



# Implications of Changing Building Permit (IMB) to Building Approval (PBG): A Legal Analysis

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**Abstract.** This article aims to identify and analyze legal problems after the enactment of the Job Creation Law which revoked the Building Permit (IMB) to become a Building Approval (PBG). This research was carried out using library research with a specificity in normative legal research while to see how in the field this research uses primary data which in this case arises from data from Lamongan Regency regarding the implementation of building ap-provals.

The results of the study show that, first, the position of the Building Permit Regulation after the issuance of the Building Ap-proval itself is no longer valid. However, for buildings that have previously been es-tablished, the permit is still valid until the validity period expires. Second, the most visible legal problems after the revocation of the IMB to PBG are that there is still local governments (Lamongan) that do not yet have a regional legal umbrella. Local governments that are responsive to the change in IMB to PBG, by issuing regional regulations on PBG, issuing decisions on the implementation of PBG. The government is obliged to provide socialization and guidance to the community so that in practice the community can also understand the intent of the policy itself, especially building owners

**Keywords:** PBG, Local Government, Implication.

## 1 Introduction

The Indonesian government is trying to improve the investmentecosystem and business activities to increase competitiveness and economic growth. However, this effort is experiencing obstacles, one of which is the relatively large number of regulations that overlap and conflict (disharmony) among regulations. Based on this, the government made legal breakthroughs the law by omnibus law as basically is commonly used in countries that use the Anglo Saxon (Anglo American) legal system. Form of omnibus law is Law Number 11 of 2020 Concerning Job Creation (Job Creation Law) which later the law reaped a polemic and there was a judicial review to the Constitutional Court. Basically the Constitutional Court's decision is to improve within 2 years, however instead of revising the Job Creation Law the Government issued a Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2022 Concerning Job Creation (Job Creation Perppu). Furthermore, the Job Creation Perppu was ratified

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to become Law Number 6 of 2023 concerning Stipulation of Government Regulation of Law Number 2 of 2022 concerning Job Creation to become Law (2023 Job Creation Law).

The provisions as stipulated in the 2023 Job Creation Law Chapter III Article 23 which regulate matters concerning the improvement of the investment ecosystem and business activities, regulate at least four main things. *First*, regarding the implementation of risk-based business permit. *Second*, regarding the simplification of the basic requirements for business permits. *Third*, regarding the simplification of business permit. *Fourth*, regarding the simplification of investment requirements. Regarding the simplification of the basic requirements for business permit, the Job Creation Perppu has regulated the suitability of space utilization activities, environmental approvals, and the implementation building particularly regarding building approvals (PBG) and Certificate of Functionality (SLF) building.

The 2023 Job Creation Law has revoked relatively many of the provisions in Law Number 28 of 2002 Concerning Buildings (Building Law) which is the main legal umbrella in the management of buildings so far. On the other hand, the implementing regulations for the Job Creation Law as well as the Building Law have been promulgated by Government Regulation Number 16 of 2021 concerning Implementation Regulations for Government Regulation Number 16 of 2021 concerning Implementation Regulations for Law Number 28 of 2002 (Building PP).

The change in the content of the relatively large number of building arrangements, it is undeniable that regulations at the regional level need adjustment/harmonization, especially in terms of substance. So that the provisions regarding the management of buildings are in harmony and harmony from the central level to the regional level.

This article aims to analyze the legal implications of changing a building permit (IMB) to a building approval (PBG). This research uses legal research methods from a normative aspect, while to see how in the field this research uses primary data which in this case arises from data from Lamongan Regency regarding the implementation of building approvals.

## **2 Discussion**

### **2.1 Legal Implications of Changing a Building Permit (IMB) to a Building Approval (PBG)**

The Building Approval (PBG) itself is a permit where permit is a one-sided State Administrative Law act carried out by the government and applied to regulations in which the regulations have conditions and procedures for obtaining the permit as appropriate and guided by statutory provisions. Every permits issued essentially limits individual activities and freedoms. Limiting permits so as not to violate the basic principles of a rule of law, namely the principle of legality [1]. Building permits are applied to the public so that there is no chaos in spatial planning, disputes that occur in the community and are a form of control over space or area users [2].

Provisions regarding permits have the function of regulating and orderly. As a function of order, which is intended for permits for everything in order to create order and

harmony in society carrying out daily activities, and for the function of regulation, it is intended that the permits issued are in accordance with the purpose of the permit, so that there can be no misuse of the permits that have been issued and this function is a function that can be used by the government. Likewise, the Building Approval (PBG) has the function of regulating so that buildings located around the community create order and harmony so that the community can carry out their daily activities in the building and for the function of regulating buildings that already have the permit to operate in accordance with the permit. provided and there is no misuse of the building which can cause discomfort in society [3].

