perform the business activities.</p>
High Risk	<ol style="list-style-type: none"> a. NIB; and b. Licenses, in the form of approval by the Central or Regional Government for the implementation of business activities, which must be obtained by the relevant business prior to engaging in any business activities; c. Standard certificates for products and/or business activities issued by the Central or Regional Government in accordance with their respective authorities based on the verification on the fulfillment of such standards (as applicable).

Therefore, basically, when starting and conducting business activities, all businesses must comply with (i) basic business licensing requirements; and/or (ii) Risk-Based Business Licensing.

Basic business licensing requirements generally include conformity with spatial use regulations, environmental approvals, building approvals, and certificates of fitness for purpose, compliance with which is mandated by the respective laws and regulations. Meanwhile, lists of the requirements and/or obligations for each sector for Risk-Based Business Licensing are set out in the annexes to GR 5/2021.

Through the application of this concept, the implementation of business licensing is being made more effective and simpler because not all business activities are required to go through the same licensing application process irrespective of the risk of the business. In addition to a more simplified business licensing, this allows more structured supervision both by the Central Government and Regional Government.

We expect that this new framework will help both the Government and businesses in creating an investment-friendly ecosystem.

Risk-Based Business Licensing Arrangements

The Risk-Based Business Licensing is further determined by the following:

- a. Indonesian Business Sectors Classification (Klasifikasi Baku Lapangan Usaha Indonesia / “KBLI”) codes/ references, KBLI titles, the scope of activities, risk parameters, risk levels, business licensing, time periods, validity periods, and business licensing authorities, which can be found in Annex I of GR 5/2021;
- b. Risk-Based Business Licensing requirements and/or obligations, which can be found in Annex II of GR 5/2021; and
- c. Risk-Based Business Licensing guidelines, which can be found in Annex III of GR 5/2021; and
- d. Business activity standards and/or products standards, which will be further promulgated by the Minister and/or Head of Institution for the respective sectors.

Compared to the previous regulatory framework on business licensing, which was mostly regulated in separate regulations provided by the relevant ministry for each sector, this new comprehensive arrangement on business licenses is a positive step to make navigating the business licensing process easier. While this is so, certain aspects such as business standards and/or product standards will still be subject to further implementing regulations as provided in each sector.

NSPK for Risk-Based Business Licensing and the OSS system

One of the issues in Indonesia's business licensing process is the overlapping authority between the Central Government and Regional Governments, which leads to uncertainty for businesses. To resolve this issue, the Job Creation Act has policies align between institutions. In this matter, the Central Government of Indonesia will determine NSPK containing, amongst other things, lists of requirements for each business sector. The NSPK will be the sole reference for the issuance of Risk-Based Business Licensing documents. In this respect, all Risk-Based Business Licensing processes must be performed electronically and in an integrated manner through the OSS system.

Risk-Based Business Licensing Supervision

In addition to business licensing, GR 5/2021 also sets the method for supervising the business activities by the Government, which consist of the following:

- a. Regular supervision, which will be carried out periodically based on the level of risk of the relevant business activities with due consideration of the level of compliance by the business; and;
- b. Incidental supervision, which will be carried out by the relevant ministries, governmental agencies provincial regions, regency/city governments, Special Economic Zone (SEZ) administrators, and/or Free Trade Zone Free Port (FTZFP) on an ad hoc basis.

Regular supervision will be conducted by way of (i) businesses' reports; and (ii) field inspections. Incidental supervision will be conducted by way of field or virtual inspections.

Obstacles Involving Risk-Based Business Licensing and Sanctions

To ensure the implementation of Risk-Based Business Licensing, GR 5/2021 also provides that (i) each relevant ministry and/or government institution must settle any disputes and obstacles that become obstacles in the implementation of Risk-Based Business Licensing for their relevant government affairs, and (ii) the public can file a report or complaint with the relevant ministry, head of the institution, governor, regent/mayor, public prosecutor, or the police about a government official who does not implement the GR 5/2021.

GR 5/2021 provides sanctions for any government official (which includes any minister, head of institution, governor, regent/major, SEZ administration and Head of FTZFP, or other relevant government official) who does not implement Risk-Based Business Licensing through the OSS system and who does not provide the services required by GR 5/2021.

In addition to the foregoing, GR 5/2021 also provides and determines the sanctions for violations by businesses in each sector.

Violations of any business licensing requirements will result in the imposition of administrative sanctions, which will differ depending on the business sector concerned. For certain violations that take place within the telecommunications and defense sectors, GR 5/2021 also allows for the imposition of criminal sanctions in accordance with the prevailing laws and regulations.

Implementation of Risk-Based Business Licensing in the Regions

The Job Creation Act and GR 6/2021 also strengthen Regional Governments' roles in implementing business licensing in the regions. The roles include the governor's/regent's/mayor's obligations to provide licensing services, including Risk-Based Business Licensing using the OSS system that the Central Government manages according to the NSPK established by the Central Government. With the NSPK being the sole reference, we expect this will overcome the issue of inconsistency of policies between the Central Government and Regional Government.

The licensing service authority in the regions is the Provincial Government or Regency/City Government, subject to business activities as determined under GR 5/2021, with the exceptions of nuclear power, religion, and defense and security sectors, which come under the authority of the Central Government with the licensing process integrated with the licensing service in the regions.

To boost the investment and ease of doing business in the regions for local businesses, each Regional Government must provide Risk-Based Business Licensing by way of (i) service assistance whereby the relevant local integrated service provider must provide the business licensing service interactively with local businesses and (ii) mobile services whereby the relevant local integrated service provider must provide business licensing services in locations that are easy for the relevant local businesses to reach.

GR 6/2021 also provides that each Regional Government must issue local regulations with regard to Risk-Based Business Licensing in coordination with the Ministry of Domestic Affairs and the relevant government institution above their level.

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