



April 2021 – Issue 2

ABOUT M&T ADVISORY

M&T Advisory is a digital publication prepared by the Indonesian law firm, Makarim & Taira S.

It informs generally on the topics covered and should not be treated as legal advice or relied upon when making investment or business decisions.

Should you have any questions on any matter contained in M&T Advisory, or other comments in general, please contact us at the emails provided at the end of this article.

ADDRESS

Summitmas I, 16th & 17th Floors
Jl. Jend. Sudirman Kav. 61-62
Jakarta 12190

PHONE

+6221 5080 8300 | +6221 252 1272

FAX

+6221 252 2750/51

 makarim.com  Makarim & Taira S.

Risk Based Business Licensing: the New Approach by the Government of Indonesia to Attract More Investment

2020 has been a year to remember for any country, including Indonesia, with the COVID-19 pandemic causing an economic contraction for three consecutive quarters in almost every country. While the government of Indonesia can still maintain the stimulus needed for national economic recovery, the road to recovery could also use aid from foreign direct investments. In order to support and attract more foreign direct investments, the government finally issued Law Number 11 of 2020 on Job Creation, commonly referred to as the Omnibus Law, in November 2020 which amends numerous laws on different business sectors or industries and aims to facilitate the investment climate in Indonesia.

The Investment Law (Law Number 25 of 2007), and a number of its major implementing regulations, is one of many laws amended or impacted by the Omnibus Law. Following the enactment of the Omnibus Law, a number of implementing regulations have also been issued, such as Presidential Regulation No. 10 of 2021 on Investment Business Fields (commonly referred as the Positive List).

Business licensing, being one of the key elements of doing business in Indonesia and therefore part of the Omnibus Law framework, has also been updated. It is only a few years since the government of Indonesia introduced the Online Single Submission (OSS) system which essentially integrates all the business licensing procedures electronically under Government Regulation Number 24 of 2018 on the Integrated Electronic Business Licensing Services (“**GR 24/2018**”). The OSS system was introduced to simplify the licensing procedures for all businesses in Indonesia (both foreign and domestic investment) so that inter-ministerial

permits or licenses can be processed (or at least monitored) under a single framework, the OSS system.

As the new investment climate introduced by the Omnibus Law is intended to be more attractive and less restrictive in certain ways, the government also introduced a new approach to issuing business licenses under Government Regulation Number 5 of 2021 on the Implementation of Risk Based Business Licensing (“**GR 5/2021**”) aimed to simplify the licensing procedures for a number of business sectors and GR 5/2021 will replace the current GR 24/2018.

GR 5/2021 essentially changes the *ex-ante* licensing concept (to satisfy all the requirements in advance) to *ex-post* licensing (the requirements are verified afterwards), which will be very useful for types of business activities that are classified as low or medium risk (given that there are certain standards which have already been determined).

The central government undertakes the following procedure to decide on business licenses:

1. identifying the relevant business activity;
2. assessing the hazard level;
3. assessing the potential for the occurrence of any hazard;
4. determining the risk level and business scale rating; and
5. determining the type of business licensing.

GR 5/2021 covers licensing in the following sixteen business sectors:

1. marine & fisheries;
2. agriculture;
3. the environment & forestry;
4. energy & mineral resources;
5. nuclear energy;
6. industry;
7. trading;
8. public works and housing;
9. transport;
10. health, medicine and food;
11. education and culture;
12. tourism;
13. religion;
14. post, telecommunications, broadcasting, electronic systems and transactions;
15. defence & safety; and
16. employment.

The first stage of the Risk Based Licensing procedure is to obtain a Business Registration Number (*Nomor Induk Berusaha* – **NIB**) through the OSS system. In order to secure a NIB, business actors must provide the following required data: their business profile, capital structure, taxpayer identification number (*Nomor Pokok Wajib Pajak* - NPWP), the 5-digit business activity code according to the Indonesian Business Classification (*Klasifikasi Baku Lapangan Usaha Indonesia* - KBLI), and the proposed location of the business.

