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JOB CREATION LAW: EASE OF DOING BUSINESS VS. LICENSING

On 2 November 2020, President Joko Widodo signed Law No. 11 of 2020 concerning Job Creation (“**Job Creation Law**”). The Job Creation Law is expected to increase the investment, ease doing business in Indonesia, and enlarge job opportunities for Indonesian workers. As Indonesia is ranked 73rd out of 190 countries in terms of ease of doing business by the World Bank in 2020, Indonesia must take serious action on this. This article will discuss the Indonesian government’s efforts in supporting ease of doing business by deleting some licenses as well as amending the requirements and approval process to simplify business licenses in the Job Creation Law.

Below are major changes in the Job Creation Law regarding licensing requirements:

1. Risk-based Business License

A business license is classified based on the potential risk level. The risk level is divided into 3 (three) types: low risk, medium risk, and high risk. The risk level is determined by the safety, environmental, health, exploitation, and other relevant aspects. For low risk business activities, the entrepreneur is only required to obtain a business identification number (*Nomor Induk Berusaha* or “**NIB**”). For medium risk business activities, the entrepreneur is required to obtain a NIB and certification. Whereas for high risk business activities, the entrepreneur is required to obtain a NIB and business licenses from the central government. Risk-based business licenses eliminate the requirement of business licenses for low risk and medium risk business activities.

2. Location Permit

A location permit (*izin lokasi*) was previously required for the use of land for business activities, including to purchase or transfer land rights. Job Creation Law eliminates the location permit, and instead introduces the Confirmation of the Suitability of Space Utilization Activities (*Konfirmasi Kesesuaian Kegiatan Pemanfaatan Ruang*) which will be automatically granted if the usage of location area fits with the land allocation in the Detailed Spatial Planning (*Rencana Detail Tata Ruang* or “**RDTR**”). For regions that do not have RDTR yet, the approval will not be automatic, and even requires the Approval of the Suitability of Space Utilization Activities (*Persetujuan Kesesuaian Kegiatan Pemanfaatan Ruang*) from the Minister of Spatial Planning, which can be delegated to the Governor, Mayor, or Regent. Based on the draft Government Regulation concerning Spatial Planning dated 17 November 2020, both the Confirmation of the

Suitability of Space Utilization Activities and Approval of the Suitability of Space Utilization Activities shall be applied through the Electronic Business License System. The application requires submitting the location coordinate, total area, and land tenure information. Then, the license will give information regarding the location, type of spatial planning activity, building base coefficient, building floor coefficient, building layout terms, and requirements to utilize the land.

3. Environmental License

The environmental license (*izin lingkungan*) is changed into an Environmental Eligibility Approval (*Keputusan Kelayakan Lingkungan Hidup*), while the Environmental Impact Analysis (*analisis dampak lingkungan* or "AMDAL") still exists for high risk business activities. The Job Creation Law stipulates that the AMDAL committee (*Komisi Penilai AMDAL*) will be appointed from the central government level, while previously the AMDAL Committee was determined at the regional level. The new AMDAL will also include the Traffic Impact Analysis (*Analisis Dampak Lalu Lintas* or "Andalalin") which was previously issued in a separate license.

4. Building License

The Job Creation Law eliminates the building license (*Izin Mendirikan Bangunan* or IMB) which was issued by the regional government, and instead introduces the building approval (*Persetujuan Bangunan Gedung*), which is issued directly by the central government. Meanwhile, the Building Worthiness Certificate (*Sertifikat Layak Fungsi*) still exists but has to be issued by the central government electronically. The central government will provide the standard of buildings so that any building that meets the standard can obtain the licenses by an online system.

5. Disturbance License

The disturbance license (*izin gangguan/HO*) is regulated in the colonial regulations, the Staatsblad 1926 No. 226 jo. Staatsblad 1940 No. 450 concerning the Disturbance Law (*Hinderordonnantie*) which is required for all business activities that may cause disturbance on the surrounding areas. The requirements to obtain the disturbance license is a statement from neighbors, approval of permit from all four directions (south, east, west, and north), and acknowledgment from the Head Sub-District. The disturbance license has become more irrelevant because the business location is now based on the zoning and spatial planning, which becomes less of a problem for the neighbors. The Job Creation Law revokes Staatsblad 1926 No. 226 jo. Staatsblad 1940 No. 450 concerning the Disturbance Law (*Hinderordonnantie*). Therefore, the requirement of a disturbance license (*izin gangguan*) is no longer needed.

All business licenses issued prior to the Job Creation Law are still valid until the expiration of such licenses. The business licenses which are currently in the application process will be adjusted to the requirements of Job Creation Law.

Right now, the government is preparing the implementation regulations to synchronize with the existing regulations and system that will support the integration of business licensing. Until the issuance of this article, the Indonesian government has not issued further implementation regulations yet.

It is paramount to ensure that all regional regulations regarding licensing, which exist before and contradict Job Creation Law, shall be revoked. The implementation regulations shall avoid any confusion and dualism of licenses between the Central Government and the Regional Government. From our experiences, regional governments tend to create their business licenses, which will confuse the investor.

We are excited to see the implementation of the Job Creation Law in Indonesia. It is a big step for Indonesia in supporting the ease of doing business and combating corruption. As clearly seen that only by eliminating location permit and disturbance license itself will save around 30 days in permitting process.

Note: The content of this article does not constitute legal advice and should not be relied upon since there will be implemented regulations to be further issued. The judge's opinion may also be different, due to the facts relevant to the case. If you need specific advice related to this topic, please contact us by email at info@yangandco.com.