



## ARMA Update: 27 April 2021

(English Version)

### Implementing Regulation of Omnibus Law Risk-Based Business Licensing

#### General Overview

*“The Law of the Republic Indonesia Number 10 of 2020 on Job Creation (“Omnibus Law”) regulates various sectors, one of them is business licensing. In consequence, to create convenience in business which will make easier for Business Actors and investors, the Government of Republic Indonesia enacted the Government Regulation Number 5 of 2021 (“GR 5/2021”) which revokes Government Regulation Number 24 of 2018 on Electronic Integrated Business Licencing (“GR 24/2018”), and Government Regulation Number 6 of 2021 on Regional Risk-Based Business Licencing (“GR 6/2021”) on 2 February 2021.”*

This ARMA Update will discuss the general overview about GR 5/2021 and GR 6/2021 which enacted by Government of Indonesia as implementing regulations of the provisions of the Articles 7, 8, 9, 10 and 11 of the Omnibus Law. In addition, it also addresses the basic information to understand GR 5/2021 and GR 6/2021 as well as some insight that related to the scope of risk-based business licensing, norms, procedures, and sub-sectors.

#### A. Understanding GR 5/2021

Business licensing is the legality which granted to business actors to start and run their business and/or business activities,<sup>1</sup> and risk is the potential loss cause by hazards.<sup>2</sup> Thus, risk-based business licensing is business license based on the risk level of such business (“**Risk-Based Business Licensing**”).<sup>3</sup> The implementation of Risk-Based Business Licensing is aimed to improve investment ecosystem and business activities, through<sup>4</sup>:

- a. the implementation of the issuance of business licenses is more effective and simpler; and
- b. transparency, structured, and accountable supervision of business activities in accordance with provisions of laws and regulations.

These are the aspects of implementing Risk-Based Business Licensing, which includes<sup>5</sup>:

- a. Risk-Based Business Licensing arrangements;
- b. Norms, standards, procedures and criteria for risk-based business licensing;
- c. Risk-Based Business Licensing through *Online Single Submission* (“OSS”) system service;
- d. The procedures of supervision for risk-based business licensing;
- e. Evaluation and reform of risk-based business licensing policies;
- f. Risk-based business licensing funding;

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<sup>1</sup> Article 1 Number 1 of the GR 5/2021

<sup>2</sup> Article 1 Number 2 of the GR 5/2021

<sup>3</sup> Article 1 Number 3 of the GR 5/2021

<sup>4</sup> Article 3 of the GR 5/2021

<sup>5</sup> Article 2 of the GR 5/2021



- g. Solution for problems and barriers on risk-based business licensing; and
- h. Administrative sanctions.

Risk-Based Business Licensing conducted based on the determination of the level of risk with scale of business from Micro, Small, and Medium Enterprises (“MSME”) to large business.<sup>6</sup> The implementation of risk analysis is carried out by the Government, through:

- (i) identifications of business activities;
- (ii) assessment of the hazard level;
- (iii) assessment of the hazard occurrence process;
- (iv) determination of risk level and level of business scale; and
- (v) determination of the type of business license.

### **Business Field**

There are 16 (sixteen) sectors which classified in GR 5/2021, and further arrangements regarding: (i) sub-sector and risk analysis, (ii) norm and criteria, and (iii) business licensing to support business activities.

No.	Sector	No.	Sector
1.	Marine and Fisheries	9.	Transportation
2.	Agriculture	10.	Health, Medicines, and food
3.	Environmental and Forestry	11.	Education and Culture
4.	Energy and Mineral Resources	12.	Tourism
5.	Nuclear Power	13.	Religious
6.	Industry	14.	Post, Telecommunication, Broadcasting, and Systems and Electronic Transactions
7.	Trading	15.	Defence and Security
8.	Public Works and Public Housing	16.	Employment

Indonesian Standard Industrial Classification (*Klasifikasi Baku Lapangan Usaha* - “KBLI”), KBLI Number, scope of activities, risk parameter, risk level, business licensing, time period, validity period, and business licensing authority and business license to support business activities are specified in Attachment I of the GR 5/2021.

