

## The Role of Notaries in Executing Location Permits for Housing Business Actors Using a Risk-Based OSS System

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**Abstract.** *Electronically Integrated Business Licensing Services or Online Single Submission - Risk Based Management (OSS - RBA) which is a one-door investment licensing portal and is said to provide business convenience for all parties, including Small and Medium Enterprises (MSMEs), as stipulated in Government Regulation Number 5 of 2021 Concerning Risk-Based Business Licensing, which system was developed by the Investment Coordinating Board (BKPM). This study aims to elaborate on the roles and responsibilities of Notaries regarding the implementation of location permits for business actors with legal status in Indonesia, especially for Housing and Industrial businesses and to identify inhibiting factors and supporting factors for Notaries in carrying out their roles. The approach method in this study is a sociological juridical legal research method that studies the influence of society on empirical law and juridical where researchers carry out field studies by conducting interviews with informants. The specification of this research uses descriptive analysis. The type of data used in this study is primary data which includes the 1945 Law, Act No. 30 of 2004 in conjunction with Act No. 2 of 2014 concerning the Office of a Notary, Act No. 40 of 2007 concerning Limited Liability Companies, and Government Regulations Number 5 of 2021 concerning Risk-Based Business Licensing. The results of this study indicate that notaries are greatly assisted by the OSS RBA system, but there are still several obstacles both systemically, technically, in the field, and from human resources.*

*Keywords: Location; Online; Permit; Submission.*

### 1. Introduction

With the development of communication technology in the millennial era, the licensing system in Indonesia has undergone many changes. This is what makes each individual must adapt to technological advances that are increasingly developing day by day. Basically, the government system in Indonesia places service as the basis for building bureaucratic relations between the state and

society. What they place in the service governance system as a form of achieving common goals must definitely receive special attention in order to achieve the nation's ideals. Public service is an activity or a series of activities in order to fulfill the need for services to the community that are included in the framework of the State of Indonesia as a welfare state with the aim of *bestuur zorg* and also the implementation of Act No. 25 of 2009 concerning Public Services. The government as a state apparatus must be able to provide good public services to the community. As stated in Act No. 25 of 2009 concerning Public Services Article 4 letter L concerning Speed, convenience and affordability.

Introduced Electronically Integrated Business Licensing or Online Single Submission - Risk Based Management (OSS - RBA) is a business license issued by the OSS Institution for and on behalf of ministers, leaders, agencies, governors, or regents/mayors to business actors through an electronic system that integrated as regulated in Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing. This service system was developed by the Investment Coordinating Board (BKPM) to speed up the processing of business permits. The OSS - RBA system is aimed at accelerating and increasing investment and trying to make it easier for business actors, both individuals and non-individuals, to start a business in Indonesia. The implementation of risk-based business licensing through the OSS system is the implementation of Act No. 11 of 2020 concerning Job Creation. Risk-Based OSS is regulated in BKPM Regulation Number 3 of 2021 concerning Electronically Integrated Risk-Based Business Licensing Systems. Risk-Based OSS must be used by business actors before starting business activities in Indonesia.<sup>1</sup>

Notaries as public officials who carry out their profession in providing legal services to the public, need to get protection and guarantees in order to achieve legal certainty. The guarantee of protection and the guarantee of achieving legal certainty regarding the performance of the duties of a notary has been regulated in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary (UUJN). However, several provisions in the Law are no longer in accordance with legal developments and the needs of the community, so changes need to be made, which are also intended to further confirm and strengthen the duties, functions and authorities of notaries as officials who carry out public services, as well as synchronize with other laws.<sup>2</sup>

The function of the notary profession as a public official is very much needed as a place for the public to obtain advice and everything according to what is written and determined by the notary (*constatir*) is correct and it can be said that a notary is the strongest document maker and has perfect evidentiary properties

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<sup>1</sup>[https://www.bkpm.go.id/id/publikasi/detail/berita/pengenalan-about-oss-berbasis-risiko:](https://www.bkpm.go.id/id/publikasi/detail/berita/pengenalan-about-oss-berbasis-risiko)  
Saturday, 02 July 2022

