

# Transforming Licensing Regulations: Legal Implications for Administrative Governance in Indonesia

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**Abstract:** This fundamental change in the legal architecture of licensing has complex and multi-layered implications for government administrative governance, particularly regarding the redistribution of authority between government institutions, a paradigm shift from obligation-based licensing to risk-based licensing, and the restructuring of the legal responsibilities of administrative officials in the digital licensing ecosystem. This study aims to analyze the legal implications of the transformation of licensing regulations on administrative governance in Indonesia, map the shift in institutional legal responsibilities post-reform, and formulate a framework for adapting administrative law that is responsive to the dynamics of the digital technology-based licensing system. The research employed a normative juridical method reinforced by an empirical juridical approach. Analysis of primary and secondary legal documents was combined with in-depth interviews with 52 informants, including administrative law academics, officials from the Ministry of Investment/BKPM, regional regulators, business actors, and judges at the State Administrative Court in three major cities. Data were analyzed using an integrated statute, conceptual, and case approach within a transformative legal implications analysis framework. The findings identify four main legal implications of the transformation of licensing regulations: (1) a shift in the legal paradigm from ex-ante to ex-post, which changes the nature of administrative officials' legal responsibilities; (2) a restructuring of the state administrative lawsuit mechanism against digital licensing decisions; and (3) a weak legal protection framework for business actors who rely on self-declaration-based standard certificate conformity. This research produces a transformative licensing administrative legal adaptation framework that serves as an academic and policy reference for administrative law reform in the era of digital licensing governance.

**Keywords:** transformation of licensing regulations, legal implications, administrative governance, state administrative law.

## Introduction

In the history of Indonesian legislation, it is rare for a law to introduce such fundamental and far-reaching changes to the legal architecture as Law No. 11 of 2020 concerning Job Creation. This law, which was subsequently revised through Government Regulation in Lieu of Law No. 2 of 2022 and subsequently enacted as Law No. 6 of 2023, simultaneously amends more than 76 sectoral laws that have served as the backbone of Indonesia's licensing system. The changes packaged in this omnibus law concept respond to a long-standing diagnosis by the business community and international institutions: that the complexity, uncertainty, and compliance costs of Indonesia's licensing system have become structural barriers to investment and job creation ([Dick et al., 2002](#)). The fact that Indonesia consistently ranks among the least competitive in the global ease of doing business index has been a key accelerator of this ambitious reform.

The essence of the regulatory transformation brought about by the Job Creation Law is a fundamental paradigm shift: from a license-based licensing system to a risk-based licensing system. Under the old paradigm, nearly every business activity required an explicit permit issued by a government official before it could be implemented. In the new paradigm, business activities are classified based on their level of risk to safety, health, the environment, and the public interest; and only medium-high and high-risk businesses still require permits in the conventional sense ([Mietzner, 2021](#)). Low-risk businesses only need to register, while medium-low-risk businesses only need a standard certificate which in most cases can be obtained through self-declaration ([Gultom et al., 2021](#)). This paradigm shift is not only procedural, but also touches on the most fundamental nature of the legal relationship between the state and citizens and business entities.

From an administrative law perspective, this transformation presents a number of challenging conceptual issues that have not yet received fully satisfactory answers ([Eliantonio & Dragos, 2022](#)). Classical administrative law, as built on the foundation of Continental European legal theory, which is the legacy of the Indonesian legal system, places permit as a preventive instrument (preventive working) which provides certainty that an activity has fulfilled the conditions stipulated by law before being carried out. Under this logic, administrative officials issuing permits bear clear legal responsibility for their decisions. The new risk-based system reverses this logic: for most business activities, legality is now determined not by the permits issued by officials, but by compliance with standards declared by the business actors themselves. The question of who bears legal responsibility when those standards are not met or result in harm to third parties is one of the most crucial and yet comprehensively unanswered legal questions.