The information required is similar to that requested when applying for an NIB in the older system, except that now the OSS system will eventually be fully-integrated with the systems of other relevant ministries, such as the Ministry of Law and Human Rights, the Ministry of Finance, and the Ministry of Home Affairs, so that all the data will be verified by the relevant ministries online. The simplified procedure will likely be experienced for the proposed business location. GR 5/2021 no longer requires a “Location Permit”, but replaces it with the conformity of spatial utilization activities (*kesesuaian kegiatan pemanfaatan ruang*) which can be secured without having to file another application as the proposed business location will be verified and confirmed/rejected by the Ministry of Agrarian Affairs online by cross-checking the proposed business location against the relevant spatial plan (ie zoning).

In addition to its main function as the identity of the business, the NIB also serves as company's Import Identification Number (*Angka Pengenal Impor – API*), right of access to Customs and Duties, registration as a business actor for BPJS health and manpower (the Indonesian Social Security Program) and mandatory manpower reporting for the first period. For business activities classified as ‘low risk’, business actors will only need a NIB as the legal document for engaging in the business. For Micro & Small Businesses (*Usaha Mikro Kecil - UMK*), the NIB will also serve as an SNI (Indonesia National Standard) or a ‘halal’ product statement or both.

Low risk business activities must also comply with the work safety and health, community health, and environment standards, the checklist of which can be found in Attachment III to GR 5/2021 (sub-paragraph III.2.2.5).

Under GR 5/2021, medium risk businesses are further divided into two categories, medium – low risk and medium – high risk. To engage in ‘medium risk’ business activities, business actors will also have to fill out Standard Certificate (“**Certificate**”) in addition to an NIB. The Certificate is a form of statement of undertaking to meet the business activity business standards (under Attachment II to GR 5/2021). The Certificate will be issued by the OSS system after the applicant submits a self-assessment statement regarding meeting and complying with the business standards for the relevant business activities. The business standards must be complied with for as long as the business remains in operation and will be supervised by the government. Depending on the activity, business actors will also be required to complete the Environmental Management and Monitoring Efforts (UKL-UPL) or Statement of Undertaking Environment Management and Monitoring (SPPL) form.

For medium – low risk businesses, the NIB and Certificate will legalize the business for it to commence its business activities from the preparation and operation to the commercial stage. For medium – high risk businesses, the NIB and Certificate may only be used for the preparation stage. Either the central or regional government (according to its authority) will first verify compliance with the Certificate before the business can undertake its operational and commercial activities (although for certain business activities, the verification may be conducted in parallel with the operational stage).

