

LEGAL ASPECTS OF BUILDING CONSTRUCTION APPROVAL WITHIN THE SCOPE OF LICENSING

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Abstract

The aim of this writing is to find out how the application of legal sanctions against perpetrators of *obstruction of justice* in law enforcement is linked to the Criminal Code and what are the obstacles to law enforcement against criminal acts of *obstruction of justice* in the legal system in Indonesia. This research is normative legal research. Therefore, the research method includes research specifications, namely analytical descriptive, normative juridical approach methods, through the library research stage, namely researching and reviewing secondary data obtained through library study data collection techniques, which are then analyzed juridically - qualitatively. This research produces conclusions regarding the legal aspects in implementing building business permits referring to Government Regulation Number 36 of 2005 concerning the implementation of Law Number 28 of 2002 concerning Buildings and the benefits of building approval, namely, from the regional government side it can regulate permits and as sources of income for each region. With a request for a permit, the government's income will automatically increase because for each permit issued, The applicant must pay the levy or tax first. The more income in the field of levies, the ultimate goal is to finance the development of the local area and from the community side, there is legal certainty and legal protection that regulates it and makes it easier to get facilities. If the building being built already has a permit, it will be easier to get facilities.

1) INTRODUCTION

Law has a very important role and function in Indonesia. The role of law, especially in dealing with changes in society, needs to be studied in order to encourage social change for the better. The influence of this legal role can be direct and indirect. Law has an indirect influence in encouraging social change. On the other hand, the law forms or changes basic institutions or important social institutions, then there is a direct influence, which is often referred to as law as a tool for changing behavior in society.¹

The government, in making a business license, of course pays attention to several things, namely the suitability of data, the truth of identity, and other things that are deemed appropriate based on laws and regulations regarding space management. Licensing also functions as something that controls certain activities. The issuance of a permit will of

course also contain certain terms and conditions that are adjusted to the conditions at that time. Then the resulting output is the harmony of activities whose implementation can be accounted for.

Licensing is also a form of legal certainty because the benchmark form of licensing that is used and considered is the statutory regulations and provisions in force at that time. Apart from that, if unexpected things happen, several efforts, one of which is legal protection, can be immediately initiated by the relevant parties and a solution can be immediately found. Then licensing balance is also one of the government's efforts to realize community welfare by providing significant protection from the facilities provided by the government.

Based on Article 33 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, it is explained that the laws that apply to the earth, air and space constitute a customary law as a whole does not conflict with national interests or interests country. If we look further, this is where the true meaning of legal certainty is, apart from being useful for protecting users who will apply for permits so that some of the facilities that will be used can be recognized as legitimate, it can also provide benefits, especially for countries which also have a lot of land that can be used as long as it is not observed. With existing regulations.

Fulfillment of building permit requirements as a business implementation permit is also an issue formal requirements that have a direct impact on the implementation of legal certainty in spatial planning in Indonesia.³ Thus, several terms and conditions covering Building Approval (PBG) must be carefully considered and their implementation must be carried out optimally. The instrument of legal certainty in this case reflects directly on the use of building approval (PBG) as a form of licensing.

The form of feasibility, both administrative and technical, is also one of the objectives of legal certainty in licensing. These administrative and technical equipment are also considered to be the completeness of the substance of business licensing that revolves around welfare responsibility for business licensing. Apart from that, if a business permit can be said to be maximal, then the related parties can also receive a good impact and by using business permits, both the government and the community who are processing or directly involved in the scope of business licensing, especially building permits, can obtain benefits in the form of assistance. Obtaining permits to guarantee the legality of the building.

Based on the explanation above, it is identified as follows: What are the legal aspects in implementing building business permits and what are the benefits of building approval?

2) RESEARCH METHODS

The research method used in this research article uses a normative juridical approach, namely a method in normative legal research using primary sources of secondary data or library materials. ⁴Secondary data in legal research is data obtained from the results of a literature review or review of various literature or library materials related to frequently used problems or research materials. Called legal materials. ⁵Legal materials consist of:⁶

1. Primary legal materials, namely binding legal materials, ⁷which consists of statutory regulations;⁸
2. Secondary legal materials, namely legal materials that provide explanations of primary legal materials, such as research results, books written by experts, scientific articles, journals and so on ;⁹
3. Tertiary legal materials, namely legal materials that provide instructions or explanations for primary and secondary legal materials such as dictionaries, encyclopedias, which in this research were processed selectively. ¹⁰
4. Secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials is processed systematically and does not use statistics.

