

Legal Certainty for Integrated Health Services as a Form of Accelerating Health Development in Indonesia

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Abstract

This article aims to review the ease of business licensing policy through the online system in health sector as a follow-up to the Online Single Submission (OSS) service policy intended to facilitate entrepreneurs' legality. Licensing in the health sector is designed to protect for the public in obtaining safe, high quality, and affordable health services. Therefore, its existence is an instrument to achieve health development and the third goal of the Sustainable Development Goals, namely health and well-being and the prevention of health services that could harm the community. Based on a literature review, licensing services through the OSS application is a policy that accelerates licensing services, which have been considered long and expensive. Yet, the implementation of online licensing services still raises legal issues, including not meeting the legal certainty, accuracy, and openness principles. Therefore, the potential of having permission for health services does not guarantee the availability of safe, high quality, and affordable health services. This article's discussion was written through a conceptual analysis of licensing and health services that analyze the laws and regulations in the field of health services licensing.

Keywords: *health services; licensing legal certainty; Online Single Submission; legitimate expectation; state administrative decisions*

Introduction

Health service is a human right expressly stated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Charter of Fundamental Right of the European Union. Therefore, based on Article 28 paragraph (4) of

the 1945 Constitution of the Republic of Indonesia, the government is responsible for fulfilling the right to health services.

In achieving the health of all people globally, the Primary Health Care (PHC) needs to be agreed upon in the Alma-Ata Declaration of 1978. The Alma-Ata Declaration, furthermore, contains five basic concepts for achieving people's health. The concepts are the equal distribution of health services; the effective, efficient, and affordable health services; the preventive, promotive, curative, and rehabilitative health services; society participation; and the services that must pay attention to social, economic, and environmental factors[1].

One of the efforts to achieve the health of all the people in the world, thus, is by providing health service facilities and health workers. Moreover, a health service facility is a tool and place used to carry out the promotive, preventive, curative, and rehabilitative health care efforts. This facility is provided by the central or regional governments or the community.

Under Article 17 paragraph (1) and Article 21 paragraph (1) of the Law of the Republic of Indonesia No. 36 of 2009 on Health, the government is responsible for: "The availability of access to health information, education, and service facility to increase and maintain the highest standard; Planning, provision, utilization, development and quality control of health workers to implement health services."

The government's actions to fulfill responsibilities in the field of health services are carried out in concrete efforts to provide health care facilities, such as hospitals, community health centers, and health workers, as well as legal actions, such as regulations, licensing decisions, and law enforcement, to ensure the availability of quality health facilities and health workers to spread evenly and affordably. These efforts follow the health development policy in East Java by encouraging the realization of community independence in healthy living, and realizing, maintaining, and improving quality, equitable, and affordable health services[2].

The establishment of health care facilities and health services by health workers requires a license as an instrument that serves to provide legal certainty and to guarantee legal protection to the public, health workers, and health service providers. Moreover, the establishment of health care facilities experiences difficulties acquiring permits for some reasons, for instance, differences in license ownership obligations between health service facilities organized by the government, regional governments, and those run by the public or private sectors. There are also difficulties in fulfilling the requirements of environmental documents, which lead to challenges in getting the Health Facility Licensing and Certification

(HFLC). Some non-legal factors, additionally, further influence the supervision and law enforcement of licensing service facilities. One example is the public's complaints in expanding participation to improve the quality of non-optimal health service facilities and the unevenly distributed health workers with certain specialties.

In general, licensing is an example of government control through administrative regulations, contrary to the regulations of the judicial, legislative, or executive branches of government [3]. In licensing services, licensing officials require a long time. In the process of realizing the principle of accuracy, the licensor must obtain the recommendations from other agencies or ask for approval from the surrounding community. As a result, the licensing process takes a long time and needs quite a lot of cost. The existence of permits, generally, affects society and can be categorized into two, namely the price effect and the quality effect [4]. Under these conditions, the applicant frequently performs various actions to accelerate or pass the required permit. The applicants' different efforts to expedite the license can habitually lead to violations, including the abuse of authority or offenses committed by the permit issuer, such as gratuities, bribes, or corruption in the permit issuance process.

