

Risk-Based Licensing Arrangements: Between Convenience and Legal Certainty

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Abstract

Article History:

Submitted:

26-10-2023

Received:

30-01-2024

Accepted:

20-02-2024

Keywords:

legal certainty;

licensing system; risk-

based licensing;

Government through Law No.6/2023 has changed the licensing system which originally used the concept of licensing (license-based) to become risk based (risk based approach). The change in approach was carried out by the government in an effort to simplify licensing considering that the concept of licensing in practice tends to be complicated and hampers the business sector. In setting up a risk-based licensing system, the use of license is only required for businesses with certain risk standards. The change in approach to the licensing system brings convenience, but with the application of uncertain risk standards it will injure legal certainty in society. Therefore, this study will raise issues related to legal certainty in the regulation of risk-based licensing systems. This research was conducted using a normative juridical method using a statute approach and conceptual approach. The result of this study will show that there are problems in legal certainty in risk-based licensing arrangements, so the government could be more careful in implementing the risk-based licensing system.

1. Introduction

The conception of law in the administration of licensing is based on the perception of a democratic legal state which is a combination of the concepts of a state of law (*rechtstaat*) and a welfare state. In the concept of the rule of law, the law becomes the commander in chief in running a country by reflecting good and fair governance. On the other hand, the concept of a welfare state focuses on the role of the government to create order with the aim of realizing welfare for the community as mandated in the Preamble of The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945). Based on this, a country should be obliged to harmonize between the application of law and the ideals of realizing public welfare, by running a good governance system, so that the main objectives of law, namely certainty, justice and usefulness, can be fulfilled.¹ Thus, the concept of a democratic rule of law requires the government to protect the rights of its citizens in all fields by making the law the basis for action, so that the fulfilment of people's constitutional rights can be guaranteed.

One way to realize a democratic rule of law is to create a climate of public service as a form of state obligation in carrying out the process of good governance balanced between systematic regulation and clear governance as a reference for application in social life. Public services in the licensing sector are one of the main pillars for realizing a good and fair government system (good governance) based on the principles of effectiveness, justice,

¹ Iron Sarira, "Kebijakan Perizinan Sesuai Asas Diskresi Terkait Manajemen Risiko Dalam Perspektif Negara Hukum Kesejahteraan" (2011) 2:2 *Humaniora* 1483-1491.

participation, accountability, and transparency.² The implementation of public services in the licensing sector is an obligation for the government, so the role of the government as a catalyst is essential to create good services for the community. Therefore, public services in the licensing sector are an important note for policy makers to continuously improve the quality in the licensing sector so as to create an inclusive licensing climate.

The dynamics of licensing in the field of public services in Indonesia is still a problem that never ends. Based on the results of a study from the Investment Coordinating Board, there were 190 cases of failed investment caused by various inhibiting factors, including 32.6% from the licensing sector, 17.3% from the land acquisition sector, and 15.2% due to regulations or policies.³ In contrast to this data, it indicates that licensing services in Indonesia are still convoluted and bloated, which is in line with the opinion of Professor of Public Administration and Organization Science, Prof. Bertha Toha. Therefore, public services in the licensing sector have always been a public demand to improve the quality of better public services.

In essence, Ateng Syarifuddin explained that the concept of licensing (license based) in Indonesia aims to remove obstacles from what is prohibited to be able to do or the elimination of general prohibition provisions in a concrete event (*als opheffing van een algemene verbodregel in het concrete geval*). Sjahchran Basah also emphasized that a permit is a one-sided legal act of applying regulations in concrete matters based on requirements and procedures as stipulated in the provisions of laws and regulations.⁴ Based on the concept of licensing, the essence of a permit is to require something that is prohibited to be done as a preventive form of harm.

The evaluation of licensing implementation in Indonesia has allegedly not been able to meet the needs of the community both externally and internally. Externally, related to investment according to the Ease of Doing Business report in 2019, business establishment licensing matters in Indonesia are ranked 134th out of 190 countries and the second lowest among ASEAN countries. On the other hand, licensing in Indonesia requires 10 stages and takes around 19.6 days to establish a business.⁵ Reflecting on this data, the government shifted the paradigm of the licensing concept to a risk-based license (RBL), which aims to simplify the licensing system in Indonesia and improve and enhance the investment climate by prioritizing procedures that are fast, short, and low cost so as to realize legal certainty.

