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## **Executive Law Review in an Effort to Accelerate Program Ease of Doing Business**

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### **Abstract**

Indonesia is currently still ranked below in attracting domestic and foreign investment because the existing regulations are not conducive. Many contributing factors, including central government regulations that are inconsistent in their implementation in the regions and the linkages of various regulations that support investment (for example: employment, land, credit, contracts, taxation, cross-country trade, business entities, bankruptcy and etc.), updates adapted to the era of free trade and fair business competition. One of the Government's efforts to improve the investment climate is to implement the Ease of Doing Business program that has been carried out by other countries in various parts of the world. This study aims to carry out the executive law review in an effort to accelerate program ease of doing. This study uses normative juridical research methods by examining various regulations and policies of the Central Government and local governments with a statute approach. The results of this study shows that there are three policies from the Government in the form of revoked, amended or maintained by the regulations referred to in 5 (five) dimensions in the evaluation of regulations, namely the accuracy of the type of legislation, the potential for disharmony in regulations, clarity of the formulation of regulations, assessment of conformity of norms, and effectiveness implementing statutory arrangements. These five dimensions in the Ease of Doing Business program are expected to provide synergy from existing regulations so that foreign investors can look at Indonesia as a country that is comfortable in investing and can provide benefits for businesses that are invested in Indonesia.

**Keywords:** Central Government Regulation and Local Government Regulation, Executive Law Review, Ease of Doing Business, Legal Evaluation

### **I. INTRODUCTION**

Indonesia is currently trying to attract maximum investment to improve the national economy in the face of global competition. When the world becomes a market, it results in stronger interference between one country and another while maintaining political, economic and certainly balance in the context of fulfilling the interests of each country. In such conditions, the creation of a climate of ease of doing business in each country becomes something that is put forward. In an effort to respond to these challenges, the Indonesian government continuously strives to improve the ranking of business ease. This effort needs to be balanced with strengthening the role of law that is not only as legitimacy in providing business facilities, but also provides protection for unfair business competition in the middle of a liberal world economic climate. Therefore, the Government must provide a reasonable proportion through a system of selection and direction that is adequate with its sole sovereignty (Napitupulu, 1975). The regulations developed must be able to balance various interests so that each country respects the sovereignty to determine its investment law.

Ease of Doing Business is a legal analysis and evaluation activity by reviewing the legislation related to the ease of doing business in Indonesia. Analysis and evaluation of law is part of the concept of testing legislation (executive review) which so far has not been well known in the practice of state

administration compared to the concept judicial review (Asshiddiqie, 2010) or legislative review (Salmande, 2011).

Some similar study have been conducted by some researchers previously, such as (Fibra, 2018) who conducted a research entitled “The Ease of Doing Business in Indonesia”. This study aims to reveal the implementation of EOB policy in Indonesia. The results of this study showed that Indonesia’s EOB has improved from 2008 to 2018. By 2018, seven out of ten indexes of EOB improved. The indexes are starting a business, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across border. Three indexes still need further improvement and should become government focused areas. The indexes are dealing with construction permits, enforcing contracts, and resolving insolvency. The EOB rank is highly competitive as Indonesia tries its best to achieve its 2019 target; other countries have planned to do the same. Therefore, Indonesia must do extra effort to be able to compete and secure its target of rank number 40th in EOB. In addition, (Canare, 2018) also carried out the similar study entitled “The effect of ease of doing business on firm creation”. This paper looked at the effect of ease of doing business on firm creation. The results of this study showed that overall ease of doing business has a positive effect on business creation. This relationship is most strongly driven by the Starting a Business component, but Paying Taxes is also important. In addition, the effect of the Starting a Business component is driven by the financial cost rather than the time and administrative cost. Finally, results change when the analysis is applied to non-high-income countries only. Based on the background and the latest related studies above, this study aims to carry out the executive law review in an effort to accelerate program ease of doing

