



PRINSIP HUKUM PELAYANAN PERIZINAN TERPADU SATU PINTU (PTSP) DI INDONESIA

(Law Principles of One-Stop Integrated Licensing Service in Indonesia)

Pung Karnantohadi

pung.karnantohadi.gk

n@gmail.com

Dinas Pendapatan daerah Provinsi Jawa Timur

Jln. Manyar Sabrangan, Mulyorejo, Surabaya

Abstract

This research entitled "Law Principle of One-Stop Integrated Service". The preamble of the 1945 Constitution of the Republic of Indonesia mandated that the objective of the establishment of the Republic of Indonesia was to advance public welfare and educate the life of the nation. The mandate implies that the state is obliged to fulfill the needs of every citizen through a system of government that supports the creation of excellent public services in order to meet the basic needs and civil rights of every citizen of public goods, public services, and administrative services. The philosophical foundation of the obligation of every person to have permission to carry out their activities is contained in the provisions of Article 28J paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Amendment), which aims to respect the human rights of other people in an orderly society, nation and state. In accordance with the provisions of Article 28 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Amendment), permission is a limitation of one's right to provide facilities to the community in the One Stop Integrated Service (PTSP) in the provisions of Article 28 H paragraph (2) The Republic of Indonesia in 1945 (Amendment), which reads "everyone has the right to receive facilities and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice. The One Stop Integrated Licensing Service is a licensing service model that integrates the authority of the licensing agency, so that legal figures in the One Stop Integrated Licensing Service are legislation that regulates the mapermits, among others in the form of regulations regions and regional head regulations. Based on the principle of bevoegdheid zonder verantwoordelijkheid, each permit issuer can be held accountable for the permit issued or rejected, so that the public or applicant can submit legal protection efforts through the judicial institution (State Administrative Court). Legal remedies carried out by permit applicants or the public are also a form of legal protection for permit issuers in measuring the validity of issuing decisions.

Keywords: *One-Stop Integrated Service*; legal certainty; legal figures.

A. Introduction

Public service in the field of licensing facilities in Indonesia is still a complex legal problem because there is a provision of licensing facilities which are the authority of the Central Government and some are only the authority of the Regional Government but do not rule out the provision of licensing facilities which are lingering in the Central Government and Regional Government. The government system in Indonesia adheres to a decentralized government system (regional autonomy). In the provisions of Article 11 paragraph (3) of the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government (hereinafter referred to as RI Law No. 23 of 2014 concerning Regional Government) distinguishes between compulsory affairs and elective affairs held based on criteria of externality, accountability, and efficiency.

Some factors that make Indonesia's competitiveness decrease, among them are corruption, inefficiency of government bureaucracy, limited infrastructure, access to funding, inflation, policy instability, tax rates and others. In the field of business regulation, in addition to taxation issues, regulation of business licensing still has a significant influence on the development of the business world. Business licensing is one of the things that must be passed by business actors both those who will start businesses and in the business development stage. Many studies show that licensing bureaucracy has not run efficiently and effectively, so there are still problems in its service. These obstacles have a direct impact on the business world, especially investment activities in Indonesia. Whereas investment is the key to economic development, both nationally and in regions, which is translated through remuneration for factors of production, land rent, bank interest and primarily in employment.¹

Legal issues and the provision of licensing facilities are still a complaint from the public, especially investors, which often hampers the implementation of investment in Indonesia. Current alternatives and solutions include one-stop service and one-stop service patterns.

¹ World Economic Forum (WEF), Global Competitiveness Index 2017-2018 edition, The annual report released by the WEF contains research reports on the competitiveness of countries based on several parameters such as: institutions, infrastructure, education and others.

Is the one-stop service pattern used or is it a one-door service pattern, the most important thing is to implement a service pattern by integrating procedures and regulations in licensing services.²

One-Stop Integrated Services (hereinafter abbreviated as PTSP) are a topic that is widely discussed in the administration of the current government in order to support increased investment in all regions in Indonesia. PTSP is a function of an institution / organization that must be implemented in all regions, both the Central Government and the Regional Government. PTSP is also an obligation for Regional Governments that have not implemented it even for Local Governments that have implemented the obligation to optimize the PTSP function itself.