The novelty of this research lies in its systematic and comprehensive approach to analyzing the legal implications of the transformation of licensing regulations, particularly in three interrelated dimensions that are rarely studied in an integrated manner: the institutional dimension (redistribution of authority and responsibility between institutions), the substantive dimension (shifting nature of legal responsibility), and the procedural dimension (adaptation of licensing dispute resolution mechanisms). This research also fills a gap in the Indonesian administrative law literature that has not sufficiently explored the legal consequences of the self-declaration-based licensing system and standard certification that are characteristic of the OSS-RBA ([Enok Rohayati, 2011](#)). The urgency of this research is even greater considering the various legal issues that have begun to emerge in practice: from conflicts of authority between the Central Investment Coordinating Board (BKPM) and regional governments, state administrative lawsuits challenging the validity of standard certificates, to civil disputes between business actors claiming losses due to inaccurate OSS system information.

Theoretically, this research is based on three main conceptual frameworks. First, the theory of transformative administrative law developed by Stewart and Sunstein, which examines how the administrative law system adapts to fundamental changes in the regulatory paradigm and its implications for the structure of legal accountability ([Mullally, 2009](#)). Second, the concept of regulatory governance as developed by Scott and Black, which emphasizes the importance of understanding regulatory governance as a complex system involving various actors and instruments, not just as a formal normative hierarchy. Third, the theory of responsive law which provides a framework for analyzing the extent to which the transformation of Indonesian licensing regulations reflects a shift from autonomous law to law that is more responsive to social and economic needs, and what implications this has for standards of accountability in administrative law.

The relevance of this research is further strengthened when linked to the empirical fact that the OSS-RBA system, despite having been running for several years, still faces various fundamental legal implementation challenges ([Lado & Rini, 2025](#)). Data from the Indonesian Ombudsman shows that licensing remains one of the three public service sectors with the most reports of maladministration, even after the implementation of the OSS ([Lado & Rini, 2025](#)). More significantly, jurisprudential precedents have begun to emerge in the State Administrative Court that raise fundamental questions about the legal status of licensing documents issued through the OSS system: whether standard certificates issued automatically by the system can be categorized as State Administrative Decrees (KTUN) subject to the conventional administrative law regime, or whether they constitute a new category requiring a separate legal instrument ([Hazucha, 2016](#)).

The issue of the legal status of digital licensing documents is not merely an academic technical issue ([Tapia-Hoffmann, 2021](#)). This has very real practical consequences: determining whether businesses harmed by OSS system failures or misinformation on the platform can file administrative lawsuits, civil lawsuits against the state, or have no clear legal recourse at all. This lack of clarity impacts most severely on small and medium-sized businesses, which lack the legal capacity to navigate the complexities of the judicial system and rely on the legal certainty of digital licensing as a basis for making investment and operational decisions.

The comparative dimension also enriches this research's analysis. Several countries that have already implemented risk-based licensing systems, including the United Kingdom, Australia, and Singapore, have developed specific adaptations to administrative law to address the accountability challenges posed by these new systems. A comparative study of these countries' experiences provides valuable perspectives on various institutional and legal adaptation options that can serve as references for reforming Indonesian administrative law. However, it is important to emphasize that any adaptation model cannot be transplanted mechanically; it must be recontextualized within the framework of Indonesia's unique legal system, bureaucratic culture, and institutional capacity.

Based on the background and problem identification above, this study focuses on the following two research questions: RQ1: What are the substantive legal implications of the transformation of licensing regulations through the Job Creation Law and the OSS-RBA system on administrative governance, particularly regarding the redistribution of institutional authority, the paradigm shift in the legal responsibility of administrative officials, and the adaptation of licensing dispute resolution mechanisms? RQ2: What kind of administrative law adaptation framework is most appropriate and comprehensive to ensure accountability, legal certainty, and protection of applicants' rights in the risk-based licensing ecosystem and digital technology in Indonesia?