## **II. METHOD**

The research method used in this study is juridical normative, which is a legal research method aimed at reviewing/analyzing secondary data in the form of literature and related legislation. In connection with the research methods used in the Executive Law Review of this Ease of Doing Business program are the laws and regulations made by an effective agency or government, from the highest level to the regulations used for their implementation or implications. This study focused on 2 (two) regulations issued by the government of the Republic of Indonesia, namely Presidential Regulation of the Republic of Indonesia Number: 91 Year 2017 Concerning the Acceleration of Business Conduct and Presidential Instruction Number: 7 of 2017 Concerning Policy Taking, Supervision and Control at the Ministry of State and Government Level . The indicators used are 5 (five) dimensions in the executive law review. The results of this analysis First, the suitability between types, hierarchies, and material content; Second, the clarity of the formula; Third, assessment of conformity of norms; Fourth, the potential for disharmony in regulation; Fifth, the effectiveness of the implementation of laws and regulations.

## **III. RESULT AND DISCUSSION**

Based on the objectives and the study conducted, thus it derived the results that there are three policies from the Government in the form of revoked, amended or maintained by the regulations referred to in 5 (five) dimensions in the evaluation of regulations, namely the accuracy of the type of legislation, the potential for disharmony in regulations, clarity of the formulation of regulations, assessment of conformity of norms, and effectiveness implementing statutory arrangements. Moreover, it can be described in the following discussion.

### ***Executive Law Review Policy***

Executive Law Review is all forms of executive party legal products that are tested by both hierarchical institutions and authorities. In this context the term "internal control" is introduced by the party itself over the legal products issued in the form of regulations and also *beschikking* (Lotulung, 1999). The object of the Executive Law Review object is a regulation that is *regelung* through the process of revocation or cancellation. The so-called "executive review" test is carried out to keep the regulations created by the government (executive) remain synchronous or unidirectional, and also consistent and there is legal certainty for justice for the community (Hoesein, 2009).

The implementation of Executive Law Review has been regulated in Article 145 paragraph (2) of Law Number 32 Year 2004 concerning Regional Government. The executive review process of Regional Regulations if contrary to public interest and / or higher legislation can be canceled by the

Government. Executive review is carried out in the form of supervision by the central government through the Ministry of Home Affairs. In carrying out the analysis and evaluation there needs to be standardized standards so that the recommendations produced have uniform quality. Therefore it is necessary to develop an assessment instrument that includes: First, the compatibility between type, hierarchy, and material content; Second, the clarity of the formula; Third, assessment of conformity of norms; Fourth, the potential for disharmony in regulation; Fifth, the effectiveness of the implementation of laws and regulations (Usihen, 2016).

### ***Analysis of Executive Law Review of Five Dimensions***

Based on the 5 (five) dimensions above, the directions and objectives of the 5 (five) dimensions can be described, as follows:

#### **Conformity Between Type, Hierarchy and Material Content**

Concerning the Conformity between types, hierarchy, and material content relating to legislative material which is expressly ordered by the 1945 Constitution of the Republic of Indonesia to be regulated further or in laws. For this indicator a total of 39 provisions are required to be spelled out in the form Constitution. Furthermore, the next indicator is the material which is not explicitly ordered by the 1945 Constitution of the Republic of Indonesia to be regulated further with or in law as many as 2 provisions, namely Article 33 and 34 of the 1945 Constitution. To fulfill the principle of accuracy between types, hierarchy and material content, it is necessary to determine the material content criteria that can be regulated by law in meeting the legal needs of the community.

#### **Clarity of Formulation**

The clarity of this formulation is related to (a) the systematic suitability and legal drafting techniques, and (b) the use of language, terms and words.

Norm conformity assessment relates to norm variables which must include guarding, humanity, nationality, kinship, literacy, Unity in Diversity, justice, equality of positions in law and government, order and legal certainty, and finally the variable of balance, harmony and harmony.