Administrative services carried out by PTSP are administrative actions that have legal consequences so that they are not just providing services to the community. Administrative services are not only directed at the licensing sector in the industrial and investment sectors, but can be various sectors. Various efforts to simplify administrative services in this case licensing services have not been able to overcome the existing obstacles. The pattern of one stop service administration services or PTSP does not only mean merely integration between service recipients and applicants with various authorities but requires integration of service procedures. In the integration of procedures, the steps taken are to reduce or reduce the authority to issue permits and recommendations that are very diverse, so that only the basic (core) permits must be taken. It is undeniable that there is resistance from the related unit (agency), but it must be avoided gradually.

Furthermore, the formulation of the problem can be described in sub-problems that reflect the scope of writing as follows *first*, The One Stop Integrated Licensing Service (PTSP) philosophy as a juridical instrument; *second* Legal figures in the implementation of One-Stop Integrated Licensing Services (PTSP), and *third* Legal protection against granting permission to the public.

² Tatiek Sri Djatmiati, Licensing as Juridical Instrument in Public Service, Speech for Inauguration of Professor in Administrative Law at the Faculty of Law, Airlangga University, November 24, 2007, p. 3 (Tatiek Sri Djatmiati II), see also Law number 25 of 2009 concerning Public Services, article 9

B. Method

This type of research in legal research is normative legal research³. The problem approach used by the authors of several approaches above is the legal approach (statute approach), case approach (case approach) and conceptual approach (conceptual approach).

C. Analysis And Discussion

1. One-Stop Integrated Licensing Service Philosophy (PTSP) as Juridical Instrument

License according to definition are approvals or statements granted. Specific permission is an agreement by the authorities to in certain circumstances deviate from the provisions of the prohibition of laws and regulations, while broadly licensing is a procedure or procedure that regulates the relationship between the community and the state in the case of a community requesting permission.⁴

License instruments are used by the authorities in a large number of areas of policy, especially those relating to the environment, as well as to social, economic, cultural and health administration, licensing is very important in managing the environment. Various stipulations arise from strategies and techniques used by the government to control or control various circumstances, namely by prohibiting without written permission to carry out any activities that the government wants to regulate or control. In other words, through the licensing system the authorities intervene in or on the process of running certain community activities.⁵

³ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, hlm 35

⁴ Philipus M. Hadjon, *Pengantar Hukum Perizinan*, Yuridika, Surabaya, 1993, hlm. 7

⁵ See and compare with Sodikin, Enforcement of Environmental Law According to Law No.32 of 2009 concerning Environmental Protection and Management, Kanun Journal, No. 52 December 2010, p. 553 which states that: "Administrative decisions which are the authority of the government are in the form of permits to carry out business and / or activities by including requirements that must be obeyed by the recipient of the permit, for example licensing relating to environmental impact analysis (AMDAL), waste water quality standards and others include supervision and administrative sanctions if the requirements are violated.

As a provision, licenses are not different from the general provisions, namely the issuance, issuance, and revocation must meet the conditions that apply to the provisions must meet the formal requirements and material requirements. From the above statement, it can be understood that the issuance of a permit must indeed fulfill the conditions and considerations in accordance with the form and content of the requested permit. Government organs or authorities through the relevant agencies must really be able to pay attention to the purpose and purpose of the permit, so that no permission is issued for side effects for others and the environment.

The conception of licensing and its form as above also affects the licensing authority in the administration of government in the region. In other words, the approval of the regional government to a party to do something that should be prohibited by the Regional Government legal products is also found in various forms of licensing stated above, such as permits, dispensations, licenses, concessions, recommendations, certifications, and so forth. Similarly, if reviewed from its legal character, that regional licensing is a manifestation of a one-sided Regional Government legal action that allows a party that has fulfilled the requirements to do something that should be prohibited by the laws and regulations. Permission as a juridical instrument means that the definition of licensing is the acquisition of something that should be prohibited. Permits are not only to give approval / acquisition in very special circumstances, but so that actions that are permitted / permitted are carried out in a certain way so that various permits and conditions are included in the permit. Permission is used by the government as a legal instrument to direct and influence citizens to want to follow recommended ways to achieve a concrete goal that the government wants. As an instrument, permission functions as the spearhead of legal instruments as directors, engineers and community designers to achieve certain desired goals.

Licensing as one of the instruments in the implementation of regional government can be applied as one of the authorities determined by regional governments whose implementation is reflected in the attitude of the head of regional law, both on the basis of legislation used as the basis, and in the framework of addressing the principle of governance as a form public responsibility.

