

One Single Submission: Certainty or Uncertainty?

Rahmad Hendra*, Firdaus Firdaus

Faculty of Law
Universitas Riau
Pekanbaru, Indonesia
*b4nk.h3n@gmail.com

Abstract—One Single Submission (OSS) contained in PP 24/2018 was launched with a view to providing legal certainty in the investment licensing process in Indonesia, as an embodiment of the Economic Policy Package, one of which is the acceleration of licensing related to land. This OSS system is beneficial for prospective investors or entrepreneurs for the selection of business premises land. But on the other hand it is very detrimental to the community including the customary law community, because the land selection can be done without the knowledge of the actual owner. This research is a normative legal research, data sources obtained from primary legal materials in the form of legislation, jurisprudence and expert opinions relevant to the research. The legal certainty that is expected by the implementation of OSS can actually lead to legal uncertainty, because the OSS system can cause new problems, namely land conflicts between investors and local communities. This study is expected to provide input for the government to immediately undertake efforts to harmonize with the Land Law and the Investment Law.

Keywords: *One Single Submission (OSS), investment, legal certainty, land*

I. INTRODUCTION

The World Bank's latest report entitled Doing Business 2020 deserves attention because, according to the World Bank's assessment level of ease of doing business in Indonesia in 2019 is ranked 73 [1]. This ranking is the same as in 2018, but decreased by one level from 2017 where at that time Indonesia managed to rise far to rank 72 from previously ranked 91. The decline in Ease of Doing Business (EoDB) really becomes an irony for the government, considering that in two years the government launched various economic packages in the hope that Indonesia could penetrate the rank 40 as the target set by the President Joko Widodo [2]. However, the fact is that Indonesia's EoDB level has actually dropped to 73th out of 190 countries. The downgrade is a warning to the government that more needs to be improved so that investors are more interested in investing in Indonesia.

One of the issues that must be addressed is the issue of legal certainty over licensing procedures [3]. In the context of accelerating and increasing investment and business, the government considers it necessary to implement an integrated

business Licensing Services so that on June 21, 2018 a Government Regulation of the Republic of Indonesia Number 24 of 2018 concerning Electronic Business Licensing Services is known as One Single Submission (OSS) [4].

Based on 190 investment cases in LWG 4 Coordinating Ministry for Economic Affairs, the main investment inhibiting factors were: licensing 32.6%, land acquisition 17.3%, regulations and policies 15.2%. To reduce these obstacles, the government made a special license / recommendation, certification, DG Letter and Ministerial Decree policy, all of which can be submitted by investors through OSS [5].

However, in its application, OSS has created new problems related to legal certainty for investors. Kadin's Deputy Chairperson for International Relations, Shinta Widjaja Kamdani, said that in fact Indonesia had many potential investors who were ready to invest, but when faced with problems such as ease of business permits they chose to go to a friendlier country. He gave an example as the application of business licensing through one single submission (OSS) which turned out to confuse entrepreneurs so that it did not facilitate because the central and regional governments had not been well coordinated [6].

II. OBJECTIVES

- To find out if the OSS system provides legal certainty in granting location licence for investors also for the local community
- To find certainty of Sustainable Development Goals Specially Life on Land

III. DISCUSSION

A. *Legal Certainty for Business*

In the business world, legal certainty is needed to ensure the calm and certainty of business. According to Hans Kelsen, law is a system of norms. Norms are statements that emphasize the "supposed" aspect or *das sollen* by including some rules about what to do. The existence of these rules and the implementation of these rules lead to legal certainty [7].

The general nature of the legal rules proves that the law does not aim to realize justice or benefit, but solely for certainty [8]. The law must have certainty, for that the law must be in the form of written regulations [9].

Legal certainty is one of the principles of investment activities in Indonesia as stipulated in Law Number 25 of 2007 concerning Investment (UUPM). In Article 3 paragraph (1) letter a, it is stated that investment activities are carried out based on the principle of legal certainty. Meanwhile, what is meant by "the principle of legal certainty" is the principle in a legal state that places the laws and provisions of legislation as the basis for every policy and action in the field of investment.

Legal certainty is also the main objective of BAL, stated in the Explanation namely:

- To set the foundations for the preparation of national agrarian law.
- Become the basis in realizing unity and simplicity in land law.
- Become the basis for realizing legal certainty regarding land rights for all Indonesian people [10].