Theoretically and normatively speaking, the regulation and the issuance of permits aim to prevent problems that will possibly arise. Thus, licenses as instruments for creating a balance of rights between communities, such as a Medical Practice License or other health workers who aim to select people who will open the practice health services, are for the people who have the ability based on the Registration Certificate or diploma. This kind of permit aims to protect the public from the practice of health services carried out by people who do not have competence.

Various ways or actions that encourage the issuance of permits without conforming to the requirements and procedures will result in the unachieved license, which will cause a problem in the community and can reduce the public's trust in government institutions. Under the facts, licensing is considered easy money for corruption or illegal levies in the area that renders many regional heads to get arrested by the Corruption Eradication Commission (henceforth, KPK). The following is the corruption data sorted by type of the case.

According to the corruption data from the KPK, corruption cases are mostly done through the procurement of goods/services. Still, undoubtedly, licensing issues are the second highest type of situation in corruption cases in Indonesia. Consequently, the problem has led to the diminished public trust in the government and regional government, and the importance of

permits as an effort to balance the people's rights and the preventive protection instruments. Moreover, from the community and employers' perspectives, permits are instruments to make money for officials and government.

Under these conditions, the government and regional governments, hence, made improvements in licensing services. Some policies to change licensing services include the One-Stop Integrated Service (PTSP) in licensing services and the revocation of several local regulations that are considered to hinder investment. For instance, the Ministry of Home Affairs has canceled 3,143 regulations which are considered to inhibit regional economic growth and extend the bureaucratic pathway, which has an impact on impeding investment and ease of doing business in the region. The effect of several licensing service policies and the revocation of several local regulations has changed Indonesia's ranking in the World Bank Report on Ease of Doing Business (EODB) in Indonesia. From 190 countries surveyed, Indonesia ranked 91 in 2017 and 72 in 2018.

Licensing policy in 2018, coupled with the existence of electronically permitted licensing services, was with the stipulation of Government Regulation Number 24 of 2018 concerning the Electronically Integrated Business Licensing Services or Online Single Submission (henceforth, OSS). Besides, licensing in the health sector is regulated in Ministry of Health Regulation Number 26 of 2018 concerning the Electronically Integrated Business Licensing Services in the Health Sector, which is expected to help health service providers obtain the required licensing, reduce the availability of direct services, and avoid any levies. The implementation of the licensing service system using OSS has not been going well since there is a change in authority and mechanism for obtaining permits. OSS regulations state that OSS institutions are authorized to issue licenses on behalf of ministries, institutions, governors, and regents or mayors.

Business licenses issued through the online system make local governments feel ignored because the licenses are granted without their knowledge and interference. Therefore, if the local governments conduct supervision and law enforcement because it is not following the designation or no environmental documents, the health facility providers can show their business permits, although the permission has not established yet.

Based on the background description, the legal issues that can be drawn are the validity of permits issued through OSS and the government's responsibility for licenses issued through OSS. This paper intends to investigate the legality and legal consequences of licenses in the health sector issued through OSS and to discover the solutions to licensing problems

through the OSS system as a preventive instrument in controlling health service activities and balancing community rights.

Method

This paper employed legal research methods and was supported by other studies. Legal research can be done through normative and empirical juridical methods. The normative juridical method is conducted through a literature study that examines the legal material in the form of laws, regulations, and regional legal products in the field of licensing, which are also completed by interviews and discussions. Meanwhile, the empirical juridical method is a study that begins with a review of laws, regulations, and local legal products, followed by in-depth field research by studying licensing issues.

Results and Discussion

The Legality of Licensing Through OSS

Based on the scope of health services, including the public health efforts aimed at maintaining and improving health and preventing illness and the individual health efforts aimed at healing illnesses and restoring individual and family health [5], licensing in health services functioned to control health service activities to maintain and improve public health as well as to be able to heal and restore individual health.

Licensing of health services based on the classification of decisions made by Rene Serden could be divided into decision in personam (personal decision) and in rem (material decision) [6]. Following this distinction, an individual or personal license was a permit for a health worker since it was issued based on a person's qualifications or abilities. In contrast, a material permit was a license granted based on health service activities or facility permits, for example, a hospital operating permit, a pharmacy permit, a pharmaceutical industry business permit, and so on.