Juridically, RBL is regulated in Articles 7-12 of Law of Republic of Indonesia Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2023 on Job Creation (hereinafter referred to Law No.6/2023) along with derivative regulations in Republic of Indonesia Government Regulations Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing (hereinafter PP No.5/2021). RBL is a business license based on the level of risk of business activities. The RBL concept has been applied in several countries with common law systems such as the United Kingdom (UK), Australia, and Canada which were later adopted in Indonesia. The RBL concept in Indonesia covers several sectors including agriculture, education, health, medicine and food, marine

² Siswati. *Pelaksanaan Prinsip Good Governance Dalam Pelayanan Pemerintahan (Studi Pada Badan Pelayanan Perizinan Terpadu Dan Penanaman Modal Kota Tanjungpinang)* (Tanjungpinang: Universitas Maritim Raja Ali Haji, 2015).

³ Badan Koordinasi Penanaman Modal, "Ada 190 Kasus Investasi, Hambatan Apa Paling Dominan?", (BKPM, July 13, 2023) (BKPM, July 13, 2023), https://www.bkpm.go.id/images/uploads/file_siaran_pers/Siaran_Pers_BKPM_191119_190_Kasus_Investasi.pdf

⁴ Christianto Peter et al, *Pada Perkara Pidana Kesusilaan* (Surabaya: Revka Prima Media, 2021).

⁵ Citradi, T, "Benarkah Urus Izin Pendirian Usaha di RI Ribet? Cek Faktanya!", (CNBC, October 29, 2019) (CNBC, October 29, 2019), <https://www.cnbcindonesia.com/news/20191029142549-4-1110-06/benarkah-urus-izin-pendirian-usaha-di-ri-ribet-cek-faktanya>

and fisheries, energy and mineral resources, transportation, public housing works (PUPR), trade, post, telecommunications and broadcasting, tourism, land and security, forestry, nuclear, industry, and religion.⁶

The breakthrough in the implementation of the RBL system in Indonesia cannot be separated from the various pros and cons in its application. This is based on the adoption of RBL which is prone to problems in its implementation. Some of the problems related to the implementation of the RBL system in Indonesia are as follows: (1) Licensing nomenclature; (2) Subjectivity in determining risk; (3) Dichotomy between decentralization and recentralization. These problems become a criticism in this paper because they cause confusion in interpretation and application, which leads to the creation of legal uncertainty in line with Gustav Radbruch's opinion. Radbruch argues that one of the objectives of law is legal certainty. That is because legal certainty is directly proportional to peace. This means, if legal certainty is realized, then peace will also be realized.⁷

In the study of several other studies, which were reviewed by Mohammad Mova Al'afghani with the research title "The Concept of Risk-Based Regulation: A Critical Review of its Application in the Job Creation Law" resulted in four criticisms of the application of risk-based regulations in Law No.11/2020, including (1) creating confusion in risk assessment, (2) the birth of volatility risks that have not been considered, (3) not considering the emergence of systemic risks, and (4) the potential for "regulatory capture".⁸ Another study conducted by Hari Agus Santoso with the title "The Effectiveness of the Job Creation Law on Increasing Investment", found that changes in the licensing system in Indonesia by accommodating RBL are able to provide effectiveness in increasing investment because they create licensing that is fast, easy, and efficient.⁹ In line with that research, Erni and Febri Jaya in their research titled "Effectiveness of Risk-Based Business Licensing In the Context of Ease of Doing Business" explain that RBL still has many obstacles so the effectiveness of the new concept of business licensing are still not optimal. On the other hand, the research named "Risk Based Licensing System: Comparison Between Australia and Indonesia" conducted by Merissa Bhernaded Lie, focuses on explaining about RBL in Indonesia by comparing the regulation and the implementation of RBL in Indonesia and Australia. From several other studies, It can be seen that the difference between this research with previous research is that this research not only explains the risk-based approach license but specifically analyse the risk-based business licensing from the point of view of legal certainty.

Some of the articles above discuss the impact of risk-based business licensing which is considered to provide convenience, speed, and efficiency in its application. However, it still poses many obstacles to its effectiveness. The study in this paper will be different because this paper discusses the impact of risk-based business licensing. Apart from that, there is potential uncertainty arising from the implementation of risk-based business licensing due to differences in authority between the central and regional governments, making it vulnerable to abuse of government authority in carrying out supervision.