2. Legal Figures in Operating One-Stop Integrated Services (PTSP)

Licensing is a juridical instrument used by the government to influence citizens to want to follow the way it is recommended to achieve a concrete goal. As an instrument, permits function as the spearhead of legal instruments as directors, engineers, and designers of a just and prosperous society that are embodied. With the granting of permits, it can be seen that the management of the development of a just and prosperous society can be realized. This means that the requirements contained in the permit have facilities and control functions. The permit can be declared to have a function as a controlling instrument and an instrument to create a just and prosperous society.

Actions carried out in a one-stop service system are carried out based on delegation of authority or delegation of authority, which in accordance with Article 1 number 23 of Law No. 30 of 2014, the concept of delegation is the delegation of authority from the Agency and / or higher Government Officials to the Agency and/or lower Government Officials with responsibility and accountability to the recipient of the delegation.⁶

PTSP at the central level related to investment licensing is carried out by institutions that are authorized in the field of investment that receive delegations from institutions that have the authority of licensing and non-licensing at the central, provincial or district / city level. The institutions referred to here are the Investment Coordinating Board (BKPM) or the Regional Investment Coordinating Board (BKPMMD).

The government coordinates investment policies, both coordination between Government agencies, between Government agencies and Bank Indonesia, between Government agencies and Regional Governments, as well as between Regional Governments. The coordination of the implementation of the investment policy was carried out by BKPM. In implementing PTSP, BKPM must involve representatives directly from each sector and region related to officials who have competence and authority.

⁶ Ahyar Ari Gayo, *et.al.*, *Laporan Akhir Penelitian Hukum tentang Afektivitas Undang-Undang Penanaman Modal dalam Mendorong Iklim Investasi yang Kondusif di Daerah*, Pusat Penelitian dan Pengembangan SHN Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, Jakarta, 2013, hlm. 70.

On the Law No. 25 of 2007 the provisions in relation to what is one-stop integrated service, the purpose of its formation, its institutions, the relationship between the central government and the regional government have been more explicitly regulated. This assertiveness can create certainty for central and regional government officials in carrying out their duties, certainty for investors, and certainty for the general public. Nevertheless, the arrangement of the "umbrella" will not be carried out without any regulation regarding the mechanism and procedures for one-stop integrated services. The Law only regulates one-stop integrated services in general and instructs the preparation of a Presidential Regulation to regulate the procedures and implementation. At that time the said Presidential Regulation had not been issued.

3. Legal Protection On Giving Licenses To Communities

In the welfare state government involvement in the lives of citizens occurs in various sectors. This government intervention is contained in the form of regulations, decisions, permits, and government actions in carrying out public services⁷. In accordance with the concept of the rule of law, every government action must be based on the principle of legality. Based on the principle of legality, every act of government must be based on legitimate authority, proper procedures, and the right substance.⁸ Likewise, the regulation and issuance of licenses by the government as one of the government's actions must also be based on legitimate authority. In order to have errors, according to the principle of "*geen bevoegdheid zonder verantwoordelijkheid*" (without authority there is no accountability), the government as the party authorized to issue permits has accountability.

On legal dictionary there are 2 terms that show responsibility, namely liability and responsibility. In the Black's Law Dictionary, it is explained about the definition of liability, namely the quality, state, or condition of being legally obligated or accountable; legal responsibility to another society, enforced by civil crime or criminal punishment. Which if translated has the meaning of quality or circumstances that are legally required or accountable; legal responsibility to other people or the community, carried out through civil or criminal legal efforts.

⁷Tatiek Sri Djatmiati *et.al.*, *Buku Ajar Hukum Perizinan*, Fakultas Hukum Universitas Airlangga, 2012, hlm. 60

While the definition of responsibility is the quality, state, or condition of being answerable or accountable. Which means the quality or circumstances that become a responsibility or can be accounted for.