<sup>2</sup>Permatasari, E. (2017). Roles and Responsibilities of Notaries for the Implementation of Limited Liability Company Legal Entity Registration Through the Online System. *Journal of Deeds* Vol 4 Number 3, 401.

in an enforcement process. law. The development of the globalization era hit all countries, and this development requires that notaries are always up to date on developments regarding the latest technological media related to civil society. The development of the era of globalization in terms of the global financial crisis is a major issue in all parts of the world that has occurred since 1997, and this has happened so far, and notaries are required to face the challenges of this development in the globalization era.<sup>3</sup>

Notaries as public officials authorized to make authentic deeds through UUJN, the role of notaries is very important in overseeing and ensuring the operation of Act No. 25 of 2007 concerning Investment (Investment Law), Act No. 40 of 2007 concerning Limited Liability Companies (UU Limited Liability Company), Presidential Regulation Number 44 of 2016 concerning List of Closed Business Fields and Open Business Fields and other implementing regulations so that they are in accordance with what the government wants in granting investment rights, namely legal certainty in the form of an Authentic Deed from a notary as regulated in Article 14 letter a Investment Law.<sup>4</sup>

The relationship between a Notary and the OSS system is when a non-individual business actor is about to establish a legal entity and arrange for permits including a Location Permit for Business Actors. There is a lot to go through to get a company Location Permit. Because the permits that were issued last year regarding Location Permits are still ambiguous to obtain related to Online Single Submission (OSS) registration which is still in the system evaluation. As a public official who acts as an intermediary between business actors and legal provisions, notaries are required to master the latest regulations related to business licensing.

In this case, the government through the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency issued the ATRBPN Regulation Number 12 of 2021 Concerning Land Technical Considerations. In this regulation, it is explained that Concerning Land Technical Considerations regulates again the implementation of the recognition and implementation of fair and sustainable land tenure, ownership, use and utilization. With the Online Single Submission - Risk Based Management (OSS - RBA) it is hoped that it will make it easier for business license seekers because it is easy and can be accessed anytime and anywhere in accordance with the provisions of Government Regulation Number 24 of 2018 Article 96 paragraphs a to c concerning Provision of Equipment for implementation of the OSS system, then the OSS system network and human resources for the implementation of the OSS system. But the fact is that the Government Regulation stipulated by President Joko Widodo on June 21 2018 which regulates this OSS and which has been amended by Government

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<sup>3</sup>Yulia, A. (April 2019). Notary Profession in the Era of Industrialization in the Perspective of Transcendence of Pancasila, *Journal of Law and Justice*. Vol 4 No 1, 57.

<sup>4</sup>Yusrizal. (2018, July 3). The Role of Notaries in Encouraging the Creation of Legal Certainty for Investors in Foreign Investment. *Lex Renaissance*, 362

Regulation Number 5 of 2021 concerning Guidelines and Procedures for Supervision of Risk-Based Business Licensing, it turns out that there are still many obstacles from business actors and from the government agency. many who oversee the implementation of Location Permits in Online Single Submission - Risk Based Management (OSS - RBA), namely understanding the use of the Online Single Submission - Risk Based Management (OSS - RBA) system, many still do not understand, both from the task force and entrepreneurs. And also the difficulty of access for business actors to obtain location permits. Regarding the renewal of the OSS system which is now an Online Single Submission - Risk Based Management (OSS - RBA) system,

## **2. Research Methods**

This research is a type of sociological and empirical juridical research. Juridical Sociological Approach Method which aims to obtain legal knowledge empirically by going directly to the object. The sociological juridical approach is an approach that is carried out by looking at the reality that exists in practice in the field.<sup>5</sup>While empirical juridical or commonly referred to as field research, namely examining the applicable legal provisions and what happens in reality in society.<sup>6</sup>

### **1. Research Specifications**

The specification of this research uses descriptive analysis, namely research that in addition to providing an overview, writing and reporting an object or an event will also draw general conclusions from the issues discussed. Conduct a description of the research results with data that is as complete and as detailed as possible. Furthermore, an analysis of the results of the research is carried out using relevant laws and theories.