## Research Method

This research employs a normative legal research method strategically reinforced by an empirical legal research approach. This methodological combination was chosen because the research question involves two inseparable dimensions ([Creswel, 2009](#)): the normative dimension concerning the construction and interpretation of positive licensing law, and the empirical dimension concerning how these norms are applied, interpreted, and have implications in actual administrative governance practices. Within the normative legal approach, the research employs three integrated analytical approaches: a statute approach to analyze existing licensing regulations, a conceptual approach to construct a new conceptual

framework for administrative legal accountability, and a case approach to analyze relevant jurisprudential precedents. The research was conducted over a twenty-four-month period (February 2022–January 2024).

The selection of three study cities Jakarta (as the center of PTUN policy and jurisprudence), Bandung (as a region with a dynamic creative and manufacturing industry ecosystem), and Surabaya (as a trade and industrial center in East Java with different characteristics of OSS implementation) was based on considerations of licensing ecosystem representation that include variations in: licensing volume levels, characteristics of dominant business sectors, OSS implementation capacity at the regional level, and the track record of relevant PTUN jurisprudence. The combination of these three cities allows for a comparative analysis that enriches the depth of understanding of cross-contextual legal implications.

## Sampling Techniques

The selection of interview participants used a purposive sampling technique guided by the criteria of expertise and relevance of experience to the research questions. This selection was complemented by snowball sampling to identify key informants with specific knowledge on certain aspects of licensing regulatory transformation that were not yet identified by the initial informants. A total of 52 participants were recruited, distributed across five categories representing the entire ecosystem of actors in licensing governance. This diverse distribution was designed to ensure comprehensive triangulation of perspectives: those of regulators, implementers, users, adjudicators, and critical observers.

## Participant Characteristics

Interview participants met strict inclusion criteria based on their respective categories: (a) administrative law academics must have published scientific publications on licensing law or digital administrative law within the last five years; (b) BKPM/Ministry officials must have been directly involved in the development or implementation of the OSS-RBA system for at least two years; (c) regional regulators (DPMPSTP) must have been actively handling OSS-RBA licensing for at least one year with a significant volume of applications; (d) business actors must have undergone the licensing process through the OSS-RBA system and faced at least one legal issue in the process; (e) PTUN judges must have handled or considered cases related to digital licensing decisions.

## Data Collection Techniques

Data collection was conducted through four complementary primary instruments and applied through methodological triangulation. First, the analysis of primary legal documents included: Law Number 6 of 2023 concerning Job Creation; Government Regulation Number

5 of 2021 concerning the Implementation of Risk-Based Business Licensing; Government Regulation Number 6 of 2021 concerning the Implementation of Business Licensing in the Regions; Investment Coordinating Board (BKPM) Regulation Number 3 of 2021; all sectoral implementing regulations related to OSS-RBA; and regional policies related to licensing in the three study cities. Second, the jurisprudential analysis included 35 first-instance and appeal PTUN decisions directly related to digital licensing disputes and OSS-based state administrative decisions during the 2021–2023 period.

Third, semi-structured in-depth interviews were conducted using interview guidelines developed based on a theoretical framework and validated by three administrative law experts from the University of Indonesia and Gadjah Mada University. Different interview guidelines were prepared for each participant category, with consistent core themes including: perceptions of the legal implications of the licensing paradigm shift, experiences with OSS-RBA authority conflicts, assessments of dispute resolution mechanisms, and recommendations for administrative law adaptations. Fourth, four rounds of focus group discussions (FGDs) were conducted—one in each study city and one at the national level—each involving 8–10 participants across categories to triangulate and deepen the findings of individual interviews.

## Data Analysis Techniques

Data were analyzed using a multi-layered analytical framework integrating two complementary techniques. First, legal content analysis was applied to all primary legal documents and jurisprudence, using analytical categories that included: scope and limits of authority, construction of legal responsibility, control and oversight mechanisms, and legal protection instruments. Second, thematic analysis following the procedures of Braun & Clarke (2006) was applied to interview and focus group discussion data using ATLAS.ti 9 software. The coding process involved three independent coders to ensure intercoder reliability (Cohen's kappa = 0.84 —indicating strong substantial agreement). Data validity was ensured through member checking, source triangulation, peer debriefing by two senior administrative law professors, and a comprehensively documented audit trail.