B. Legal Certainty for Customary Law Community

The customary law community has been recognized internationally and nationally. Internationally in 1966 the World Council of Indigenous Peoples (WCIP) in Kiruna Sweden was born in 1966 which emphasized that indigenous peoples have full rights to their land without having to see whether they held official rights issued by the authorities or not [11]. Then in the United Nations Declaration and Program of Action on Combat Racism and Racial Discrimination held in Geneva in 1978 the rights of indigenous peoples are recognized as part of the struggle against racial discrimination [11].

Rajagukguk said that indigenous peoples' rights to land were universally recognized, but were not always respected [12]. For a long time, ILO Convention No.107 of 1957 stated:

"The right of ownership, collective or individual, of the members of the populations concerned over the lands which (they) traditionally occupy, as well as customary laws and procedures for the transmission of rights ownership, and use within indigenous communities. Indigenous peoples 'shall not be removed without their free consent' except for reasons of national security, public health, or national economic development, in which case they must be compensated fully in kind (i. e. land of at least equal quality) [13]."

Nationally, the 1945 Constitution in the second amendment added Article 18B paragraph (2) which recognizes and respects MHA and its traditional rights. Furthermore, Article 28I paragraph (3) regulates the respect of the state for the cultural identity and rights of traditional communities. Legislation that is a mandate in agrarian reform and natural resource management is the MPR TAP No. IX of 2001 concerning Agrarian Reform and Management of Natural Resources. Article 4 states that agrarian reform and natural resource management must be carried out in accordance with the following principles: j. recognize, respect, and protect the

rights of indigenous peoples and the diversity of the nation's culture over agrarian / natural resources.

C. Legal Certainty in Location Permit

One of the permit given by The OSS Institution is Location Permit [14], based on Regulation of the Minister of Agraria and Spatial / Head of The National Land Agency of the Republic of Indonesia Number 14 Of 2018 Concerning Location Permit. Entrepreneurs who want to apply for a location / land permit to try to apply through the OSS. This system is profitable and easy for investors or entrepreneurs. Because they can choose and block maps of the land they want in developing their investments.

Submissions made with the fulfilment of commitments or without the fulfilment of commitments, will be examined and must be given consideration by the National Land Agency in only 10 (ten) days. The very short time is a problem because BPN does not have enough time to conduct a field inspection of the requested land, so that problems occur in practice.

One example of the problem that occurs is that the community as the land owner who has registered his land does not know that his land is affected by the location permit map block proposed by the investor. If the land is blocked, for 3 years the land owned by the community cannot carry out legal actions against the land, as traded to another party. As a result, there were many complaints from the community about land to the Regional Government [15].

The same thing can happen to indigenous and tribal peoples who do not even register their customary land. The customary rights of the customary law community are regulated in the Basic Rules of Agrarian Principles:

"Bearing in mind the provisions in Article 1 and Article 2, the exercise of customary rights and the implementation of such rights from Customary Law communities, as long as in reality they still exist, must be such that they are in accordance with national and state interests based on national unity and may not be contrary to other laws and regulations that are higher [16]."

Land ownership consists of several people or groups such as customary land (land that is *publiekrechtelijke*) regarding land registration initially is not something that is important to do, because the priority is the function of rights, namely how to be able to benefit all family members of the region who live on the land, not the safe function of these rights in the hands of someone [17].

D. Legal Certainty in SDGs Life on Land

Preserving diverse forms of life on land requires targeted efforts to protect, restore and promote the conservation and sustainable use of terrestrial and other ecosystems. Goal 15 focuses specifically on managing forests sustainably, halting and reversing land and natural habitat degradation, successfully combating desertification and stopping biodiversity loss. All these efforts combined aim to ensure that the benefits of land-based ecosystems, including sustainable livelihoods, will be enjoyed for generations to come [18].

IV. CONCLUSION

The legal certainty that was expected by the implementation of the OSS system, especially related to location permits, was apparently not fulfilled as expected. For investors, the process is fast, but the concern over business comfort is not achieved due to demands from the community regarding the land issued by the permit. For indigenous people, especially the OSS system, can eliminate their rights to both registered and unregistered property rights.

Many facts that illustrate the reduced quality of land after being managed by investors. The lack of integration of the OSS system with local governments can lead to inaccurate granting of licenses to land that can make the quality of the land degraded.

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