

NEWSLETTER

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ONLINE SINGLE SUBMISSION

On 21 June 2018, President of the Republic of Indonesia, Joko Widodo issued and enacted Governmental Regulation No. 24 Year 2018 concerning Electronically Integrated Business Licensing Services ("**Regulation**"). The Regulation was issued as a mean to integrate all licenses processing and issuing from the Capital Investments Coordinating Board of Indonesia ("**BKPM**") to an online platform known as Online Single Submission ("**OSS System**") which can be found at www.oss.go.id.

The Regulation has also been strengthened with the issuance of the Head of BKPM Regulation No. 6 year 2018 concerning the Guidelines and Procedures for Investment Licensing and Facilities, the above mentioned regulations were enacted in light of increasing the ease of doing business, and more primarily investing in Indonesia. The OSS System is currently being overlooked by the Ministry of Economy of the Republic of Indonesia, however, the plan for the future is that the system will be overlooked by the BKPM.

The OSS system might be the mechanism that alters the licensing game in Indonesia and we shall see how it operates below.

Registration

Previously, investors who wanted to apply for a business license, investment registration, or industrial license would need to register for account in the BKPM's National Single Window Investment website ("**NSWI System**"). Similarly, with the OSS System, a registration must also be done. However, the main difference is that while with the NSWI System, companies can register for an account under the name of their legal representatives (based on a power of attorney), the OSS System requires registrations to be made under a name and information of any one of the directors of that company (or any names stated in the latest deed of that company).

Pursuant to Article 22 of the Regulation, after obtaining a login username and password, the company will be asked to input the following data:

- a. Name and/or number of ratification of the deed of establishment or registration number;
- b. Business activity;
- c. Type of capital investment;
- d. Origin country of capital investment, in the event it is a foreign investment company;
- e. Location of capital investment;
- f. Plan of capital investment;
- g. Human resources plan;
- h. Contact number of the company;
- i. Application plan for tax, customs and other facilities;
- j. Tax Identification Number of the company; and
- k. Customs Registration Number of the company.

In the event that the company registering does not already have a Tax Identification Number, the OSS System will process the same for the company.

Business Identification Number

Once the documents above have been uploaded and all the requirements have been inputted in the OSS System, the OSS System shall issue a Business Identification Number (*Nomor Induk Berusaha* or “**NIB**”). The NIB is in the form of a random thirteen digit number that is secured and provided with an electronic signature. The NIB shall be valid for as long as the company carries out its business activities and shall also be considered as the companies Registry Certificate (*Tanda Daftar Perusahaan* or “**TDP**”), Importer Identification Number (*Angka Pengenal Importir* or “**API**”) and as a customs access.

Additionally, the NIB serves as the companies business identity which will be used to obtain a business license and commercial or operational license as well as one of the

requirements to obtain these licenses. The NIB will continue to be valid as long as the company continues to conduct its business activity. This term of validity applies to the NIB simultaneously becoming a TDP. Companies that have obtained an NIB will be automatically registered as a member of social security for health and manpower as regulated in Article 28 of the Regulation.

Issuance of Business License and Commercial/Operational Licenses based on Commitment

A business or company can obtain its business licenses (*Izin Usaha* or “**IU**”) or after it has obtained its NIB. After obtaining an IU, the company or business may also be required to obtain a commercial or operational license (*Izin Komersial atau Operasional* or “**Commercial or Operational Business License**”) based on the business activity of that company. The Regulation provides a list of business activities that require such license in its attachments such as the management of B3 waste, utilization of alcoholic beverages and private operation of river or lake transportation.

Pursuant to Article 31 and 32 of the Regulation, businesses that can obtain an IU are businesses that require infrastructure before operating and businesses that do not require infrastructure before operations. For businesses that require infrastructure, IU or Commercial or Operational License can be obtained only after such required infrastructure has been completed.