The purpose of issuing permits for the government can be linked to the income of each region, it can be explained that regional income is an important factor for the progress of each region. Without adequate revenue, regional autonomy is difficult to implement so that the development of each region can be hampered. Here the issuance of permits can also help regional income [4]. Likewise with the Building Approval where each building owner can carry out the function of the building in accordance with what has been approved so that it can drive the economy of each region.

According to Sjachran Basah's opinion, where the function of law is also expected to develop the country and shape society according to what the country aspires to be, so that the Building Approval which is one of the instruments of Licensing Law is expected to help in developing the country and society in terms of use or construction of a building or structures.

In 2021, the Indonesian state government has officially replaced the Building Permit with the Building Approval. Building approvals themselves are regulated in Government Regulation Number 16 of 2021 concerning Regulations for Implementing Law Number 28 of 2002 concerning Buildings. This replaces the Building Permit which was previously regulated in Regulation Number 36 of 2005 concerning Regulations for Implementing Law Number 28 of 2002 concerning Buildings [5].

The Building Permit itself cannot be valid since the Building Approval came into effect. However, for buildings that have obtained permits from the local regional government before the enactment of Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings, the building permits are declared still valid. This is in accordance with what is explained in article 346 of Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings which can be concluded that:

1. All buildings whose permits have been obtained from the regional government prior to the enactment of said government regulation are declared still valid;
2. All buildings that have a building permit obtained from the local government before the government regulation comes into force, then the permit is still valid until the permit itself expires;
3. All buildings that have been erected and do not have a Building Approval, in order to obtain a Building Approval, must apply for a Certificate of Proper Function in accordance with said government regulation.

## **2.2 Legal Problems of Implementation of Building Approval (PBG) in Local Governments (Lamongan)**

Based on the observations and interviews conducted, the problems faced by the community in the practice of implementing building permits in Lamongan Regency have been identified. So far, implementation practices have experienced difficulties in the field due to changes in higher laws and regulations. The following are some practices and problems that have been identified based on empirical data.

1. The legal basis for regional regulations related to building construction in Lamongan Regency refers to Regional Regulation Number 16 of 2018 concerning Buildings. The regional regulation was drafted in 2018, meaning that before the enactment of the Job Creation Perppu which changed many or even revoked various regulations, including the Building Law. Based on that, Lamongan do not yet have a regional legal umbrella for building approval (PBG).
2. The Building Permit (IMB) was abolished which was later replaced with a Building Approval, until now the legal basis for PBG in Lamongan Regency still does not exist, and the Central Government has provided relaxation until early 2024.
3. The use of SIMBG as an information system in managing building administration is currently relatively new and the public needs to know the technical rules of the game for its use. Based on this, it becomes an important thing to prioritize in the drafting of building regulations
4. As for another reason, there is an assumption that there is still overlap in policies between the Central and Regional Governments, especially in proving that the central government is still being authoritarian in running the bureaucracy.

Regulations regarding buildings in Lamongan Regency are generally oriented towards improving services and following up on the PP on Buildings and also the Perppu Cipta Kerja. Related to the implications for regional finance, of course the construction of buildings will increase regional fees. Of course, apart from regional regulations, specific arrangements will be required later in specific regulations.

The regulation of the administration of buildings in Lamongan Regency, in fact this is a form of orientation of regional autonomy in which regions are given the authority to regulate and establish policies from various aspects which are part of regional autonomy. This is as stated in Law Number 23 of 2014 concerning Regional Government as amended several times, most recently by Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government. The substance of the Regional Government Law actually emphasizes the importance of the role and participation of the regions in various problems that occur in the regions. Furthermore, the passing of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments is actually an important turning point for the regions in regulating various policies in the regions.

Emphasized the need for the role of the regional government (in this case the district/city regional government) to make arrangements and formulate policies regarding building management. In the context of Lamongan Regency, apart from

being an order from the Law on Building Buildings and the Perppu on Job Creation, the establishment of Regional Regulations Concerning Buildings will also be used to collect regional taxes and levies as stipulated in Law Number 1 of 2022 concerning Financial Relations between the Central Government and the Government Area.