From this we can see that the differentiation of terms of responsibility with accountability is strongly influenced by the differentiation of the term responsibility with liability in English literature. Responsibility is matched with responsibility while accountability is matched with liability.⁹ According to Peter Mahmud Marzuki, accountability (liability / aansprakelijkheid) is a specific form of responsibility. The definition of accountability refers to legal subjects who are deemed to have to pay a form of compensation or compensation after a legal event. The term accountability is within the scope of private law¹⁰

The responsibility or accountability of the state is related to the use of government authority in the function of the public service. In carrying out these functions, loss or suffering can arise for the community. The occurrence of losses for the community can occur due to defects in the use of authority or related to the behavior of the apparatus as a person. Both of these are parameters of whether or not there is a responsibility or responsibility for the losses.¹¹

D. Conclusion

The conclusion of this study are *first*, The philosophical basis of the obligation of every person to have permission to carry out their activities is contained in the provisions of Article 28 J paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Amendment), which aims to respect the human rights of other people in an orderly, social and national life. In accordance with the provisions of Article 28 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Amendment), permission is a limitation of one's right to provide facilities to the community in the One Stop Integrated Service (PTSP) in the provisions of Article 28 H paragraph (2) The Republic of Indonesia in 1945 (Amendment), which reads "everyone has the right to receive facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice."

⁹ Paulus Aluk Fajar Dwi Santo, "Mempertanyakan Konsepsi Tanggung Gugat",

<http://business-law.binus.ac.id/2016/05/31/mempertanyakan-konsepsi-tanggung-gugat/>, Mei 2016, Accessed on 7 December 2018

¹⁰ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta, 2009, hlm. 258

¹¹ Tatiek Sri Djatmiati, 'Kesalahan Pribadi Dan Kesalahan Jabatan Dalam Tanggung Jawab Atau Tanggung Gugat Negara', Paper Delivered On "Lokakarya Hukum Administrasi dan Korupsi" Hosted by Fakultas Hukum Unair, Surabaya. 28 – 30 Oktober 2008, hlm.

Second One-Stop Integrated Licensing Service is a licensing service model that integrates the authority of the licensing agency, so that legal figures in the One-Stop Integrated Licensing Service are legislation that regulates the main tasks and functions of regional apparatus authorized to issue permits, among others in the form of regulations regions and regional head regulations. This legal figure refers to Law No. 23 of 2014 concerning Regional Government, Law No. 25 of 2009 concerning Public Services and implementing regulations;

Third Based on the principle of bevoegdheid zonder verantwoordelijkheid, each permit issuer can be held accountable for the permit issued or rejected, so that the community or the applicant can submit legal protection efforts through the judicial institution (State Administrative Court). Legal remedies carried out by permit applicants or the public are also a form of legal protection for permit issuers in measuring the validity of issuing decisions.possible application and/or suggestions related to the research findings.

Bibliography

- Ahyar Ari Gayo, *et.al.*, *Laporan Akhir Penelitian Hukum tentang Afektivitas Undang-Undang Penanaman Modal dalam Mendorong Iklim Investasi yang Kondusif di Daerah*, Pusat Penelitian dan Pengembangan SHN Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, Jakarta, 2013.
- Paulus Aluk Fajar Dwi Santo, "Mempertanyakan Konsep Tanggung Gugat", <http://business-law.binus.ac.id/2016/05/31/mempertanyakan-konsepsi-tanggung-gugat/>, Mei 2016, Accessed on 7 December 2018
- Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011
- Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta, 2009.
- Philipus M. Hadjon, *et.al.*, *Hukum Administrasi dan tindak Pidana Korupsi*, Gadjah Mada University Press, Yogyakarta.
- Philipus M. Hadjon, *Pengantar Hukum Perizinan*, Yuridika, Surabaya, 1993.
- Sodikin, Enforcement of Environmental Law According to Law No. 32 of 2009 concerning Environmental Protection and Management, *Kanun Journal*, No. 52 December 2010,
- Tatiek Sri Djatmiati, Licensing as Juridical Instrument in Public Service, Speech for Inauguration of Professor in Administrative Law at the Faculty of Law, Airlangga University, November 24, 2007
- Tatiek Sri Djatmiati *et.al.*, *Buku Ajar Hukum Perizinan*, Fakultas Hukum Universitas Airlangga, 2012.
- Tatiek Sri Djatmiati, 'Kesalahan Pribadi Dan Kesalahan Jabatan Dalam Tanggung Jawab Atau Tanggung Gugat Negara', Paper Delivered On "Lokakarya Hukum Administrasi dan Korupsi" Hosted by Fakultas Hukum Unair, Surabaya. 28 – 30 Oktober 2008.
- World Economic Forum (WEF), *Global Competitiveness Index 2017-2018 edition*