3) DISCUSSION

A. Legal Aspects in Implementing Building Business Licensing

Since February 2 2021, the government has declared a change in permits for building construction, previously known as Building Construction Permits (IMB) to Building Building Approvals (PBG). Then discuss *the legal ratio*, *the legal ratio* means a legal thought whose truth can be proven and aims to produce a legal regulation. The government changing the provisions for Building Construction Permits (IMB) to Building Construction Approval (PBG) is not without reason, certain reasons such as the dissolution of licensing implementation are also taken into consideration in this case. Some of the descriptions in question include the following things, namely permits to carry out new construction, change the building, carrying out expansion and reduction of buildings, as well as maintaining a building.

Thus, the aim of the law within the scope of this licensing is to provide maximum contribution in terms of spatial planning and licensing, especially for law enforcement and legal protection sector.

In practice, Building Approval (PBG) will go through several processes, namely the planning process and also the permit issuance process itself. It is hoped that in this case the application of permits can be carried out optimally so that permit users can feel that their position and implementation within the scope of licensing is protected by law based on applicable regulations. Just like the previous concept of implementing a Building Construction Permit (IMB), the permit is formed with the aim that in the future when

carrying out an activity in the building there will be no problems that result in obstacles in a particular activity. ¹¹By having official permits, users are entitled to legal protection.

The development of information technology in Indonesia today plays an important role in various aspects of the activities of the Indonesian people. Utilizing developments in information technology with the use of internet networks in the implementation of government is known as *electronic government*. *Electronics government* or *e-government* is the mission of *good governance* or good government administration which aims to create fast, effective and efficient government in accordance with the needs of society. The demands of society along with the development of information technology are increasingly high. So that public services are currently being transformed into electronic services (*E-Service*) in order to achieve improved quality of excellent public services in facing the era of technological development, global competition and the demands of the business world.

Based on Law Number 25 of 2009 concerning Public Services Article 5 which states that one form of administrative public service is business licensing services. The public complains that the licensing services provided by government officials to the public tend to be unsatisfactory. Business licensing services are complicated, slow, repetitive, scattered, convoluted, there are no licensing standards, no supervision and they are not yet electronically integrated.

Considering that business licensing is a community need, especially in the aspect of providing guarantees of legal certainty or legality of ownership, rights and business existence. The central government created an electronic-based business service system to address the problem of slow licensing services in various regions in Indonesia and improve public services in managing business permits. The business licensing system uses an electronic system called *Online Single Submission* (OSS) which is based on the Electronically Integrated Business Licensing Service. The presence of OSS functions to simplify the management of business permits and prerequisites to conduct business, business permits, or business operational permits both in regional or central level, making it easier to obtain permits safely and quickly and *real time* so that it can increase investment and business especially in One Stop Integrated Services (PTSP).

Republic of Indonesia Government Regulation Number 24 of 2018 concerning

Law enforcement in Indonesia has the aim of helping regulate people in social life. For example, law enforcement can get someone out of a difficult situation that binds them with legal certainty that guarantees legal enforcement and protection. The public or even related users will feel helped by the implementation of this law enforcement. Apart from that, as a country of law, of course Indonesia does not want to miss something that has the potential to maintain the condition of its people. By establishing structured laws and provisions, society can reap the benefits in the form of enforcement and protection of the law in question.

Then regarding the scope of licensing in a building is also considered to be an important substance in an aspect of the suitability of the building in question. By holding and implementing permits, several things, one of which is the feasibility aspect, can be guaranteed to be correct. The formation of permits is not only reflected in reporting, but also in several things that can be used as benchmarks for the implementation of these activities as well as law enforcement and legal protection. Some of the feasibility concepts in question include several aspects such as administration and technical aspects of several things related to the establishment of a permit that will be implemented. By providing administrative and technical administration, it is hoped that a structured form of licensing can be helped and carried out as it should. Apart from that, licensing is also related to validity or proof of authenticity that can be accounted for at a later date.

Legitimacy is usually synonymous with certain data that can be accounted for and is useful as proof of ownership or even a guarantee when facing certain matters. By utilizing optimal spatial planning in terms of building construction, obtaining permits can also be a requirement for proof that the building is officially being used properly and in accordance with procedures and even in accordance with the laws and regulations in force in Indonesia.

A permit related to a building is directly related to the scope of spatial planning, especially in terms of the use of the building and the type of permit held.

In this case, the regional government which has permission to issue approvals regarding the building in question must also pay attention to several principles of feasibility and excellent service in processing permits and implementing good governance measures. As one of the outputs of licensing, documents are also a form of legal certainty whose validity can be guaranteed and usually serve as proof of validity in the future. With the issuance of this permit, it is hoped that the user who permits the permit can use the building to become a building that can function properly, as the concept of a permit to build a building is to guarantee legal certainty within the scope of building construction or several similar things that are considered related and appropriate to its implementation.

In its implementation, of course, in building construction there are conditions in accordance with those imposed in Law Number 28 of 2002, all building operators, both in construction and utilization, which are carried out within the territory of the Republic of Indonesia are carried out by the government, private sector, community, as well as by foreign parties, are obliged to comply with all provisions contained in this Law.

