

Juridical Implications On The Implementation Of The Position Of A Notary In Processing Business Licenses Online Through OSS RBA (Online Single Submission Risk Based Approach)”

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Abstract

Licensing is a crucial aspect in business to ensure orderly administration, which is a prerequisite for establishing a business entity. Notaries, who have the responsibility to make authentic deeds in the process of establishing an entity, have limited authority based on the Law on the Position of Notaries. Often, notaries are involved in licensing activities using the Online Single Submission Risk-Based Approach (OSS RBA), although this is not specifically regulated in the regulations that apply to notaries. The author raises the issue regarding the limitations of the responsibilities that notaries have in carrying out business permits in the process of obtaining business permits through the RBA OSS and the relevant legal provisions for notaries involved in processing these permits. The research method in this research is doctrinal legal research using a legislation-based approach. The results of the research reveal that regulations related to risk-based licensing do not explicitly give authority to notaries to process business permits only with a power of attorney. Apart from that, sanctions against notaries who violate the provisions in processing business permits through the RBA OSS have not been adequately regulated in the code of ethics or the Law on Notary Positions.

I. Introduction

One of the profound impacts of current digital advances is significant transformation, especially in the economic sector. The integration of digital technology in meeting various community needs emphasizes the government's role in reducing bureaucratic practices that traditionally take time and harm some citizens. Policies resulting from this digital progress include modifications in licensing procedures, which have led to the emergence of licensing systems that already use electronic systems. The main aim of this policy is to integrate data electronically for business entities and simplify conventional bureaucratic processes. This policy framework is known as the Online Single Submission RBA (Risk-Based Approach) licensing system.

Notaries play a crucial role in supporting government policies aimed at speeding up business processes and strengthening national economic resilience. This function is directly related to the responsibilities of a notary as an official whose task is to prepare authentic deeds related to various actions, agreements and decisions which are regulated directly in statutory regulations. Making a deed of establishment is a basic requirement for recognizing a business as a legal entity. A notary is the only public official who has the authority to prepare this deed of establishment, and this is in accordance with Article 1, paragraph (7) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. The deed made by a notary serves as proof of a legal relationship and can be used as a reference in the future regarding business establishment.¹

Simultaneously, the implementation of Online Single Submission (OSS) in the electronic licensing system is directly regulated by Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing. According to Article 1, paragraph 22, the institution responsible for managing and implementing OSS is the government agency responsible for investment coordination.²

Business licensing arrangements, both for individuals and legal entities, can be carried out independently through the OSS system. For legal entities, the Board of Directors can handle licensing after the entity has been approved by the Ministry of Law and Human Rights. However, in practice, there are some Notaries who provide assistance with OSS licensing for business entities that are reluctant to do it themselves, often receiving additional compensation. This practice exceeds the authority of Notaries directly and does not belong to those involved.³

¹ Article 15 paragraph 1 of Law Number 2 of 2014 concerning Notary Positions

² Habib Adjie, *Annulment and Cancellation of Notarial Deeds*, Refika Aditama, Bandung, 2010, p. 63

³ Article 1 number 22 Government Regulation Number 5 of 2021 concerning Implementation of Risk-Based Business Licensing

There is a difference between the legal requirements for establishing a business, which are complied with by all business owners for the sake of orderly administration and legal certainty, and the practice where Notaries are considered to be able to provide additional services in processing OSS permits. Some business actors mistakenly understand that Notaries have this authority, even though the actual authority lies with the Capital Investment Service, as regulated in Article 1, paragraph 22 of the Government Regulation on the Implementation of Risk-Based Business Licensing. This situation has the potential to create confusion in licensing administration. The legal relationship between business actors and Notaries regarding the processing of OSS permits, as well as possible sanctions for Notaries based on the code of ethics and the Law on the Position of Notaries, needs to be clarified.

To present information in this journal, it is important to identify research problems related to the title discussed by the author. Questions that need to be answered include: What is the role and authority of a Notary in managing business permits based on the Online Single Submission Risk-Based Approach (OSS RBA)? Apart from that, how do the legal provisions that apply to Notaries in the process of obtaining OSS RBA-based business permits correspond to the duties carried out by notaries?

2. Research Method

Various types of legal research can be carried out systematically, methodologically and consistently. One approach that is often used is the doctrinal method or library research.⁴ This technique involves collecting and analyzing relevant literature to develop a thorough understanding of the subject being researched. By using this method, it is hoped that researchers can research and evaluate various theories, concepts, legal principles, regulations and court decisions that are relevant to the research topic.⁵ In legal studies, various methods are used to analyze problems, including the statutory approach, case approach, historical approach, comparative approach, and conceptual approach. This journal adopts a statutory and case approach, with an emphasis on the role and authority of notaries in the online business licensing process under the RBA OSS system.