In obtaining licenses for health service facilities, they faced several obstacles in the practice, such as time-consuming process, expensive charge, or onerous requirements. These reasons resulted in health facilities that did not have any license or even owned invalid permits. In response to this problem, the government adopted a policy to implement business licensing services that were electronically integrated or known as online licensing.

Based on Government Regulation Number 24 of 2018 concerning the Electronically Integrated Business Licensing Services (henceforth, PP OSS), PP OSS formation became an

effort to simplify and accelerate the business licenses acquisition in the context of stimulating and increasing investment and business in Indonesia.

Online Single Submission (OSS) was a business license issued by the OSS institution for and on behalf of ministers, institutional leaders, governors, and regents or mayors to businesses through an integrated electronic system. Under the legitimacy of government actions in issuing permits, three parameters must be met: authority, procedure, and substance [7].

Based on Article 12 and the attachment to Law Number 23 of 2014 concerning Regional Government, the authority to grant health licensing was entitled to the agencies, provincial, and municipal governments. Besides, with the provisions in Government Regulation Number 24 of 2018 and Minister of Health Regulation Number 26 of 2018 concerning the Electronically Integrated Business Licensing Services in the Health Sector, permits were issued by OSS institutions for and on behalf of ministers, agency leaders, governors, and regents or mayors. Thus, PP OSS and OSS in the health sector of Minister of Health Regulations delegated the authority of ministers, institutional leaders, governors, and regents or mayors in issuing licenses to OSS institutions.

The authority delegation in licensing services in the construction of the law was not following the *contrarius actus* principle. The licensing authority should be delegated according to the Regional Government Law, which resulted in authority norm conflicts. In Article 2 of Minister of Health Regulation No. 26 of 2018, the electronically integrated business licensing services in the health sector were only material business licenses rather than individual licenses, namely health personnel licensing. That was why the individual health licenses remained issued by the Minister, provincial, and municipal governments in accordance under their authorities.

The policy to simplify the business permit acquisition procedure in the health sector was following Minister of Health Regulations Number 26 of 2018, stating that the procedure for granting permits was done online via the *oss.go.id* website, in which individual businesses or business entities through the OSS institution could obtain a business registration number (NIB) online by following the stages.

NIB was a business identity and utilized by business actors to acquire and meet the requirement for business, commercial, and operational permits. After having NIB, the business actor had to commit to the agreement which stated that the business actor must meet the requirements of the business, commercial, and operational permits. Based on Article 50

paragraph (1), the business actors who already had NIB could have their business licenses issued by the OSS institution. Yet, according to Article 53, a business, commercial, or operational license was effective after the commitments and payments were completed. Therefore, based on Article 54, the OSS institution might revoke the business, commercial, or operational license that had been issued if the actor did not commit to the license. This contradicted the previous system, in which requirements must be fulfilled before a business license was issued.

Under these provisions, the business or commercial license was a state administration decree and the final element could not be completed since there were still requirements of fulfilling commitments. The procedure for receiving permits through the OSS system still gave government agencies, as well as provincial and municipal governments the authority to issue the commitments. Therefore, some obstacles occurred in the reform of licensing procedures:

Business, commercial, and operational licenses could not be effective if they did not meet the commitments, so they could not be called legitimate expectations.

Procedures for obtaining permission still required a long groove because there were laws that had not been harmonized and synchronous.

The changes in procedure impacted the community, in which the permit holders tried to operate before fulfilling the commitment and resulted in many complaints from the society. For these conditions, the local governments issuing the commitments, for example, building and environmental permit, had to conduct more intense supervision on entrepreneurs, however there were constraints on human resources and financial issues.

The substance reform policy was executed through business licensing reform as stipulated in Government Regulation Number 24 of 2018 concerning the Electronically Integrated Business Licensing Services in the Health Sector. This reform aimed to reduce the abundant types and numbers of licenses. Thus, it was necessary to simplify licensing, both in the procedure and substance, and some reforms in several leading sectors. It could be explained that with the licensing policy through OSS, there was the elimination and integration of several licenses, so the number of permits and non-licenses in various sectors could be reduced. One example was the policy on eliminating grants in the health sector, in which 31 permits were reformed to only fifteen.

Table 1. Some Reforms in Several Leading Sectors.