Furthermore, the requirements and/or business licensing obligations for these sectors based on risk analysis and business licensing to support business activities are regulated in Attachment II to GR 5/2021.

### **Risk-Based Business Licensing**

GR 5/2021 categorizes business activities into 4 (four) levels of risk. The following is a division of the level of risk and the required permits, namely:

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<sup>6</sup> Article 7 of the GR 5/2021



Required Permission	Low Risk	Medium Low Risk	Medium High Risk	High Risk
<b>Business Identification Number (Nomor Induk Berusaha "NIB")</b>	✓ NIB also applies as the <sup>7</sup> : a. Indonesian National Standard ("INS") b. Halal statement guarantee	✓	✓	✓
<b>Standard Certificate</b>	-	✓ Standard Certificate is the legality to carry out business activities in the form of a business actor's statement to meet business standards <sup>8</sup>	✓ Must be verified by the Government <sup>9</sup>	✓ *if needed
<b>Special Permit</b>	-	-	-	✓

### Risk-Based Business Licensing Procedures

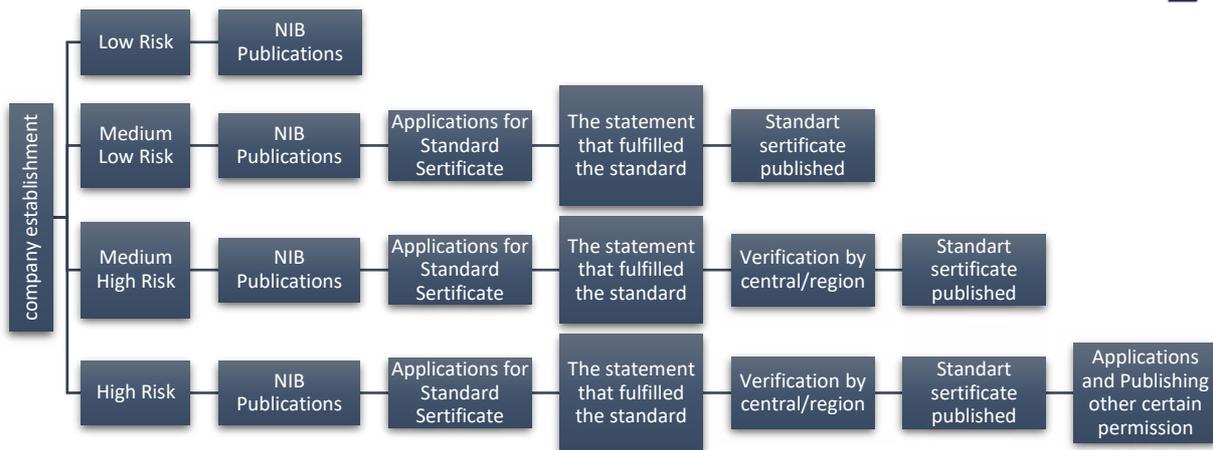
Based on the classification and assessment of business activities that have a low, medium-low, medium-high, and high risk level above, GR 5/2021 introduces the business licensing procedure for each of these risk levels, namely as follows:

*- this section is intentionally left blank -*

<sup>7</sup> Article 12 (2) of the GR 5/2021

<sup>8</sup> Article 13 (2) of the GR 5/2021

<sup>9</sup> Article 14 (3) of the GR 5/2021



- Low Risk

For low-risk business activities, the required business license is an NIB as the legality of the implementation of a business activity.<sup>10</sup> NIB is proof of registration / registration of business actors to carry out business activities and as an identity for business actors in carrying out their business activities.<sup>11</sup> To obtain NIB, business actors must pay attention to:<sup>12</sup>

- KBLI;
- Provisions concerning closed business fields and open business fields with conditions; and
- Commitments that must be fulfilled.

The issuance of NIB is carried out by the OSS Institution after the business actors have registered through filling in their complete data.<sup>13</sup>

- Medium Low and Medium High Risk

Business licensing for medium risk business activities includes:<sup>14</sup> (1) medium low risk business activities; and (2) medium high risk business activities.