It is important to note that the required IU or the Commercial or Operational Business License will only be effective after fulfilling the required commitment plan. Pursuant to Article 1 paragraph (10) a “commitment” under the Regulation is defined as a statement that a company or a business has fulfilled the requirements to obtain an IU or a Commercial/Operational License. For example, for businesses that require infrastructure, an IU will only be issued once that business has obtained such infrastructure and fulfilled the requirements to obtain the following from the OSS Agency:

- a. Location Permit;
- b. Water Location Permit;
- c. Environmental Permit; and/or
- d. Building Permit.

Companies that have obtained an IU or Commercial or Operational License prior to this Regulation, but intends to expand or develop its business may apply for and obtain its IU or Commercial or Operational License through the OSS System. Any IU or Commercial or Operational License that has been obtained prior to this regulation shall remain valid and shall be registered into the OSS System.

Obligation to Have Paid Up Capital Minimum IDR 10,000,000,000

The Foreign Investment Company/PMA which is established after the OSS system is up shall have issued and paid up capital in the amount of more than IDR 10,000,000,000 (ten billion Rupiah) However, grandfather clause shall apply for company's who have already obtained business license before the enactment of OSS system and such business license is still valid.

If a company has already obtained its business activity, but they would like to change the company data stipulated in its business licenses such as its shareholders composition, address or maybe the Company would like to expand its business activity, then such company need to apply for NIB and IU. The policy of grandfather clause also applies for this situation, if the business license of the company who wants to change the data in its business license is still valid, such company does not need to adjust with the current capital requirement.

Trade-Sector Licensing

The Ministry of Trade has also issued Regulation of the Ministry of Trade No. 77 Year 2018 concerning Electronically Integrated Business Licensing Services Within the Trade Sector ("**Regulation No. 77**") which integrates trade-sector licensing with the OSS System.

In general, the process of obtaining an IU or Commercial or Operational License is the same. However, we can see that there are still several differences as mentioned below.

Firstly, Regulation No. 77 states that foreign legal entities and/or foreign individuals do not need to utilize the OSS System to obtain their business license. Secondly, in addition to fulfilling the commitments required in the IU or Commercial or Operational License, businesses in the trade sector must satisfy certain requirements in what is called a “Service Level Arrangement” which regulates several matters such as timeframes and fees required for trade IU or Commercial or Operational Licenses.

Investment Control

For further implementation of the OSS System, the BKPM issued Regulation No. 7 Year 2018 on the Guidelines and Procedures for Investment Control (“**Regulation No. 7/2018**”)

With the issuance of Regulation 7/2018, there have been changes in the investment control mechanism that was previously regulated in BKPM Regulation No. 14 Year 2017 on the Guidelines and Procedures for the Implementation of Capital Investment Licensing and Facilities.

Investors with investment values of more than IDR 500,000,000 (five hundred million Rupiah) are required to submit an Investment Activity Report (or *Laporan Kegiatan Penanaman Modal* or “**LKPM**”) whether the relevant investors have already commenced commercial production or not. Investors whose investment is less than IDR 500,000,000 (five hundred million Rupiah) will only need to submit reports required by the relevant technical institutions. The LKPM shall be submitted to the Electronic Investment Information and Licensing Services (“**SPIPISE**”) by making reference to the details of the Investors found in the OSS System. Monitoring activities shall be conducted by the BKPM through the collection, verification and evaluation of the LKPM of the Investor, import realization and fiscal facilities report,

report on the activities of representative offices and other business activities required in accordance with the regulations of the relevant technical institutions.

Conclusion

Although the system has not run optimally, the OSS System has been up and running. There have been companies that have used this system and obtained an IU. Currently, the OSS System only assists in obtaining the following:

- a. IU;
- b. Commercial;/Operational License;
- c. TDP;
- d. API;
- e. NPWP;
- f. Customs access;
- g. Location Permit;
- h. Water Location Permit;
- i. Environmental Permit; and/or
- j. Building Permit.

All other permits and/or licenses outside the list above are still to be obtained through their normal mechanism. Although currently the system is still not in optimal form, the OSS System is believed to be transitioned to BKPM and we hope that by the time that happens, all licenses and permits that are required will be easier to obtain and access, and the problems being faced by users will be immediately sorted out.