⁶ Kementerian Koordinator Bidang Perekonomian Republik Indonesia, "OMNIBUS LAW Cipta Lapangan Kerja", (Kemdikbud, October, 2020) (Kemdikbud, October, 2020), <https://dikti.kemdikbud.go.id/wp-content/uploads/2020/10/Booklet-UU-Cipta-Kerja.pdf>

⁷ E Fernando M Manullang, "Misinterpretasi Ide Gustav Radbruch mengenai Doktrin Filosofis tentang Validitas dalam Pembentukan Undang-Undang" (2022) 5:2 UJH 453-480, Hal. 466.

⁸ Mohamad Mova; Bisariyadi Al'afghani, "Konsep Regulasi Berbasis Risiko: Telaah Kritis dalam Penerapannya pada Undang-Undang Cipta Kerja Risk Based Regulation: Critique to Its Adoption in the Job Creation Law" (2021) 18:Permits Jurnal Konstitusi 68-69.

⁹ Hari Agus Santoso, "Efektifitas Undang-Undang Cipta Kerja Terhadap Peningkatan Investasi" (2021) 6:2 Jurnal Hukum POSITUM 254-272.

The change from license-based approach to risk-based licensing raises problems with the legal certainty of the license itself because of the changing. Therefore, this research aims to analyse the problem about the legal certainty and the impact of changing the license-based approach to a risk-based licensing approach and whether the RBL arrangement has fulfilled legal certainty for the community or vice versa.

2. Methods

This research is normative legal research, namely research focused on examining the application of rules or norms in applicable positive law using a statutory approach and conceptual approach. The statutory approach is carried out by examining all laws and regulations related to the legal issues raised. In this approach, primary legal materials will be used in the form of Law No.6/2023 and PP No.5/2021. A conceptual approach is carried out by examining existing views and doctrines related to the issues raised.¹⁰ The views and doctrines are taken from books, journals and other scientific writings which are used as secondary legal materials in analyzing the issues discussed.

3. Results and Discussion

3.1 Impact of the Change of Licensed Based Approach to RBL

The construction of licensing legal arrangements in Indonesia is one of the products of the Dutch colonial government. In essence, licensing comes from the word permit (*vergunning*) which means approval from the authorities to deviate from a prohibited rule.¹¹ In practice, permits have different meanings depending on the essence of the permit itself, such as environmental permits, billboard permits, business licenses, and other permits. The existence of licensing in Indonesia is intended to direct and control community behavior as a preventive effort from the government to prevent harm.

A permit as a juridical instrument issued by an authorized official, namely a State Administrative Officer in the form of a State Administrative Decree has 6 (six) substances including:

1. Government Organ;
2. Recipient Subject;
3. Reason;
4. Dictum;
5. Provisions, restrictions, and conditions;
6. Additional notice.

The existence of 6 (six) forms of permit substance is a cumulative requirement that must be owned by a State Administrative Decree, so that it can be interpreted as a permit. But in practice, the complexity of licensing in Indonesia with various requirements that must be met is a scourge for investors and the wider community to carry out business activities. Therefore, the government changed the paradigm of the licensing system by adopting the RBL system.

Article 1 point 3 of PP No.5/2021 provides a definition of RBL as a business license based on the level of risk of business activities. Furthermore, Article 13 to Article 15 of PP No.5/2021 describes the level of risk with requirements that must be met by business actors, including:

¹⁰ Marzuki, Peter Mahmud. *Penelitian Hukum Edisi Revisi*. (Jakarta: Kencana Premada Media Group, 2013).

¹¹ Siregar, "Duh! Izin di RI Ribet, Investor Industri Kayu Batal Investasi", (CNBC, January 3, 2020) (CNBC, January 3, 2020), <https://www.cnbcindonesia.com/news/20200103201644-4-127581/duh-izin-di-ri-ribet-investor-industri-kayu-batal-investasi>

1. Business licenses with a low risk level only require a Business Identification Number (NIB);
2. Business licensing with a medium risk level can be classified into 2 parts, namely (a) low medium risk requiring NIB and standard certificate; and (b) high medium risk requiring NIB and standard certificate;
3. Business licensing with a high-risk level requiring NIB, and Permit.