### **2. Data Types and Sources**

Source of data in this research is secondary sata. Secondary data is data obtained from the results of a literature review or review of various literature or library materials related to legal issues or materials.<sup>7</sup>Sources of data used in this study are as follows:

a. Primary Legal Materials consisting of laws and regulations, jurisprudence or court decisions. The primary legal materials in this study include:

- The 1945 Constitution of the Republic of Indonesia.
- Code of Civil law.
- Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2007 concerning limited liability companies.
- Act No. 23 of 2014 concerning Regional Government.
- Law 25 of 2007 concerning Investment

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<sup>5</sup>Agung Nugroho and Karmi, Notary Authority in Installing Mortgage as Effort to Settle Bad Credit (Second Way Out), Sultan Agung Notary Law Review, Vol 2, No 2, 2020, p 93.

<sup>6</sup>Suharsimi Arikunto. 2012

<sup>7</sup>Mukti Fajar ND and Yulianto Achmad, Op. Cit, p 156

- Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions
  - Act No. 14 of 2008 concerning Public Information Disclosure
  - Act No. 25 of 2009 concerning Public Services
  - Act No. 9 of 2015 concerning Regional Government
  - Act No. 11 of 2020 concerning Job Creation
  - Presidential Regulation Number 97 of 2014 concerning the Implementation of One Stop Integrated Services.
  - Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 138 of 2017 concerning the Implementation of Regional One-Stop Services
  - Regulation of the Minister of ATR/BPN Number 13 of 2021
  - Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services.
  - Government Regulation Number 21 of 2021 concerning Implementation of Spatial Planning (PP 21/2021)
  - Regional Regulation Number 6 of 2011, Regarding: Spatial Planning for Semarang Regency 2011 - 2031
- b. Secondary legal materials, namely legal materials that can provide an explanation of primary legal materials which can be in the form of expert opinions, scientific journals, newspapers and Internet news.
- c. Tertiary legal materials, namely legal materials that can explain both primary and secondary legal materials, in the form of legal dictionaries, Indonesian language dictionaries, and encyclopedias.<sup>8</sup>

### 3. Method of collecting data

#### a. Interview

Field study is research conducted by direct observation of the object under study to obtain primary data.<sup>9</sup>The data collection technique is done by interview. In this study interviews were conducted among others to:

1. Office of Notary Roberto Verhoeven, SH, M.Kn
2. Willy Brordous Notary Office. B.P, SH
3. Business Actors who use Notary Services in managing the establishment of legal entities and Licensing at OSS;
4. DPMPTSP Semarang Regency,
5. Semarang Regency National Land Agency

#### b. Internet

Data collection techniques were carried out by library research and field studies. Data collection techniques in normative legal research are carried out by studying the literature on legal materials, both primary legal materials, secondary legal materials and tertiary legal materials and/or non-legal materials. Tracing these legal materials can be carried out through the internet media. .

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<sup>8</sup>Ibid, pp. 157-158

<sup>9</sup>Sugiyono, Quantitative, Qualitative Research Methods and R&D, Alfabeta, Bandung 2017, p 91

#### 4. Data analysis method

Data analysis is an activity in research in the form of conducting studies or previously obtained. In simple terms, this data analysis is referred to as an activity of providing a review, which can mean opposing, criticizing, supporting, adding to or giving comments and then making a conclusion on the results of the research with one's own thoughts and the help of the theory one has mastered.<sup>10</sup>

The data analysis method used in this thesis is descriptive qualitative analysis, in which the researcher, apart from processing and presenting the data, also conducts qualitative data analysis. This is meant to be able to synergize between some of the data that has been obtained with various literature and other data that has been prepared. Furthermore, these data will be analyzed by generating several conclusions and findings based on the research effort. Therefore, if the necessary data has been gathered and with the qualitative description analysis method mentioned above, then the next step in the data processing and analysis process, researchers in data analysis seek steps by inductively compiling,<sup>11</sup>

### 3. Results and Discussion

#### 3.1. The Role of Notaries in Executing Location Permits for Housing Business Actors with the OSS RBA System (Risk Based)

A notary in carrying out a job based on the authority and duties of his position is regulated in the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary. Based on Article 1 point 1 UUJN "Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law or based on other Laws". Notaries are appointed as public officials by the authorities/state to carry out public duties in the sense of providing services to the general public in the field of civil law, and are commonly referred to as having the same position as state officials. According to the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary in Chapter III,

1) The notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide gross, copies and excerpts of the deed, all of that throughout the making of the deeds was not also assigned or excluded to other officials or other people determined by law.