The implementation or implementation of policies is an inseparable part of the organizational process of public organizations which never stops socially. Its existence is greatly influenced by conditions in its social environment, therefore the internal and external aspects of the organization greatly determine the process of implementing the Building Approval (PBG) policy. Apart from that, it must also meet the standards and requirements set by the competent authorities, such as documents and all necessary equipment. As in construction of houses, offices, schools, and so on. Development

activities cannot just be started even though we already have a foundation on which development activities will be carried out.¹²

B. Benefits of Building Approval Objectives

Building Approval (PBG) is a form of licensing innovation carried out by the Indonesian Government in terms of building permits. The regulations governing Building Approval (PBG) itself are Government Regulation Number 16

The year 2021 is also the impact of Law Number 11 of 2020 concerning Job Creation, especially in article 24 and article 185. This form of innovation can be said to be a legal event that follows the times, then the same form of licensing is added first, namely the Establishment Permit Buildings (IMB) that still need to be optimized again.

Law Number 11 of 2020 concerning Job Creation is currently being revised based on orders from the Constitutional Court after being submitted for a judicial review by a number of groups.

Even though on the specified date the permit must begin using the Building Construction Permit (PBG), the use of the Building Construction Permit (IMB) is still declared valid until the validity period expires. This is also a release from the government to make things easier for the community and so as not to cause harm to the community behind this change of decision.

The form of *legal ratio* which is stated to be supportive is if previously, when licensing, the Building Construction Permit (IMB) was only sufficient to fulfill the technical requirements and administrative requirements, whereas currently the Building Approval (PBG) must also pay attention to the technical standards of the building. . Efforts to harmonize building technical standards are a form of guaranteeing certainty that buildings that have a Building Permit (PBG) not only have validity in the form of certain documents but also the suitability of the building and its suitability for the function being implemented.

The building technical standards applied will be determined based on the central government and the relevant regional government, this is because each region and the functional form of buildings in a region also tend to be different. The following is a standardization that is used as building requirements, namely planning and designing the building, implementation and supervision of construction related to the building, utilization of the building, and supporting documents for the building. Apart from that, there are also several things that also become technical standardization, namely certain organizing provisions such as for cultural heritage purposes, special functions, green buildings, and even state buildings. Then don't miss standardization and also apply the provisions of the organizers related to the building.

Change in nomenclature from Building Construction Permit (IMB) to Building Approval the building (PBG) is considered to be one of the most complex aspects of licensing in Indonesia. This means that although Building Approval (PBG) is one of the latest innovations in Building Construction Permits (IMB), the administrative and technical aspects that are often applied in Building Construction Permits (IMB) are also taken into

consideration in Building Construction Approvals (PBG). After these things are declared optimal, they will provide several new breakthroughs related to building permits.

Submission of permits, which is now virtual based and can be accessed from anywhere and at any time, is also one of the optimizations implemented from the change from Building Construction Permit (IMB) to Building Building Approval (PBG). Based on information reported from the Building Management Information System website, which is also an example of a website that provides information regarding Building Approvals (PBG), it is stated that registration can be done directly by simply clicking on the link provided. Apart from that, the website also provides information in the form of converting Building Construction Permits (IMB) to Building Construction Approvals (PBG) as of 2 August to 21 October 2021. With this kind of abundant and easy information, it is hoped that the public will feel helped by the programs this has been launched by the government, and vice versa, the abundance and ease of providing access to such information will make it easier for the government to provide the best service to the public.

Until the specified date, ownership of a Building Construction Permit (PBG) as a form of building permit replaces the role of a Building Construction Permit (IMB) which previously became mandatory and automatically invalidates previous regulations. It is hoped that this latest innovation can facilitate community activities in carrying out building construction, especially in the licensing sector. And the most important thing is the form of legal certainty that can be guaranteed in the context of law enforcement in the scope of permits for buildings that are currently in existence

Building Approval (PBG). Because it has been declared legal and mandatory as a building permit condition, users who want to build a building and do not have a permit in the form of a Building Construction Approval (PBG) can be subject to administrative sanctions up to criminal sanctions and also fines as regulated in the provisions of the Building Law jo . Job Creation Law.

A building that functions as a place of business certainly requires a document that guarantees that the building is legal or suitable for use. Having a Business PBG or Business Building Approval can be a good process.

As is known, Business PBG or Business Building Approval is a document or permit that every business actor or company must have. Apart from helping to provide guarantees to building owners regarding the security of a building, here are several other advantages and benefits if a business, company or business actor whose activities require a building, has a Business PBG.

The benefit or advantage of PBG Business is that it protects the building owner so that the building being built does not have a negative impact on the owner, the community and the surrounding environment, so the building must meet all technical standards for construction implementation.