### **2.3 The Government's role in the transition from changing a Building Permit (IMB) to a Building Approval (PBG)**

Building Approval is a form of permit that must be owned by every building owner or who wants to construct a building, in order to be able to carry out activities on the building that wants to be erected/has been built according to its designation, whereby this Building Approval is given by each regional head to the applicant for the Approval. The building is the community as the owner of the building. Each building must meet administrative requirements and technical requirements in accordance with the function of the building.

If each building must meet certain requirements to be able to carry out its designated function, this means that it is the responsibility of the building owner to comply with each of the requirements given, both administratively and technically. Building Approval is one of the administrative requirements that must be met by every building owner.

Government or state administration are legal subjects (*drager van rechten en plichten*) or supporters of rights and obligations. As a legal subject, the government as another legal subject takes various actions, both real actions and legal actions. Where real actions are actions that have no relevance to the law and therefore do not cause legal consequences. Meanwhile, legal actions are actions which by their nature can give rise to legal consequences. Legal consequences arising from legal actions are consequences that have relevance to the law, such as the creation of new legal relations, changes or termination of existing legal relations or legal conditions [6]. Regional Government is a government agency that manages and knows the potential of each region and also fulfills every need of the local community [7]. Regional Government in terms of developing the efficiency and effectiveness of the implementation of regional autonomy, is obliged to oversee the relationship between government structures and each regional government, the capacity and diversity of each region [8].

Building approvals are issued by the local government where the building is located. Therefore, the application of the Building Approval is one of the legal actions taken by the government which in this case refers more to the local regional government, where there are laws governing the provisions that will be enforced, and this means there are consequences the law that will be generated which can affect not only the legal situation, but also the welfare of the community which in this case is more directed towards development in the area, so that the role of the government, especially the regional government is very important in enforcing the law on building approvals. In addition, the government also issues a Certificate of Proper Function which is used for the feasibility of a building before the building is put to use.

Communities often make demands on all government apparatus regarding the progress of public services [9]. Licensing is a very prominent form of public service in

governance. In the relationship between government and citizens, permits are often used as the main indicator to assess whether a governance has reached the condition of "good governance" or not yet. In addition, the government, especially the local government, is obliged to provide services that are fair, transparent, effective, efficient, orderly and participatory in order to realize the excellent service provided by the regional government.

In order to achieve this situation, the government is trying to create an optimal service system in terms of building approvals, the government can provide guidance to organizers of building approvals, including:

1. The Central Government and Local Governments in carrying out construction must be in accordance with the authority given which is based on norms, criteria, standards and procedures that have been stipulated by the central government, and the implementation of development on a national basis in order to increase the fulfillment of requirements in building management;
2. Construction of buildings carried out by the government can be done through empowerment, regulation and supervision activities so that during the implementation of building operations can be orderly and the creation of buildings according to their functions, as well as obtain legal certainty from the building;
3. Guidance carried out by the central government is aimed at local governments and building administrators;
4. Guidance carried out by the local government to the community and building organizers in the form of supervision and evaluation of building management, empowerment and supervision during the implementation of building management.

In carrying out the application of the Building Approval to the owner of the said building, the government is required to carry out empowerment and supervision. Empowerment given to building administrators, namely in the form of disseminating all norms, standards, procedures and criteria related to buildings, providing socialization regarding rights and obligations as one of the actors in building management, providing determinations regarding operations, standards, procedures, norms and criteria in each area. Supervision carried out by the local government, namely supervision during the implementation of standards, procedures, norms and classifications of building management through existing mechanisms, besides that the government also actively encourages the community to carry out supervision while the building is running.

This shows that the government as the main government administration organ plays a crucial role in terms of disseminating the applicable provisions, especially in this case regarding the provisions regarding Building Approvals, as a form of guidance to the public to encourage and/or urge any the community as the owner of the building can immediately apply for a building approval for the welfare of the community so that they can legally carry out their activities on the building.

### 3 CONCLUSION

Provisions in the Building Law, PP on Building Construction, and Perppu Cipta Kerja have changed or revoked the provisions in the previous regulations. The position of the Building Permit Regulation after the issuance of the Building Approval itself is no longer valid. However, for buildings that have previously been established, the permit is still valid until the validity period expires. The government also has an important role in the enactment of this regulation, the government has a role as an organ that oversees and regulates the implementation of this regulation. In addition, the government is also obliged to encourage and foster the community in order to achieve the objectives of the issuance of the regulation. Local government (Lamongan) that do not yet have a regional legal umbrella. Local governments that are responsive to the change in IMB to PBG, by issuing regional regulations on PBG, issuing decisions on the implementation of PBG. The government is obliged to provide socialization and guidance to the community so that in practice the community can also understand the intent of the policy itself, especially building owners.

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