2) Authorized notary also:

a. Validate the signature and determine the certainty of the date of the letter below by registering it with a special book.

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<sup>10</sup>Ibid, p 180

<sup>11</sup>Soerjono Soekanto, Op. Cit, pp 36-37

- b. Book the letters under signature by registering in a special book.
- c. Make copies of the original letters under the hand in the form of a copy containing the description as written and described in the letter concerned.
- d. Validate the suitability of the photocopy with the original letter.
- e. Providing legal counseling in connection with making deeds;
- f. Make a deed related to defense, or;
- g. Make a deed of minutes of auction.

The role of a notary in establishing a legal entity or limited liability company (PT) is very much needed in this modern era. So that the notary is obliged to increase the knowledge and professional expertise that has been owned is not limited to legal knowledge and notary<sup>12</sup>. The role of the notary is also required to provide information regarding legal entity regulations or regarding Limited Liability Companies (PT) and the 2020 Indonesian Standard Classification of Business Fields (KBLI) which determines the category of Business Fields to be used by business actors. KBLI is a clarification of Indonesian economic activities/activities that produce products/outputs, both in the form of goods and services, based on business fields in the development and shift of economic activities in Indonesia. This KBLI was updated in September 2020 in accordance with BPS Regulation Number 2 of 2020 concerning the Standard Classification of Indonesian Business Fields, with the addition of 216 5-digit KBLI Codes from the 2017 KBLI, so that a total of 2020 KBLI currently has 1,790 KBLI codes. The role of the Notary directs business actors to choose one of the KBLI codes that relates to Developers or housing, to establish a Limited Liability Company in the housing sector. After obtaining the KBLI, the KBLI will be used in the Deed and registered at the Pratama Tax Office as an NPWP, and the Directorate General of AHU to obtain a Decree on the Establishment of a Limited Liability Company.

Business actors in the housing sector must establish their company in the form of a legal entity or limited liability company (PT). In PP 64, Legal Entities in Article 1 are limited to legal entities established by Indonesian citizens whose activities are in the field of housing and residential areas. This is in line with the definition of a legal entity contained in Law 1/2011 concerning Housing and Residential Areas. This means that by laws and government regulations it has been locked that in order to carry out development it must take the form of organs. In Article 5 Chapter II paragraph (1) which reads "Legal Entity that will carry out the construction of Low-Income Housing (MBR) following the proposal for the development of MBR Housing. Before a business actor runs his business, the first step that must be taken is to establish a legal entity in the form of a Limited Liability Company (PT).<sup>13</sup>

When the business actor (Developer) as a business actor engaged in the housing sector has become a legal entity, PT is also referred to as a new legal subject

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<sup>12</sup>Article 3 Notary Code of Ethics

<sup>13</sup> <https://asriman.com/pantingnya-had-pt-field-developer-properti-dan-step-mendirikannya/> July 05, 2022

which of course has rights and obligations.<sup>14</sup> This deed of establishment of a Limited Liability Company (PT) is referred to as an authentic deed which is proof of the validity of every agreement or legal action listed following the procedure for making it as stipulated in the laws and regulations. The Deed of Establishment of the Limited Liability Company and the Decree of the Limited Liability Company are the basic requirements for registration of permits for Housing Business Actors in the OSS system or what is now called the OSS RBA (Risk Based) system. The Decision Letter (SK) that has been issued by a Notary from the AHU Online System is data that will be withdrawn for the Risk-Based Single Submission Online System (OSS RBA) to obtain an NIB (Business Identification Number) which also functions as a Company Registration Certificate (TDP), and Permits to be applied for include Location Permits. Location Permit is a permit granted to a business actor to acquire the land required for his business and/or activities and also applies as a permit for the transfer of rights and to use the land for the purposes of his business and/or activities. Housing business actors first choose an area or business location that needs to be considered carefully. This is because it is closely related to business prospects in the future. As material for consideration, aspects that need to be considered in selecting strategic areas for business actors are accessibility to business locations, safety of the surrounding environmental conditions, ease of local area business licensing, population density of business areas, and price suitability for business locations.