PBG business itself has advantages and disadvantages.

The advantages of PBG are as follows:

1. Provides protection. Business buildings are guaranteed legal legal protection, so they will be safe if they encounter interference from various parties.
2. PBG guaranteed building standardization is not immediately given, there are several stages of checking carried out to ensure that the building being built or standing meets the specified building standards.
3. Can be used as collateral. Buildings that have PBG can be used as collateral for applications to banks.
4. Selling prices increase. As a guarantee of legal protection, it is certain that PBG can increase the selling price of a building.

PBG can be issued if the technical plan meets technical standards in accordance with statutory regulations. To find out whether the technical plan meets technical standards or not, a consultation process is needed involving experts who have the ability and expertise related to building construction. The experts in question can come from the professions or from universities. To find out who can check the technical plan, PBG has the following functions:

1. Improving the construction of buildings with legal status.
2. Showing that the building management meets standards that guarantee safety, comfort, health and convenience for its users.
3. Record the existence of building plans.

PBG is issued by the government according to its authority and is issued no later than 28 working days, depending on the function and classification of the building. The process carried out within 28 days includes:

1. Submission;
2. Technical Plan Inspection;
3. Retribution Calculation;
4. PBG Publishing.

Based on Law Number 23 of 2014 concerning Regional Government, the maintenance of buildings in regency/city areas is part of government affairs in the field of public works and spatial planning which is the authority of the regency/city government. In line with previous building licensing services in the form of Building Construction Permits (IMB) provided by regional governments (Pemda), district/city regional governments are also obliged to provide PBG services. Guidelines for Implementing PBG through SIMBG Government Regulation Number 16 of 2021, changes to provisions regarding IMB to PBG must be followed up by district/city regional governments through the provision of PBG services no later than 6 months from PP No. 16 of 2021 is stipulated. Therefore, local

governments must provide PBG services no later than August 2 2021. PBG publication services are carried out through the Building Management Information System (SIMBG). Because this system is something new for the technical team of the Bekasi City Spatial Planning Service, an implementation guide is needed to operate the Building Management System (SIMBG) so that the process of issuing Building Approvals (PBG) can run well and not hamper the rate of investment in Indonesia.

In general, the purpose and function of licensing is to control government activities in certain matters, the provisions of which contain guidelines that must be implemented by interested parties and authorized officials. Apart from that, the purpose of licensing can be seen from two sides, namely:¹³

1. From the Government's Side

From the government's point of view, the purpose of granting permits is as an implementer of the regulations. Whether the provisions contained in the regulations are in accordance with the reality in practice or not and also regulates the Regulator and as a source of income for each region. With a request for a permit, then Government income will automatically increase because for every permit issued, the applicant must pay a levy or tax first. There is also increasing income from levies whose ultimate goal is to finance local development.

2. From the Community Side

From the community's perspective, the purpose of granting the permit is as follows:

- a. For legal certainty and legal protection that regulates;
- b. To ensure certainty of rights that can be obtained.
- c. To make it easier to get facilities. If a building is erected;
- d. If you already have a permit, it will be easier to get facilities.

4) CONCLUSION

Based on the results of the research and discussion, it can be concluded as follows: legal aspects in implementing building business permits. Referring to Government Regulation Number 36 of 2005 concerning the implementation of Law Number 28 of 2002 concerning Buildings and the benefits of building permits, namely, from the Regional Government side can organize conversations and serve as a source of income for their respective regions. With a request for a permit, the government's income will automatically increase because for each permit issued, the applicant must pay the levy or tax first. The more income in the field of levies, the ultimate goal is to finance the development of the local area and from the community side, there is legal certainty and legal protection that regulates it and makes it easier to get facilities. If the building being built already has a permit, it will be easier to get facilities.

Foot Notes:

- 1) Satjipto Raharjo. *Legal Science*. Bandung Citra Adtya Bakti. 2015. pg 45.
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- 4) Mukti Fajar ND. And Yulianto Achmad, *Dualism of Normative & Empirical Legal Research*, Yogyakarta: Student Library, 2010, p. 156.
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- 10) *Ibid*, p. 33.
- 11) Yuni Dwi, *Practical Guide to Managing Residential Building Permits* (Yogyakarta: Pustaka Grahatama, 2008), p. 13
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- 13) ULIL ALBAB, *Legal Certainty for Issuing Building Approvals (PBG) In Issuing Business Licenses in the City of Surabaya*: Multidisciplinary Scientific Journal Vol.1, No.7, June 2022, accessed 29 August 2023, at 20:15 WIB.

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B. Legislation

- 1) The 1945 Constitution of the Republic of Indonesia.
- 2) Law Number 23 of 2014 concerning Regional Government.
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C. Other Resources

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