#### **Potential disharmony settings**

The emergence of disharmony between laws and regulations is due to differences between various laws, conflicts between laws and implementing regulations, conflicting central agency policies, differences between central and regional policies, and conflicting authorities between agencies due to unclear and systematic division of authority.

#### **Effectiveness of the implementation of laws and regulations**

Legislation is formed to achieve certain goals or benefits. This turned out to be in practice not in accordance with the objectives to be achieved. The inhibiting factors include the lack of implementing regulations, the rules are not operational or effective because the infrastructure does not support, the burden is greater than the benefits, not relevant to the current situation, legal culture, and there is no access to information for the community.

### ***The Executive Law Review Analysis of Policies in Central and Local Government Environments***

The assessment of these five dimensions aims to be more comprehensive, not only normatively but also practically. This standard serves as a guide and direction for the technical implementers of analysis and evaluation, both within the Central Government and Regional Governments. Regulations conducted by the executive review relating to the ease of doing business program are related to the development: the process of starting business activities, cross-country trade and employment; Licensing, land and buildings as well as electricity; Business entities, bankruptcy and contract enforcement; Access to credit, minority protection and taxation.

In addition, it is also necessary to develop a cost and benefit assessment (CBA) so that efficiency issues can be netted and a solution formulated. Cost Benefit Analysis / CBA is a method of analysis that measures and compares all the benefits / benefits to be obtained, as well as the costs / expenses / losses / consequences that must be borne by all beneficiaries of a particular policy / or regulation, along with the alternatives available to be used help the decision making process (Supancana, 2017). The results of this

evaluation analysis are in the form of recommendations on the status of existing laws and regulations, whether it needs to: (1) be changed; (2) revoked; or (3) maintained. Systematically, recommendations from the results of the legal evaluation analysis form the basis for the preparation of the National Legal Development Document (DPHN) for the determination of the Regulatory Framework in the National Medium-Term Development Plan (RPJMN), and also constitutes input for planning the formation of laws and regulations contained in the National Legislation Program.

### ***Ease of Doing Business Program in Improving the Investment Climate***

The Ease of Doing Business Program is to instill a conducive investment atmosphere and improve Indonesia as a country that provides investment facilities for investors. The ease of doing business program includes several activities consisting of the processes of starting business activities, cross-country trade, employment, licensing, land and buildings, electricity, business entities, bankruptcy, contract enforcement, credit access, minority protection and taxation. Issued by the World Bank on Ease of Doing Business, the ranking of ease of doing business in Indonesia (EODB 2018) raised 19 ranks to position 72 out of 190 countries surveyed. This achievement continues the trend of accelerating rank advancement in the last two years. As is known, in the 2017 EODB Indonesia's position raised 15 ranks, from 106 to 91. In that year Indonesia was included in the Top 10 Reformers countries. Thus, in the last 2 years Indonesia's position has raised 34 ratings. Before the 2017 EODB, Indonesia's position ranged between 116 -129.