In legal research, data sources are classified into primary and secondary categories.⁶ This journal relies on secondary data sources, which are collected through library research or documentation, including literature studies including expert opinions, scientific works, and laws to build a theoretical foundation that is relevant to the research topic. Secondary data generally includes three main categories of legal materials. First is Primary Legal

⁴ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana Prenada Media Group, 2011), p. 32.

⁵ Soerjono Soekanto and Sri Mahmudji, *Normative Legal Research: A Brief Overview*, (Jakarta: Raja Grafindo Persada, 2003), p. 13

⁶ Soerjono Soekanto, *Introduction to Legal Research*, Cet. 3, (Jakarta: UI-Press, 2015), p. 51.

Materials, which is a type of legal material with binding force.⁷ Primary legal materials include statutory regulations which are prepared in stages, as well as official records or minutes relating to the process of making these regulations.⁸ In writing this journal, several relevant regulations are the 1945 Constitution and the Civil Code (Burgerlijk Wetboek). Apart from that, Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary Public is also an important reference, which underwent changes through Law of the Republic of Indonesia Number 2 of 2014. Law Number 11 of 2020 concerning Job Creation and the Law on Determination Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation becomes Law (UU Number 6 of 2023) is also an integral part of this study. Government Regulation (PP) Number 24 of 2018 concerning Electronically Integrated Business Licensing Services and Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing also support this research. Apart from that, other relevant regulations were also taken into account in this research.

Secondary Legal Materials include elements that support primary legal materials and are obtained through literature studies, including unofficial legal sources. In writing this journal, secondary legal materials consist of legal textbooks, legal journals, theses and legal dissertations which are used as references related to research. The primary goal is to gather perspectives from a variety of experts, provide additional support, and present a more in-depth explanation for the study.⁹ Furthermore, tertiary legal materials include sources that support primary and secondary data. In writing this journal, tertiary legal materials used include legal dictionaries, Indonesian dictionaries, and legal encyclopedias that are relevant to the topic of this journal.

In legal research, the process of analyzing legal materials involves the systematic organization of the materials that have been collected. This process includes selecting primary and secondary legal sources, grouping them based on legal categories, and compiling research data systematically and logically. This approach emphasizes the interrelationships between various legal materials, thereby providing a comprehensive picture of the research results.¹⁰

3. Results and Discussion

The Role and Authority of Notaries in Managing Business Licenses Based on the Online Single Submission Risk Based Approach (OSS RBA).

The concept of electronic-based licensing through the OSS (Online Single Submission)

⁷ Peter Mahmud Marzuki, *Legal research*, p. 181.

⁸ *Ibid*

⁹ Zainuddin Ali, *Legal Research Methods*, (Jakarta: Sinar Graphics, 2009), p. 54.

¹⁰ Mukti Fajar et al. *Dualism of Normative and Empirical Legal Researchs*, (Yogyakarta: Student Library, 2006), p. 181.

policy is designed to provide legal validity to business actors, covering all aspects of licensing related to their field, including sector-specific business permits and environmental permits. These licensing aspects are very important because they provide legal certainty for business actors, as regulated in the Government Regulation concerning the Implementation of Risk-Based Business Licensing. This framework is essential to support business activities and can cause problems if misused. The legality of business permits begins with the procedures and mechanisms for obtaining permits and determining the responsible authority. Although business actors can manage OSS licensing independently, regulations also give authority to certain institutions under the Regional Government to handle and administer OSS licensing.

Article 2 of the PP on Implementation of Risk-Based Licensing stipulates that the implementation of licensing involves regulations, norms, standards, procedures, criteria, methods and sanctions for business actors who violate licensing provisions. This shows that even though business actors do not directly manage OSS-based licensing, they can obtain assistance or management from authorized institutions, as explained in Article 1, paragraph 22 of the regulation. In practice, problems can arise when Notaries are involved in the licensing process. Apart from their main responsibility in making the deed of establishment, Notaries are also often involved in creating user IDs and uploading documents. This raises questions regarding the legal relationship between business actors and Notaries.