The RBL system is believed by the government to provide convenience and effectiveness in the implementation of business activities because licensing is only required for the implementation of business activities with a high level of risk.¹² In addition, these changes aim to simplify the licensing system in Indonesia, which has complicated the investment climate with various convoluted administrative processes and overlapping and inconsistent rules in terms of requirements and procedures in the field. This is in line with the results of a study from the Indonesian Sawntwood and Woodworking Industry Association which stated that as many as 53 companies were reluctant to invest due to the complicated licensing process.¹³ Another cause of changes in the licensing system in Indonesia is the existence of licensing procedures that are costly because at each table or agency the public must pay mandatory fees for the licensing process and "extra fees" to expedite the licensing process, so that government agencies are prone to bribery.¹⁴ This is supported by a statement from the Associate Expert of the National Secretariat for Corruption Prevention which states that corruption in the licensing sector is ranked second as the most cases handled by the Corruption Eradication Commission (CEC).¹⁵ One of the cases that surfaced in the licensing domain was the case of the Kutai Kartanegara Regent who was proven to have received a bribe of IDR 6,000,000,000 (six billion rupiah) related to the granting of a permit for the location of PT. Sawit Golden Prima and Muara Kaman Village covering 16 hectares (ha).¹⁶

The presence of RBL has created pros and cons arguments in its implementation in Indonesia. This is because the relatively new RBL system has resulted in changes at the economic, social and legal levels. Changes in RBL have an impact that can be likened to the two sides of a coin, which has a positive impact as well as a negative impact. Positive excesses arising from the application of RBL in the economic field, namely providing convenience for business actors to carry out investment activities in Indonesia. This is because through the RBL system, the issuance of business licenses will be more effective, efficient, and simple because not all business activities are required to have a license as specified in PP No.5/2021. That can be seen through Article 6 Section (2) PP No.5/2021 which classifies that there are 16 (sixteen) sectors that require risk-based license, specifically: (a) maritime and fisheries; (b) agriculture; (c) environment and forestry; (d) energy and

¹² Evan Devara, Maret Priyanta & Yulinda Adharani, "Inovasi Pendekatan Berbasis Risiko Dalam Persetujuan Lingkungan Berdasarkan Undang-Undang Cipta Kerja" (2021) 1:1 LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria 101–116.

¹³ Siregar, "Duh! Izin di RI Ribet, Investor Industri Kayu Batal Investasi", (CNBC, January 3, 2020) (CNBC, January 3, 2020), <https://www.cnbcindonesia.com/news/20200103201644-4-127581/duh-izin-di-ri-ribet-investor-industri-kayu-batal-investasi>

¹⁴ Hari Agus Santoso, "Efektifitas Undang-Undang Cipta Kerja Terhadap Peningkatan Investasi," *Jurnal Hukum POSITUM* 6, no. 2 (2021): 254–72.

¹⁵ Kartika, Hermawan, "Korupsi Sektor Perizinan Jadi Terbesar Kedua Ditangani KPK", (Republika, February 12, 2020) (Republika, February 12, 2020) <https://www.republika.co.id/berita/q5ladn354/-korupsi-sektor-perizinan-jadi-terbesar-kedua-ditangani-kpk>

¹⁶ Rozidateno Putri Hanida, Bimbi Irawan & Fachrur Rozi, "Strategi Eliminasi Praktik Korupsi pada Pelayanan Perizinan dan Pengawasan Pelaksanaan Penanaman Modal" (2020) 6:2 INTEGRITAS: Jurnal Antikorupsi 297–312.

mineral resources; (e) nuclear power; (f) industry; (g) trade; (h) public works and public housing; (i) transportation; (j) health, medicine and food; (k) education and culture; (l) tourism; and (m) religious. In addition, through this RBL mechanism, business monitoring activities will also be more structured, systematic, and orderly both from the period and substance that must be monitored because the licensing that is launched is carried out online and integrated in a system called Online Single Submission (OSS) which business actors can access quickly, easily, and at low cost. The existence of OSS actually aims to facilitate business actors in managing business activity licenses such as Environmental Permits, Building Permits, Business Licenses, and so on.¹⁷ In this case, there are 3 (three) pre-requisites that must be met by business actors in obtaining a Business Identification Number (NIB) through OSS, namely:¹⁸

- (a) Have a Population Identification Number (NIK) and input it in the user-ID creation process.
- (b) Business actors in the form of Limited Liability Companies (PT), business entities established by foundations, cooperatives, CVs, firms, and civil partnerships must complete the process of legalizing business entities at the Ministry of Law and Human Rights through AHU Online, before accessing OSS;
- (c) Business actors in the form of Public Companies, Regional Public Companies, other legal entities owned by the state, public service agencies or broadcasting institutions use the legal basis for the establishment of the business entity.