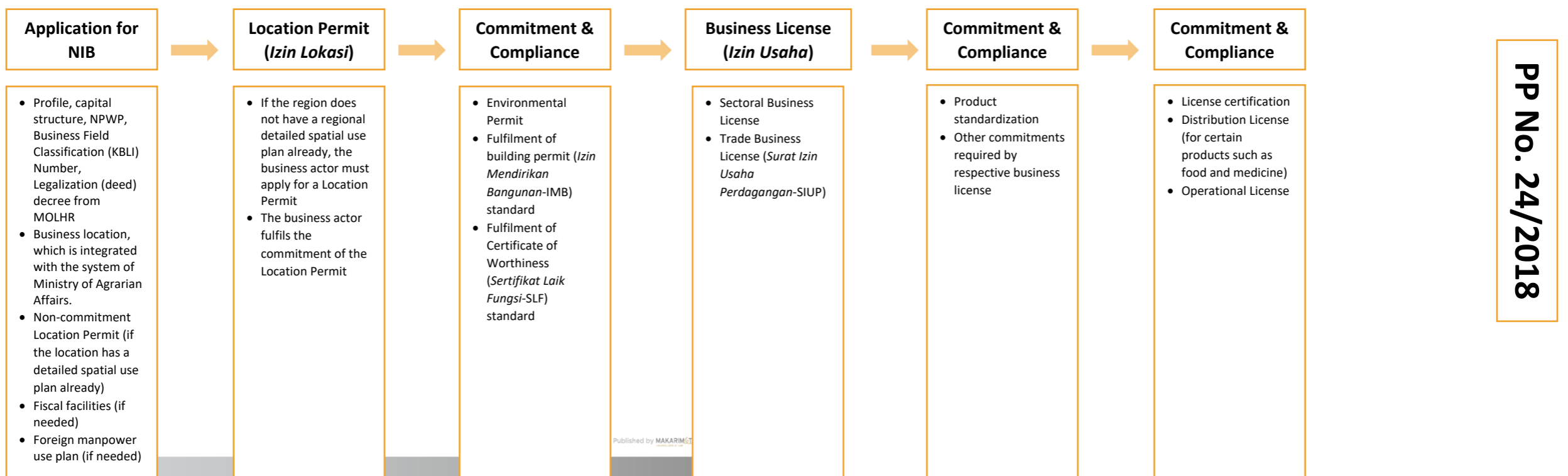
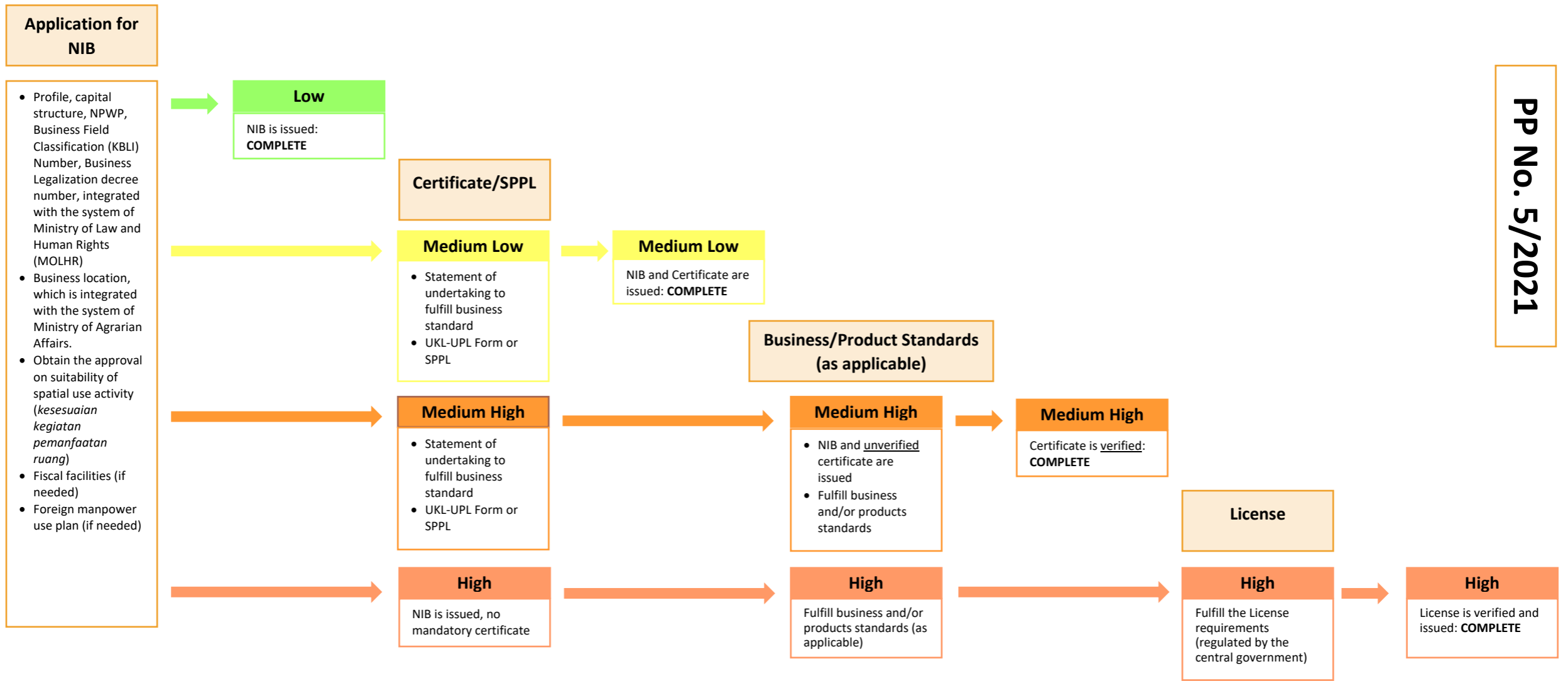
If a medium risk business is required to meet certain product standards, the business actor must submit a statement of compliance with the relevant product standards through the OSS system which will be verified by the relevant ministry or institution according to their respective authorities.