Examples of medium and low risk business activities are include agro-tourism and hotel management services.<sup>15</sup> Meanwhile, examples of medium to high risk business activities are include the refrigeration machine industry and the heavy construction industry ready to install from materials for building.<sup>16</sup> For medium-low risk business activities, the business licenses are:<sup>17</sup>

- Granting of NIB; and
- Standard certification statement. Standard certification statements are statements of business actors who have met standards prior to carrying out their business activities.

<sup>10</sup> Article 8 (1) of Omnibus Law

<sup>11</sup> Article 8 (2) of Omnibus Law

<sup>12</sup> Article 7 Chairman of BPKM Regulation 1/2020

<sup>13</sup> Article 11 Chairman of BPKM Regulation 1/2020

<sup>14</sup> Article 9 (1) Omnibus Law

<sup>15</sup> Explanation of Article 9 (1) (a)

<sup>16</sup> Explanation of Article 9 (1) (b)

<sup>17</sup> Article 9 (2) Omnibus Law



After obtaining an NIB, business actors must submit a statement through the OSS system to fulfil the standards for the implementation of business activities in the context of conducting business activities and the ability to be verified by the Central Government or Regional Governments according to their respective authorities.

Meanwhile, for medium high-risk business activities, the business licenses are:<sup>18</sup>

- a. NIB; and
- b. Fulfilment of standard certificates. Fulfilment of standard certificates is a standard obligation that has been fulfilled by business actors prior to carrying out their business activities.<sup>19</sup>

After that, the OSS Institution issues a standard certificate that has not been verified. Unverified standard certificates are the basis for business actors to prepare for business activities.

NIB and standard certificates that have been verified constitute business licenses for business actors to carry out operational and / or commercial business activities.

- High Risk

For high-risk business activities, the business licenses are:

- a. NIB; and
- b. Business license. The Business license is an approval of the Central Government for the implementation of business activities which must be fulfilled by business actors before carrying out their business activities.

Supervision carried out by the Government of each business activity is carried out with an intensity of implementation based on the level of business activity risk.<sup>20</sup> In terms of the operational and/or commercial stages, business activities require the business licensing to support business activities. Ministries and/or agencies identify business licensing to support business activities by still considering the level of risk of business activities and/or products at the time of implementing the operational and/or commercial stages of business activities.<sup>21</sup>

### **Institution that Publishes Risk-Based Business Licenses**

The Central Government has the authority to formulate and establish norms, standards, procedures and criteria for Risk-Based Business Licensing in each sector as stipulated in Article 6 paragraph (2) GR 5/2021.<sup>22</sup>

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<sup>18</sup> Article 9 (3) of the Omnibus Law

<sup>19</sup> Article 9 (5) of the Omnibus Law

<sup>20</sup> Article 11 of the Omnibus Law

<sup>21</sup> GR 5/2021

<sup>22</sup> Article 22 (1) of the GR 5/2021



Risk-Based Business Licensing is implemented electronically and integrated through the OSS system,<sup>23</sup> which available for:

- a. Ministries/Institutions;
- b. Province Government;
- c. Regional Government;
- d. Special Economic Zone (“**SEC**”) administrator;
- e. Institution Free Trade Area and Free Port Authority (“**IFTAFPA**”); and
- f. Business actors.

In its implementation, the issuance of Risk Based Business Licensing is carried out by <sup>24</sup>:

- a. OSS Institution;
- b. OSS Institution on behalf of the Minister/head of the Institution;
- c. Head of Investment and One Stop Integrated Services (“**IOSIS**”) on behalf the Governor;
- d. Head of IOSIS regional on behalf of the Regent/Mayor;
- e. SEC Administrator; and
- f. Head of IFTAFPA.

However, there are exceptions to foreign investment and/or investment business activities that use foreign capital based on agreements made by the Central Government and other local governments, where the authority to issue permits is exercised by:

- a. head of government agency that has the task of administering government affairs in the field of investment coordination in accordance with the provisions of laws and regulations;
- b. in the event that business activities are carried out in the SEC area, the authority to issue business permits is exercised by the SEC administrator; or
- c. in the event that business activities are carried out in the IFTAFPA area, the authority to issue business permits shall be exercised by the head of the IFTAFPA concession agency in accordance with the statutory regulations in the IFTAFPA sector.