If business actors have fulfilled those pre-requisites, there are 4 (four) stages for business actors to process licenses through the OSS system, namely:¹⁹

- (1) Create a user ID;
- (2) Log-in to the OSS system using the user-ID;
- (3) Fill in data to obtain a Business Identification Number (NIB);
- (4) For new businesses: carry out the process of obtaining a basic license, business license and/or commercial or operational license, along with its commitments. Meanwhile, established businesses must continue the process of obtaining new business licenses (business and/or commercial licenses) that are not yet owned, extending existing business licenses, developing businesses, changing and/or updating company data.

Risk-Based License activities through OSS-RBA are improvements that continue to be made by the Government in providing excellent public services, especially for improving the business climate while protecting the ecosystem both environmentally and socially. It can be seen through the NIB function for business activities with a low risk level that used NIB as the identity of the Business Actor as well as the legality to carry out business activities. In this case, the NIB can also function as an Indonesian National Standard (SNI) in the field of standardization, as well as a Halal Product Guarantee (JPH) statement in the halal product guarantee sector as regulated in Article 12 Section (1) and (2) of PP No.5/21. Furthermore, the improvement of the OSS into OSS-RBA can be seen through the following 4 aspects:²⁰

Aspects	OSS	OSS-RBA
Legal Basis	PP Number 24 of 2018	PP Number 5 of 2021
Business Scale	- Mikro	- Low Risk

¹⁷ "Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu | Provinsi Kepulauan Bangka Belitung", online: <<https://dpmpptsp.babelprov.go.id/node/1106>> (DPMPPTSP, February 15, 2020) (DPMPPTSP, February 15, 2020).

¹⁸ Shandi Izhandri, "OSS dan Perkembangannya di Indonesia".

¹⁹ *Ibid.*

²⁰ Ica Karlina, "Implikasi Penerapan Peraturan Pemerintah Nomor 5 dan 6 Tahun 2021 terhadap Pelayanan Perizinan Berusaha di Daerah", online: <<https://dpmpptsp.jatimprov.go.id/wp-content/uploads/2022/03/Implikasi-PP-Nomor-5-Tahun-2021-1.pdf>>.

	- Small	- Low Medium Risk
	- Medium	- High Medium Risk
	- Large	- High Risk
Lisence Product	- NIB	- Low Risk: NIB
	- Business license	- Medium Risk: NIB + Business Standard Certificate
	- Commercial or operational license	- High Risk: NIB + License and Product Standard Certificate (if required)
Risk Based	Not risk based and all business activities treated the same	Business activities are calculated for the level of risk and each level of risk has its own standard or licensing requirements
Access Rights or NIB	NIK's Owner or Person in Charge of the Company	Each Company (attached to the company email)

The negative impact of implementing RBL is that there are still constrained licenses because the implementation of licensing using OSS has not been able to be carried out optimally and stably, because there is no clarity in coordination. This is based on the statement of Hery Susanto as a Member of the Ombudsman of the Republic of Indonesia who stated that the implementation of the OSS-RBA system is still not feasible due to a lack of understanding to access or use the system.²¹ Other problems are also reflected in the legal realm caused by major regulations, resulting in legal uncertainty. This is because the Law No.6/2023 has not accommodated the comprehensive implementation of RBL and has not regulated risk holistically. The reason is that the Law No.6/2023 still provides room for in-depth analysis because risk regulation only bases calculations on several benchmarks, such as safety, health, environment, and utilization and management of resources adjusted to the nature of business activities, so that it cannot estimate risk precisely. That is what opens a big hole for legal uncertainty in the RBL system which has the potential to harm business actors.