No.	Sector	Current Number of Permits	Current Number of Reforms	Information
1.	Transportation	Permits 68 Non-Permit 129	Permits 46 Non- Permits 73	Permission integration and permit deletion 29 combined
2.	Agriculture	Permits 26 Non- Permits 35	Permits 12 Non- Permits 18	
3.	Maritime Affairs and Fisheries	Permits 32 Non- Permits 47	Permits 11 Non- Permits 33	Permission integration and permit deletion 5 combined, 2 integrated process 20 combined
4.	Public Works and Public Housing	Permits 15 Non- Permits 8	Permits 5 Non- Permits 3	
5.	Environmental and forestry	Permits 39 Non- Permits 5	Permits 16 Non- Permits 7	
6.	Trading	Permits 86 Non- Permits 55	Permits 41 Non- Permits 4	68 combined, 14 removed
7.	Industry	Permits 6 Non- Permits 44	Permits 5 Non- Permits 15	Some permits are combined, 3 removed
8.	Communication and Information	Permits 36 Non- Permits 1	Permits 10 Non- Permits 8	32 combined, 1 changed to standard
9.	Health	Permits 31 Non-Permits 2	Permits 15 Non- Permits 10	22 combined, 3 changed to standard, 6 added standards
10.	Tourism	Permits 1 Non- Permits 2	Permits 1 Non- Permits 2	The sector has confirmed it

The Government Responsibility in the Issuance of Business Licensing on the Health Sector through OSS

Online-based licensing systems or OSS had a good purpose in facilitating the permit granting process. However, with the ease of issuing licenses, it could disrupt the environment or harm others. For losses suffered, a person could submit the legal protection efforts to hold the licensor responsible.

Based on Government Regulation Number 24 of 2018 Article 19 paragraph (2) and Minister of Health Regulations Number 26 of 2018, the authority to issue licenses to OSS institutions was delegated by mandate, in which the OSS institution issued business licenses for and on behalf of ministers, institutional leaders, governors, and regents or mayors to the OSS institution. It indicated that each licensing agency still had authority, but the license issuance was delegated to the OSS institution. Meanwhile, the power to supervise and apply sanctions was still in these agencies, except for the license revocation that had to be executed by the OSS institution following the *contrarius actus* principle.

Table 2. Health Licensing Services in Surabaya.

No.	Types of Health Licensing	Total
1.	Permission to Establish a General Hospital	59
2.	General Hospital Operating Permit	38
3.	Permission to Establish a Primary Clinic	105
4.	Permission to Establish a Main Clinic	54
5.	Pharmacy License	737
6.	Medical Device Store License	7

In the study of administrative law, it was stated that each authority has responsibilities. It referred to the principle of “*geen bevoegdheid zonder verantwoordelijkheid*” [8]. By referring to this principle, the government officials could be held accountable for taking actions based on their authority. This was the realization of legal protection to the community for government actions.

The government responsibility in granting permits could be done in a criminal, civil, or administrative manner. As in the Civil Code of Russian Federation, there is a separate chapter 30 dedicated to crimes against the government authorities, the public service interests, and services in the local government bodies. These are the rules that specifically provide criminal liability against officials [9].

The government action in performing public services at the request of the community in obtaining permits was legal. If the OSS institution harmed the community in terms of granting permission, the community could submit legal protection in the form of objections, appeals, or lawsuits to the administrative court. The accountability for government actions that harmed the community previously mentioned could be divided into two: office and personal responsibilities [10]. The office responsibility focused on the action's legality, while the focus of personal responsibility was maladministration. The licensing office responsibilities were related to the action's legality in issuing permits, covering the element of permit validity, which included the authority, substance, and procedures for granting permits. Legal protection for office responsibilities was performed through administrative justice or appeals, since administrative accountability was office accountability [10].

The licensor's personal responsibility was related to the licensing mal-administrations, that was the licensor's behavior. Maladministration was an act of an apparatus that deviated or did not obey the norms of good behavior [11]. The efforts to protect the law from personal liability were executed through public justice related to corruption or claiming compensation as a realization of unlawful actions by the government, or known as *onrechtmatige overheidsdaad* (OOD).

Table 3. Corruption Data by Case Type.