## Result and Discussion

### Institutional Legal Implications: Redistribution of Licensing Authority in the OSS-RBA Ecosystem

An analysis of the OSS-RBA regulatory framework reveals that the transformation of the licensing system has resulted in an asymmetric redistribution of authority between the

central and regional governments. Formally, the Job Creation Law and Government Regulation No. 5 of 2021 position the Ministry of Investment/BKPM as the sole administrator of the OSS platform, which serves as the sole gateway for national business licensing. However, the substantive implementation of licensing, including field verification, issuance of technical recommendations, and post-licensing supervision, remains dependent on the capacity and authority of regional governments, which in practice vary widely. This asymmetry between the centralization of digital platforms and the decentralization of substantive implementation creates a gray area of authority that is a source of significant institutional conflict.

A jurisprudential analysis of 35 PTUN decisions from 2021–2023 reveals that the question of the legal status of licensing documents issued through the OSS system has not received a consistent answer from the courts. Of the 35 decisions analyzed, 18 decisions (51.4 %) accepted the PTUN's competence to adjudicate disputes related to OSS licensing decisions, considering them to be State Administrative Decisions (KTUN) within the meaning of the PTUN Law. However, 12 decisions (34.3 %) rejected the PTUN's competence, arguing that standard certificates issued automatically by the system do not constitute State Administrative Decisions (KTUN) because they do not reflect the concrete will of the authorized official. The remaining 5 decisions (14.3 %) declared them incompetent without providing adequate arguments regarding the appropriate forum. This jurisprudential inconsistency reflects the absence of an adequate dogmatic framework for administrative law to accommodate the phenomenon of digital administrative decisions issued automatically by system algorithms.

Findings from in-depth interviews with eight PTUN judges in the three study cities provide richer insights into the roots of this jurisprudential confusion. All interviewed judges acknowledged serious methodological difficulties in applying classical administrative law concepts—such as “concrete and individual decision,” “issued by a state administrative body or official,” and “having legal consequences for a person or civil legal entity”—to standard OSS certificates issued automatically without human intervention. Some judges have developed interpretations that expand the meaning of 'state administrative official' to include algorithmic systems operating under the mandate of legitimate authority. Others adhere to a conservative textual interpretation that excludes algorithmic decisions from the KTUN category.

The conflict of authority between the Central Investment Coordinating Board (BKPM) and regional governments manifests itself in three main ways, identified through interviews with regional regulators. First, there is a conflict over the authority to issue technical recommendations, which are prerequisites for medium-to-high-risk permits. Some

district/city governments issue recommendations with requirements that differ from the national NSPK (Norms, Standards, Procedures, and Criteria), creating a confusing and inconsistent environment for businesses operating across regions. Second, there is a conflict over the authority to supervise post-permits: without clear budget allocations and human resources, oversight of medium-risk businesses required to report compliance with standards through the OSS system is virtually non-existent in most regions. Third, there is a conflict over the authority to revoke or suspend permits: formal mechanisms do not provide clarity on who is authorized to do this when permits are issued by the national system but violations occur within the region.

The comparative dimension provides a richer perspective for the analysis. Australia's experience in implementing a risk-based licensing system through a "one-stop shop" system beginning in the early 2000s demonstrates that the issue of conflicting jurisdictions between the federal and state governments is a universal challenge and can take years to resolve legally. Australia addresses most of these conflicts through legally binding Intergovernmental Agreements (IGAs) supported by an institutionalized system of arbitration for jurisdictional disputes. Indonesia does not yet have an adequate equivalent mechanism to efficiently resolve OSS-RBA authority conflicts, and this study identifies the absence of this mechanism as one of the most critical gaps in the institutional legal architecture of the national licensing system.