3.2 Legal Certainty for the Community in Risk-Based Licensing Arrangements

The implementation of the RBL system is projected to provide a guarantee of legal certainty and ease of investment for business actors. However, in practice, RBL, which is echoed as a solution in the licensing field, in fact creates new problems because some of the substance of the normative foundation of RBL does not accommodate legal certainty. The arguments underlying the existence of deep gaps in the juridical basis are:

1. The nomenclature "Risk-Based Business Licensing" in Articles 7-12 of the Law No.6/2023 only applies to business activities with certain risks.

In this case, the use of license tools is only used for business actors who run businesses with a high level of risk. Meanwhile, for low and medium low and medium high risks only use NIB and standard certificates. The difference in granting licenses that are only specialized for high risk, actually creates uncertainty for business actors because business actors who carry out business activities with low or medium risk levels also have the same potential hazards as high risk. In addition, the distinction of granting permits for high risks, which does not include low and medium risks, will potentially give birth to business actors who are not in good faith because they only want to "facilitate" the process of legalizing their

²¹ Fauzia, M, "Ombudsman soroti OSS Berbasis Risiko Belum Siap Diterapkan di Daerah", (Kompas, September 24, 2021) (Kompas, Setember 24, 2021), <https://money.kompas.com/read/2021/09/24/190345426/ombudsman-soroti-oss-berbasis-risiko-belum-siap-diterapkan-di-daerah?page=all>

business. This effort is based on the fact that in practice there has been a paradigm shift in which the public considers standard certificates and NIBs to be a form of license. In fact, NIB only functions as an identity for business actors in carrying out their business activities and does not fulfill the elements of a State Administrative Decree. Even so, the standard certificate is only limited to the approval made by the business actor, while the standard certificate itself seems to eliminate the responsibility of the government because the authorized official does not issue the approval. Even worse, if the orientation of business actors is only to fulfill business requirements, there is the potential that business actors will manipulate the approval letter in the form of a standard certificate.

2. Subjectivity in risk determination;

The government's basis for implementing RBL is none other than to cut down on the bloated licensing process. However, the mechanism offered by the government is not ready to be implemented. This is because the risk limits determined by the government can be subjective because PP No.5/2021 does not accommodate rigidly and specifically related to the classification of business activities and the potential risks posed.

In PP No.5/2021, the determination of the risk level is carried out through a risk analysis which includes identifying business activities, assessing the level of hazard, assessing the potential for hazard occurrence, determining the risk level and business scale rating. Furthermore, Article 9 paragraph (3) of PP No.5/2021 stipulates that the assessment of the level of hazard is also calculated based on the location of the business activity, but this calculation is only based on the detailed spatial plan (RDTR) of the area where the business is located, not the geographical conditions of the area. In fact, risk has abstract characteristics and can change depending on the geographical conditions in each region, which cannot only be seen from the spatial plan.

Another problem is that the RBL system does not accommodate volatility risk. The volatility risk contained in the Law No.6/2023 is only limited to indicators at the hazard level but its application is unclear. Volatility risk is a risk that is easy to change, such as a risk that is initially low turning into a high risk or vice versa.²² However, in the implementing regulation, PP No.5/2021 only provides a categorization of licensing that low risk only requires NIB, medium risk requires NIB and Standard Certificate, and high risk requires NIB and Permit. This means that there will be activities that essentially do not require a permit and supervision because the risk has changed from high to low, and there should also be activities that require a permit but when the risk rating is classified as low, so they are considered not to require a permit. This is a dilemma because PP No.5/2021 does not regulate in depth the determination, assessment, and ranking of risks that can endanger the public interest if there is a shift in risk from low to high. Even the considerations in Law No.6/2023 and PP No.5/2021 do not include systemic risk. Systemic risk is a risk that is small when viewed individually but will become large because of its tendency when carried out by many parties.²³

3. Unclear Government Authority;

The substance of PP No.5/2021 creates various important notes, because the regulation still experiences a blurred perspective that creates a gap for multiple interpretations among the community. The reason is that the government authority contained in the regulation does

²² Mohamad Mova; Bisariyadi Al'afghani, "Konsep Regulasi Berbasis Risiko: Telaah Kritis dalam Penerapannya pada Undang-Undang Cipta Kerja Risk Based Regulation: Critique to Its Adoption in the Job Creation Law," *Jurnal Konstitusi* 18, no. Permits (2021): 68-69.