### ***Ease of Doing Business Program in Improving the Investment Climate***

The Government issued Government Regulation Number: 91 of 2017 concerning the Acceleration of Business Implementation. The Government's considerations in issuing this regulation are (1) the development of the number, distribution, scale, and efficiency of business activities are the main determinants of economic growth, job creation, poverty reduction and inequality between regions and between income groups; (2) business licenses issued by ministries / institutions and local governments to start, implement, and develop business activities, need to be reorganized so that they become supporters and not vice versa are obstacles to the development of business activities; (3) that the rearrangement as referred to in letter (2), is realized in the form of services, escort (end to end), and active role in resolving barriers to business implementation through the establishment of a Task Force at the national level, ministries / institutions, provincial regions and regions district / city; (4) in the context of accelerating the implementation of business in special economic zones, free trade zones and free ports, industrial zones, and / or tourism zones, it can already be implemented in the form of fulfilling the requirements (checklist); (5) for further simplification it is necessary to regulate and re-establish service standards in ministries / institutions, provincial regions, and district / city regions, through regulatory reforms needed to carry out business activities; (6) to speed up and simplify services for trying to need to implement the use of information technology through the Online Single Submission System. The implementation is carried out in 2 (two) stages, namely: First, escorting and resolving obstacles through the establishment of a Task Force (Government Regulation Number 91 Year 2017 Article 1 paragraph (1); Implementation of Business Licensing (Government Regulation Number 91 Year 2017, Article 1 paragraph (2)) in the form of fulfilling the requirements (checklist) conducted at KEK (Government Regulation Number 91 Year 2017, Article 1 paragraph (7)), KPBPB (Government Regulation Number 91 Year 2017, Article 1 paragraph (8)), Industrial area (Government Regulation Number 91 Year 2017, Article 1 paragraph (9)), and KSPN (Government Regulation Number 91 Year 2017, Article 1 paragraph (10)); and the implementation of Business Licensing by using non-recurring data sharing and delivery conducted outside KEK, KPBPB, Industrial Estates, and KSPN.

Second, the implementation of business licensing regulation reforms; and the application of an Integrated Integrated Business Licensing System (Online Single Submission). The two stages are carried out in parallel. Furthermore, in Presidential Instruction Number: 7 of 2017 in the form of a mandate for the Ministry of Economy in 3 (three) cases, namely: first, in the case of the policy to be decided is the implementation of the duties and authorities of the Minister or Institution Head who are strategic and have a wide impact on the public, the Minister and the Head of the Institution submits the policy in writing to the Coordinating Minister whose scope of coordination is related to the policy, to obtain consideration before the policy is stipulated; Secondly, in the case of policies that are decided to be cross

-sectoral or have wide implications on the performance of other Ministries or Institutions, the Minister and Institutional Head deliver the policy in writing to the Coordinating Minister whose coordinating scope is related to the policy to be discussed at the Coordination Meeting to obtain an agreement; and finally , third, in the event that the policy to be decided is a policy of a national scale, important, strategic, or has a broad impact on the community, the Minister and the Head of the Institution submit the policy plan in writing to the President through the Coordinating Minister whose coordinating scope is related to the policy, to discussed in the Plenary Cabinet Meeting or Limited Meeting in order to get a decision.

### ***The Executive Law Review Method in the Ease of Doing Business Program***

The Ease of Doing Business program uses the Executive Law Review method, which is more efficient because it is directly handled by the government itself without involving other State institutions. The executive law review uses 5 (five) indicators in this analysis. First, the suitability between types, hierarchy, and content material; Second, the clarity of the formula; Third, assessment of conformity of norms; Fourth, the potential for disharmony in regulation; Fifth, the effectiveness of the implementation of laws and regulations. The implementation of Executive law review requires an ideal and efficient management of laws and regulations, therefore it must be involved as many stakeholders as possible. Immediately after promulgation, the legal product is open for re-examination through a testing mechanism by the Constitutional Court and the Supreme Court (Shidarta, 2018). The results of the analysis of the laws and regulations related to the Ease of Doing Business are amended, revoked or maintained. This analysis is needed to find out whether the purpose of its formation has been achieved, to find out the benefits and impacts of the implementation of the legal norms. In connection with the results of the said analysis it is necessary to consider the cost and benefit analysis (CBA) so that efficiency issues can be netted and a solution formulated.

## **IV. CONCLUSION**

Based on objectives and the results obtained, thus it can be drawn the conclusion that initiation of the Government in implementing the Executive Law Review is a strategic policy in accelerating policies in the investment sector. The Ease of Doing Business Program has been carried out by States in an effort to increase investment flows in their respective countries. Investments seen from a positive angle will improve the ranking of the economy and also income per capita from the community. The Government of Indonesia needs to take policy steps in view of the contested world market by each country. There are 2 (two) important things, good regulation and law enforcement, provide legal certainty and there is no discrimination.

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