Case	2010	2011	2012	2013	2014	2015	2016	2017
Goods and Services Procurement	16	10	8	9	15	14	14	15
Licensing	0	0	0	3	5	1	1	2
Bribery	19	25	34	50	20	38	79	93
Charges	0	0	0	1	6	1	1	0
Budget Abuse	5	4	3	0	4	2	1	1
TPPU	0	0	2	7	5	1	3	8
Obstructing the KPK Process	0	0	2	0	3	0	0	2
Total	40	39	48	70	58	57	99	121

Article 48 of Decree No. 26 of 2018 stipulated that the OSS institutions issued permits in the health sector for and on behalf of the Minister, leader of the institution, governor, and regent or mayor. The authority provisions were delegated based on the mandate, in which the authority and responsibility were still in the mandate grantor. This was under the mandate concept in Article 1 number 24 of Law Number 30 of 2014 concerning the Government Administration that a mandate was an authority delegation from the higher government agencies and officials to the lower government agencies and officials, with smaller responsibilities and accountability remained within the mandate grantor. Therefore, those responsible for the legality of licenses issued by the OSS Institution were the Minister, the head of the institution, governor, and regent or mayor who authorized attribution as stipulated in the legislation.

With the enactment of Law Number 30 of 2014 concerning the Government Administration, there was an expansion of state administrative decisions, particularly in Article 78, which pointed out that state administrative decisions had to be interpreted as: Written stipulations, which also included factual actions; State administrative agencies and officers' decisions in the executive, legislative, judicial, and other state administration circles; Based on statutory provisions and AUPB; Final in a wider sense; Decisions that had the potential to cause legal consequences, and; Decisions that applied to citizens.

Therefore, the licensing service actions undertaken by the government incurred losses for the complaints handling, in which real actions could be categorized as a decision. So, if there was any unlawful act by the licensor, it would become the competence of the administrative court. It was also confirmed in Supreme Court Circular Letter Number 4 of 2014 concerning the Enforcement of the Results of the 2016 Supreme Court Chamber's Plenary Meeting as a Guideline for the Implementation of Duties for the Court.

This Supreme Court Circular Letter was a follow-up to the paradigm change of proceedings in the State Administrative Court after the enactment of Law Number 30 of 2014 concerning the Government Administration. The competencies of the State Administrative Court were:

Authorities adjudicated cases in the form of lawsuits and requests; Authorities adjudicated the acts that violated the government law, covering the acts that broke the law committed by the holder of governmental authority (government agencies or officials). This was commonly referred to as *onrechtmatige overheidsdaad* (OOD).

State administrative decisions that had been examined and decided through administrative appeals were under the State Administrative Court's authority.

In the case of a claim for loss for the act of licensing, if it was categorized as an administrative court competency, the claim submitted was only the decision cancellation accompanied by compensation and rehabilitation. This was regulated in Government Regulation No. 43 of 1991 concerning Compensation and its Procedure. In Article 3, this regulation defined the amount of compensation that could be received by the plaintiff, that is at least Rp250,000.00 (two hundred fifty thousand rupiahs) and a maximum of Rp5,000,000.00 (five million rupiahs), by considering the real situation.

With the limitations of this compensation claim, it provided limits and losses for the people who suffered losses. The consequence of the limitation of the compensation claim was that the efforts to protect the community's law were not following the aims and objectives of legal protection in the rule of law.

Conclusion

Based on Article 48 of Minister of Health Regulation No. 26 of 2018 concerning the Electronically Integrated Business Licensing Services in the Health Sector, the issuance of licenses by the OSS institution is a mandate, so that the authority and responsibility still rest within the mandate grantor. The permits granted through OSS fulfill the validity element. Since the licenses are issued through an online system, the responsible agencies are the Ministers and the regents or mayors who have attribution or delegation authority rather than the OSS institutions. Based on *the contrarius actus* principle, the revocation of permits must still be made by the OSS institution. To guarantee the electronically integrated licensing services in the health sector, it is necessary to synchronize and harmonize the laws and regulations related to the licensing authority issued by the regional government. The central

government should give the mandate delegation of authority to the regional governments, not vice versa. It is necessary to mark licenses that are not yet effective to facilitate the guidance and supervision implementations by the regional government for the implementation of activities by health service facilities.

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