²³ Mohamad Mova; Bisariyadi Al'afghani, "Konsep Regulasi Berbasis Risiko: Telaah Kritis dalam Penerapannya pada Undang-Undang Cipta Kerja Risk Based Regulation: Critique to Its Adoption in the Job Creation Law," *Jurnal Konstitusi* 18, no. Permits (2021): 68-69.

not rigidly emphasize the domain of the government to regulate and supervise the implementation of the RBL system. Referring to one of the articles in the regulation, Article 222 paragraph (1) of PP No.5/2021 stipulates "Routine supervision through field inspections as referred to in Article 220 letter b is carried out by ministries/agencies, provincial Regional Governments, regency/city Regional Governments, Special Economic Zones (SEZ) Administrators, and/or Free Trade Area and Free Port (FTA/FP) Business Entities in the form of physical or virtual visits." In contrast to this article, the supervisory authority included in a quo arrangement still creates legal uncertainty, especially the institution whose role is to conduct field inspections. Not only that, the realm of supervision of each institution can also be interpreted variously by the wider community because the regulation does not specify whether supervision is only carried out by the central government or local government or carried out by both institutions based on their respective authorities. On the other hand, there is an effort to decentralize the authority of local governments related to licensing that will be replaced by the central government.²⁴ This is based on the provisions in Article 6 of PP No.5/2021 in conjunction with Article 4 of PP No.5/2021, which explicitly determines that the central government will determine the policy for implementing RBL in which business actors in starting and carrying out their business activities are required to fulfil the basic requirements for business licensing and risk-based business licensing. This is an important note in the institutional field related to the implementation of RBL that there is no legal certainty regarding coordination between authorized institutions. In this case, the unclear coordination domain of government institutions can cause unrest for the community and potentially trigger legal abuse by the government as echoed by Lord Acton, namely power tends to corrupt, and absolute power corrupts absolutely. Thus, the government in running the RBL system should be based on the principle of prudence which always prioritizes aspects of efficiency, effectiveness, and economy in providing excellent public services as a form of embodiment of good governance. In addition, the government is also required to prioritize a democratic attitude and openness in determining risks to business actors so as to create a balance between the government, business actors, and the environment.²⁵

4. Conclusions

The presence of RBL on the one hand provides convenience and degrades the licensing system in Indonesia which is overlapping and complicated in the field. On the other hand, issuing permits will be easier, more effective and simpler because not all business activities are required to have permits as specified in PP No.5/2021. Furthermore, supervision is carried out systematically because it has been integrated through the OSS system. However, the weaknesses are the lack of coordination and clarity of tasks in implementing OSS and the risk not being regulated holistically, which can cause uncertainty and potentially harm business actors. Changes in licensing arrangements that originally used the concept of licensing (license-based) to risk-based based on Law No.6/2023 which is further regulated in PP No.5/2021 creates uncertainty. Uncertainty that occurs, among others, in terms of determining the level of risk and the unclear division of authority and responsibility between the central government and local governments.

²⁴ Permana, Y, Rimawan, P, "Perizinan Berbasis Risiko; Kerancuan Berfikir Omnibus Law Cipta Kerja", (UGM, March 8, 2020) (UGM, March 8, 2020), https://pukatkorupsi.ugm.ac.id/wp-content/uploads/sites/966/2020/07/Rimawan-P_-Risk-Based-Approach-NA-OL.pdf

²⁵ Abdul Mahsyar, "Masalah Pelayanan Publik di Indonesia Dalam Perspektif Administrasi Publik" (2011) 1:2 Otoritas : Jurnal Ilmu Pemerintahan 81-90.

Uncertainty arising from risk-based licensing arrangements can cause the government's goal of facilitating business licensing to have the potential to cause abuse of government authority in determining the level of risk and in terms of monitoring business activities. For this reason, the government in implementing a RBL system must be very careful to avoid abuse of authority that can cause harm to the community and the government must consider other aspects that have not been accommodated in the Law No.6/2023 and PP No.5/2021 in determining the level of risk.

5. Acknowledgement

For the first and foremost, the writer would like to express gratitude especially to Faculty of Law University of Surabaya for the contributions in finishing this journal.

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