



BAGUS ENRICO & PARTNERS
COUNSELLORS AT LAW



OMNIBUS LAW SERIES

CHAPTER II: INVESTMENT AND LICENSING LAW

Omnibus Series: Investment and Licensing Law

Following the enactment of Law No. 11 of 2020 on Job Creation (hereinafter referred to as "**Omnibus Law**"), the Indonesian Government has issued implementing regulations which effectuates the implementation of the Omnibus Law. One of the implementing regulations essentially revolutionizes the investment regime, with the introduction of the brand-new Risk-Based Licensing system which supersedes the previous Commitment-Based Licensing system. Dramatic changes and adjustments can be found within the Government Regulation No. 5/2021 on the Implementation of Risk-Based Business Licensing (hereinafter referred to as "**GR 5/2021**"). By the issuance of such implementing regulation in February 2021, the aforementioned changes and/or adjustments became effective on the 4th of March 2021 and thus overruled their prior regulations. The enactment of GR 5/2021 aims to improve the investment ecosystem and business activities through the implementation of the issuance of business licenses, which enables effectiveness, straightforwardness, and demonstrates transparent supervision.

Within this update, we will explore the differences between the new and the old regime of investment regulation in Indonesia and provide you with a high-level overview of the implementation of the GR 5/2021.

Risk-Based Business Licensing Regime

Changes toward business licensing brought about by GR 5/2021 are considerably notable as Indonesia previously used the Commitment-Based Licensing process, which is understood as receiving a business license to conduct business by fulfilling specific requirements (in the form of commitments), depending on the business sector, set out in certain regulations. This change was much the same as the model used by its neighboring countries, i.e., Singapore and Malaysia. By enacting the Omnibus Law, the business licensing process has now been simplified into the Risk-Based Licensing model, similar to that of Australia and the United Kingdom. In order to give you a better picture of the change of the licensing regime, please see our table below:

Before the Enactment of the Omnibus Law	After the Enactment of the Omnibus Law
<p>Licenses that need to be obtained are varied in the previous regulation, namely Government Regulation No. 24 of 2018 on Electronic Integrated Business Licensing Services (hereinafter referred to as "GR 24/2018"). These licenses include:</p> <ul style="list-style-type: none"> a) Business Registration Number (<i>Nomor Induk Berusaha</i> or "NIB"). The NIB also serves as, Importer Identification Number (<i>Angka Pengenal Importir</i>), Customs Access Rights (<i>Hak Akses Kepabeanan</i>), Company Registration Certificate (<i>Tanda Daftar Perusahaan</i>), and the Certificate of Company Domicile (<i>Surat Keterangan Domisili Perusahaan</i>). b) Business License (<i>Izin Usaha</i>), issued upon the fulfillment of commitments, which will be discussed further below. 	<p style="text-align: center;">Requirements for Starting Business Activities</p> <p>It is stipulated in GR 5/2021 that in order to start a business activity, the business actor is obliged to fulfill:</p> <ul style="list-style-type: none"> 1. Basic requirements for business licensing (covering suitability of space utilization, environmental approval, building approval, and certificate of eligibility for function); and/or 2. Risk-Based Business Licensing (the Government has established policies for implementing Risk-Based Business Licensing in the following sectors: <ul style="list-style-type: none"> a. Marine and fishery; b. Agriculture; c. Environment and forestry; d. Energy and mineral resources; e. Nuclear energy;

<p>c) Commercial or Operational License (<i>Izin Komersial atau Operasional</i>), issued upon the needs of a company.</p> <p>All of the above are to be registered through the <i>Online Single System</i> (hereinafter referred to as “OSS”) as regulated under Perka BKPM 1/2020.</p> <p>In addition, several commitments need to be covered by investors depending on their business sectors and also elaborated in Perka BKPM 1/2020 (hereinafter referred to as “Commitments”), including:</p> <ul style="list-style-type: none"> a) Location Permit (<i>Izin Lokasi</i>); b) Water Location Permit (<i>Izin Lokasi Perairan</i>); c) Environmental Permit (<i>Izin Lingkungan</i>); d) License to Build (<i>Izin Mendirikan Bangunan</i>); and e) Certificate of Worthiness (<i>Sertifikat Laik Fungsi</i>) 	<ul style="list-style-type: none"> f. Industry; g. Trade; h. Public works and public housing; i. Transportation; j. Health, medicine, and food; k. Education and culture; l. Tourism; m. Religious affairs; n. Post, telecommunication, broadcasting, and electronic system and transaction; o. Defense and security; and p. Employment. <div style="background-color: #004a7c; color: white; text-align: center; padding: 5px;">Risk-Based Business Licensing</div> <p>The GR 5/2021 introduced 4 (four) risk level with different licensing requirements. The risk level itself is determined based on the potential impact on health, safety, environment, natural resources utilization, and other hazard factors.</p> <p>1. Low risk;</p> <p>Business with the low-risk activities is only required to obtain NIB to commence their business activity.</p> <p>Difference with the previous investment regime, GR 5/2021 states that the NIB also serves as Halal Guarantee statement and Monitoring Capability Statement Letter (<i>Surat Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup</i>)</p> <p>2. Medium-low risk;</p> <p>Businesses with Medium-low risk activities is required to obtain NIB and Standard Certificate (<i>Sertifikat Standar</i>) to commence their business activity.</p> <p>GR 5/2021 stipulates that a Standard Certificate is a statement and / or evidence of compliance with standards for the conduct of business activities. Further, for Medium-low risk businesses, the Standard Certificates is in the form of a self-assessment (same approach with commitments in the previous regime)</p>
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	<p>3. Medium-high;</p> <p>Broadly speaking, the Medium-high risk has the exact requirements as the Medium-low risk. However, the difference is in the types of Standard Certificates, which must be verified first from the relevant authority before a company can be carrying out its business activities</p> <p>4. High risk;</p> <p>A business that is categorized as a high-risk business activity, requires them to obtain the NIB alongside the relevant License / Permits.</p> <p>The OSS system will issue such Licenses / Permits upon fulfilling certain conditions and verification. Depends on the type of business activity, it might be further required to obtain the additional standard certificate.</p>
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It must be noted that with the enactment of GR 5/2021, GR 24/2018 is annulled. For businesses that have already obtained an effective business license within the previous regime, such licensing will not be subject to the provisions stipulated in GR 5/2021. Meaning, those businesses can still continue their business activities using their current effective business license. On the other hand, for businesses that still merely own a non-effective business license, the license will be required to be adjusted according to GR 5/2021.

Currently, the Government is still preparing the technical implementation of GR 5/2021. BKPM, as an institution that manages the OSS system, in one of its press releases announced that the OSS system will be updated to accommodate this new Risk-Based Investment regime in the next few months.

There are various kinds of questions and debates on the implementation of GR 5/2021 because the Government has not done much socialization, and many ministries or BKPM employees are still hesitant in giving clear definitive statements regarding problems related to this. Therefore, all law firms are still waiting and monitoring further socializations and readiness of BKPM to fully implement GR 5/2021.