### **Violation and Sanction for Risk-Based Business Licensing**

GR 5/2021 contains regulations related to sanctions for violations of risk-based business licensing procedures in each regulated sub-sector, namely with written warnings, administrative fines, temporary suspension of business activities, and the most severe is the revocation of business licenses.

### **Transition Provisions**

PP 5/2021 contains regulations related to the transition provisions to the business license status that were approved or effective before the issuance of GR 5/2021, namely:

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<sup>23</sup> Article 167 (1) of the GR 5/2021

<sup>24</sup> Article 22 (2) and Attachment 1 of the GR 5/2021



- a. Provisions for the implementation of Risk-Based Business Licensing are exempted for business actors whose business licenses have been approved and are effective before GR 5/2021 comes into effect including the requirements that have been met, unless the provisions in GR 5/2021 are more profitable for business actors.
- b. Business actors who have obtained business licenses but have not become effective before GR 5/2021 are in effect, business licenses are processed in accordance with the provisions in GR 5/2021.

GR 5/2021 contains a regulation that business actors who have obtained access rights before the enactment of GR 5/2021 can update data on access rights in the OSS system, and for this renewal, the OSS system will notify business actors via registered electronic mail.<sup>25</sup>

On 1 April 2021, the Government through the Capital Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “**BKPM**”) has promulgated the implementation regulation from GR 5/2021, in this matter are the BKPM Regulation No. 4 of 2021 concerning Guidance and Risk-Based Business Licensing Service Procedures (“**BKPM Reg 4/2021**”) and Capital Investment Facilities, and BKPM Regulation No. 5 of 2021 concerning Risk-Based Business Licensing Supervision Procedures (“**BKPM Reg 5/2021**”) which both will be effective on 2 June 2021.<sup>26</sup> Henceforth, we will provide you the ARMA Update regarding that regulations separately.

## **B. Understanding GR 6/2021**

To provide legal certainty in doing business, improve the investment ecosystem and business activities and maintain the quality of responsible licensing, it is necessary to support the implementation of business licenses in the regions that are fast, easy, integrated, transparent, efficient, effective and accountable.

The implementation of business licensing in the regions is carried out by the Central Government based on the norms, standards, procedures and criteria stipulated by the Central Government, as well as by the Provincial Government, and Regency/City Regional Governments in accordance with their respective authorities based on the provisions of laws and regulations.<sup>27</sup>

The scopes regulated by GR 6/2021 are concerning:<sup>28</sup>

1. the authority to administer business licenses in the regions;
2. implementing business licensing in the regions;
3. regional regulation about business license;
4. reporting on the implementation of business licensing in the regions;

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<sup>25</sup> Article 563 of the GR 5/2021

<sup>26</sup> Article 101 of the BKPM Reg 4/2021

<sup>27</sup> Article 3 of the GR 6/2021

<sup>28</sup> Article 2 of the GR 6/2021



5. guidance and supervision;
6. funding; and
7. administrative penalty.

The Governor delegates the authority of the provincial Regional Government in the Implementation of business licensing in the regions to the head of the provincial IOSIS, which includes <sup>29</sup>:

- a. implementing business licenses which fall under the authority of provincial Regional Governments in accordance with statutory provisions; and
- b. implementing business licenses which fall under the authority of the Central Government delegated to governors based on the principles of deconcentration and assistance tasks.

The Regent/Mayor delegates the authority of the Regency/City Government in the Implementation of Business Licensing in the Region to the head of Regency/City IOSIS, which includes <sup>30</sup>:

- a. implementing business licensing which is the authority of regency / city Regional Governments in accordance with statutory provisions; and
- b. implementing business licenses which fall under the authority of the Central Government delegated to the Regent/Mayor based on the principle of assistance tasks.

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<sup>29</sup> Article 4 of the GR 6/2021

<sup>30</sup> Article 5 of the GR 6/2021