In this context, the most relevant legal relationship is the granting of power of attorney, because neither the Government Regulation on the Implementation of Risk-Based Business Licensing nor the Law on the Position of Notaries gives authority to Notaries to administer OSS-based business licensing. The granting of this power of attorney must be in accordance with the provisions of Article 1320 of the Civil Code. Generally, a Notary is given the authority to manage the OSS process until a business permit is issued, in accordance with the instructions of the business actor. However, if the granting of power of attorney conflicts with other legal regulations, then the agreement is considered null and void.¹¹

Business licensing that uses the OSS system is regulated by the Government Regulation concerning the Implementation of Risk-Based Licensing, which establishes the Capital Investment Service as an institution that has authority, in accordance with the provisions of Article 1, number 22. Therefore, if a Notary still handles OSS-based business licensing even though given power of attorney, the agreement is deemed null and void by law. The authority of a Notary in managing OSS-based business permits is not regulated in the Law on Notary Positions, even though there is an offer of additional honorarium, the Notary should refuse the request to manage OSS because it is not regulated in the PP

¹¹ Handri Raharjo, *Contract Law in Indonesia*, (Yogyakarta: Pustaka Yustisia, 2009), p.94

on Implementation of Risk-Based Licensing. Management of OSS by a Notary can lead to abuse, and if it is proven to be detrimental to business actors, the Notary can only be subject to moral sanctions. In addition, business actors can demand civil liability from the Notary.

How Are The Legal Provisions For Notaries Who Process Business Permits Based On The Online Single Submission Risk Based Approach (OSS RBA) In Accordance With The Implementation Of The Position Of Notary

In a situation where a Notary handles the management of OSS-based business licensing on behalf of a business actor, there is an inappropriate overlap of authority. The Law on Notary Positions stipulates that Notaries are limited to civil matters and may not enter the realm of public law. According to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, sanctions or punishments must be in accordance with regulatory and binding norms, to ensure that the state does not act arbitrarily. Sanctions cannot be applied without clear regulations regarding their implementation. Specific sanctions for violations in the management of OSS-based business licensing are administrative sanctions aimed at business actors. If a Notary manages OSS licensing based on a power of attorney and an error occurs, the Notary cannot be subject to heavy administrative sanctions such as revocation of the business license; These sanctions are aimed at business actors.

The responsibility for managing OSS-based business licensing lies with the Regional Government, as determined by the Government Regulation on the Implementation of Risk-Based Licensing. If a Notary is involved in managing business permits without proper authority, firm action is needed, even though the norms are not yet clearly regulated. This can be detrimental to business actors who give power of attorney to the Notary. Although there is a risk of legal invalidation, if a Notary violates their obligations, they can only be held morally responsible under a code of ethics and face civil liability for issues arising from the power of attorney granted.

Sanctions for violations related to OSS-based business licensing management are administrative sanctions aimed specifically at business actors. If the management of OSS permits is carried out by a Notary based on a grant of power of attorney and an error occurs, the Notary cannot be subject to the heaviest administrative sanctions, such as revocation of the business permit; This sanction is directly applied to business actors. This arrangement can be very detrimental to business actors who entrust the management of OSS-based business licensing to a Notary. Although there is a risk of legal cancellation, if a Notary fails to fulfill their obligations, they can only be held responsible in terms of moral responsibility in accordance with the code of ethics and bear civil liability arising from the granting of power of attorney for managing OSS-based business permits.

4. Conclusion

Based on the research questions discussed above, the author can conclude:

1. The Law on the Position of Notaries does not clearly define the role of Notaries in managing permits through the Online Single Submission (OSS) system. Specific guidelines for this are contained in the Government Regulation on the Implementation of Risk-Based Licensing, which establishes the Investment Coordinating Agency and One-Stop Integrated Services as the institution responsible for OSS-based licensing. Therefore, Notaries do not have the authority to arrange business permits for business actors, even though they have been given power of attorney for this task.
2. Notaries who take care of OSS-based business licensing may be subject to sanctions based on the Notary's code of ethics, as regulated in the Law on Notary Positions. If a Notary fails to carry out their duties when arranging OSS-based business permits on behalf of business actors with power of attorney, they will be civilly liable.

Suggestions

1. The Law on the Position of Notaries needs to be updated or clarified to determine the limits related to the authority of notaries in processing Online Single Submission (OSS) based permits. This clarity is important to avoid overlapping authority and ensure that the Notary's role in managing business permits is clearly defined and in accordance with existing regulations.
2. The Department of Investment and One-Stop Integrated Services must increase their supervision of the OSS-based licensing process, ensuring that only authorized bodies are responsible for issuing such permits. Consistent legal action must be taken against parties who exceed the limits of their authority.
3. Stricter sanctions must be established for Notaries who exceed their authority in handling OSS-based licensing. This should include clear administrative and civil sanctions, along with effective enforcement mechanisms to determine compliance with the requirements of all applicable laws.

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