The Minister of Agrarian Affairs and Spatial Planning/Head of the Indonesian National Land Agency has effectively enacted 17/2019 regarding Location Permits on 20 September 2019, replacing Regulation 14/2018. This new regulation was enacted to clarify the framework for issuing Location Permits in the Online Single Submission (OSS) system. Location Permit is a permit granted to a business actor to acquire the land needed for his business and/or activities and also applies as a permit to transfer rights and to use said land for the purposes of his business and/or activities.<sup>15</sup> With the development of the OSS system which has become the RBA OSS system, the government has issued a new regulation regarding spatial planning, namely Government Regulation (PP) Number 21 of 2021 concerning Spatial Planning. In this regulation, Confirmation of Space Utilization Activities (PKKPR) is set as a new reference in business licensing. KPPR is a type of permit that has become a new reference in carrying out business permits as a substitute for location permits and spatial use permits in building and managing land. KKPR replaces Location Permits and various space utilization permits (IPR) in building and managing land which was originally under

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<sup>14</sup>Johan Nurjam Haba (Interview, 2022)

<sup>15</sup>Article 1 point 1 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 17 of 2019 concerning Location Permits



the authority of the Regional Government (Pemda).<sup>16</sup>KKPR functions as one of the basic permits that need to be obtained before business actors can continue the business licensing process, especially Housing Business Actors. In this new Government Regulation it is also explained that in the process of issuing the KKPR it must comply with the Spatial Planning (RTR). KKPR as the basis for licensing whose position is upstream so that currently the RTR is the single reference in the field.

Location permits or what is now called KKPR are regulated through three schemes, namely:

1. Confirmation of KKPR, namely for areas that already have RDTRs that comply/integrate with Online Single Submission (OSS);
2. KKPR approval, namely for areas that do not yet have an RDTR, the assessment takes into account RTR products using the hierarchical and complementary principles;
3. The KKPR recommendation is for activities that are nationally strategic in nature but have not been included in any RTR.

The limit on the area of land control granted by a location permit to business actors who are 1 (one) group is no more than the area of a housing and settlement development business in 1 (one) province of 400 hectares (four hundred hectares) and throughout Indonesia 4,000 hectares (four thousand hectares).

#### **4. Conclusion**

Notary as a public official who has the authority to make authentic deeds and has other authorities is regulated in the Law on Notary Office Number 2 of 2014. One of the authentic deeds made before a Notary is the Deed of Establishment of a Business Entity. Limited Liability Company which is one of the requirements for housing and industrial business actors. Because business actors engaged in housing or industry must be legal entities. In PP 64, legal entities. Deed of Establishment of PT and Decree (SK) of Establishment from the Ministry of Law and Human Rights are the basis for recording data or withdrawing data on the OSS RBA system, where the OSS RBA system is a system that aims to facilitate housing or industrial business actors in managing location permits or KKPR. The role of a notary in establishing a legal entity in the housing or industry sector is limited to making the deed of establishment legal, but also assisting housing or industrial business actors in accessing business entity validation on the AHU Online system, which is integrated with the OSS RBA system, to obtain a Business Identification Number (NIB). Business Permits, Location Permits/KKPR, and Operational Permits. In carrying out its role, Notaries get convenience with the presence of the OSS RBA system. Some of the obstacles experienced by Notaries in carrying out their roles are sought to find solutions immediately, because Notaries have inherent responsibilities and obligations and have been regulated

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<sup>16</sup>Abdul Kamarzuki. Director General of Spatial Planning of the Ministry of ATR/BPN

in the Law on Notary Position and the Notary Code of Ethics. The notary must establish good communication with the business actor as a client who entrusts the establishment of a housing or industrial business actor's business entity and permits to the notary. This must also be accompanied by the seriousness of housing or industrial business actors in realizing their business fields and fulfilling commitments to all permits they have obtained. The role of the Government is also very much needed, especially in a more responsive nature towards checking the fulfillment of the commitments of the business actors concerned.

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### *Regulation:*

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- [4] Act No. 23 of 2014 concerning Regional Government.
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