The last category, ‘high risk’ businesses will require a NIB and a License (*Izin*). The License will be issued after the applicant’s satisfaction of all the requirements for the relevant business activities (which may also include an Environmental Impact Analysis – AMDAL) has been verified and therefore, may commence its operational and commercial activities. They can use their NIB during the preparation stage. However, for some activities, a Certificate and/or product standard statement may also be required, and the government will verify its compliance. For certain business activities (ie those located in an industrial estate, a special economic zone, free trade zone port, or listed in a national strategic project), the issuance of the license required may be expedited for a company to commence its preparation and operational activities.

The activities included in the preparation, operational and commercial stages under GR 5/2021 are shown in the following table:

Preparation Stage	Operational & Commercial Stages
<ul style="list-style-type: none"> • land acquisition • building construction* • the procurement of tools or facilities • the recruitment of manpower • complying with the business standards • (pre-) feasibility study • financing operations during the construction phase <p>*May only commence after the Environmental license has been issued, for high-risk business activities for which an environmental impact analysis is required.</p>	<ul style="list-style-type: none"> • the production/provision of goods/services • logistics and the distribution of goods/services • the marketing of goods/services • other operational and commercial stage activities

The new procedures above are intended to simplify the old procedures under Government Regulation No. 24 of 2018 on Integrated Electronic Business Licensing (“GR 24/2018”), and benefits low and medium-risk businesses. The following is a general comparison of the two sets of procedures:



GR 5/2021 does not apply to businesses which licenses have been approved and in effect prior to the effective date of GR 5/2021 (unless more favourable to the relevant business actors). For those whose licenses is not yet effective as of the effective date of GR 5/2021, the licensing process will follow the requirements under GR 5/2021.

Also, the businesses which obtained Access Right prior to the effective date of GR 5/2021 will have to update its data for Access Right with the OSS System.

The implementing regulations of GR 5/2021 will be issued within 2 months as of the issuance date (ie by 2 April 2021) and the implementation of Risk Based Business Licensing through the OSS System will be in effect in 4 months as of the issuance date (ie by 2 June 2021). By then, it is also stated that GR 5/2021 will revoke Government Regulation Number 24 of 2018 on the Electronic Integrated Business Licensing Services.

It will be interesting to learn further how the implementing regulations will synergize with GR 5/2021 and how the national licensing system can be fully integrated online down to the regional level. Noting the previous practice, there could be a public social awareness program to be held by the government in order to provide explanation and details of the new licensing approach.

MAKARIM&TAIRA S.
COUNSELLORS AT LAW

MORE INFORMATION



Novena C. Manullang

Associate

novena.manullang@makarim.com



Reagan Roy Teguh

Senior Associate

reagan.teguh@makarim.com



Rahayu Ningsih Hoed

Partner

rahayu.hoed@makarim.com