## Substantive Legal Implications: Paradigm Shift in Administrative Legal Responsibility

The most fundamental substantive legal implication of the transformation of OSS-RBA licensing regulations is a paradigm shift in legal responsibility: from an ex-ante model (the state is responsible for verifying compliance with requirements before issuing a permit) to an ex-post model (business actors are responsible for ensuring compliance with standards independently, with the state conducting supervision and corrections after the activity is underway). This shift, although designed to expedite the licensing process and reduce bureaucratic burdens, has fundamental legal consequences for the construction of state responsibility for losses arising from business activities that have procedurally obtained legality through the OSS system.

An analysis of the OSS-RBA regulatory documents identified at least three problematic and inadequately regulated constructs of legal responsibility. First, liability for inaccurate information in the OSS system: when business actors experience losses due to following erroneous guidance or information in the OSS platform (e.g., incorrect risk classification or

outdated standard requirements), there is no clear mechanism for determining whether these losses can be claimed from the state and through what legal channels. Second, liability for third-party losses incurred by business actors who have obtained legality through self-declaration but do not meet the declared standards: can the state be held liable for failing to conduct effective oversight? Third, liability for failures in the OSS system that cause disruption to business operations.

In-depth interviews with 17 administrative law academics yielded significant findings: there is a strong consensus (76.5 % of the interviewed academics) that existing Indonesian administrative law does not yet have an adequate conception of state responsibility within the ex-post licensing paradigm. The conception of state responsibility in Indonesian administrative law, which largely still refers to Law Number 30 of 2014 concerning State Administration and the doctrine of *onrechtmatige overheidsdaad*, is designed for conditions in which there are administrative officials who make concrete, identifiable decisions. When business legality arises from self-declaration rather than from official decisions, this conception loses its footing. This condition creates what researchers term a dogmatic vacuum: a gap between the development of the licensing system and the availability of legal concepts capable of adequately regulating it.

The findings of the jurisprudential analysis indicate that Indonesian courts are beginning to develop responses to this dogmatic vacuum, albeit inconsistently. Several of the PTUN decisions analyzed identified the state's failure to conduct effective post-licensing supervision as a basis for compensable liability, adapting the concept of *fautes de service* from the French administrative law tradition influenced by the doctrine of *droi administratif*. However, this concept has not yet developed into a consistent doctrine that can be relied upon by business actors or judges in a predictive manner. Furthermore, there is a lack of clarity regarding the adequate standard of 'oversight failure' in the context of the OSS-RBA system, where the oversight burden placed on local governments is very large while their capacity is very limited.

A specific implication that requires serious attention is the legal position of micro and small business actors in the self-declaration-based licensing ecosystem. Large businesses generally have the internal legal capacity to ensure compliance with all applicable NSPKs before making a self-declaration. Micro and small business actors, who are the majority of OSS system users, do not have equivalent capacity. Interviews with nine MSMEs participating in this study revealed that most of them make standard compliance declarations based on subjective beliefs that are not always based on a thorough understanding of all applicable technical requirements. This creates asymmetric legal risks: small businesses bear the same

compliance responsibilities as larger businesses, but lack the capacity to meet them competently.

## Discussion

The main findings of this study reveal two critical, mutually reinforcing patterns in the legal implications of the transformation of Indonesia's licensing regulations (McHarg, 2017). First, the transformation has resulted in what the researchers conceptualize as a structural asymmetry between the pace of change in the licensing system and the adaptive capacity of the existing administrative legal framework. While the OSS-RBA system has fundamentally transformed how business legality is constructed and obtained, the dogmatic apparatus of administrative law the concept of the State Administrative Court (KTUN), the doctrine of state responsibility, and the PTUN mechanism has not undergone equivalent adaptation (Sheherazade & Tsang, 2015). This asymmetry creates a vast zone of legal uncertainty that is detrimental to all parties: business actors lose certainty about the legal status of their licensing documents, administrative officials lose clarity about the limits of their responsibilities, and courts lose dogmatic guidance for consistently resolving disputes.

From the perspective of Nonet & Selznick's theory of responsive law, this study's findings provide a nuanced picture of the extent to which the transformation of Indonesian licensing regulations reflects a shift toward more responsive law (David, 2020). On the one hand, the OSS-RBA system reflects a strong adoption of responsive law principles: goal-oriented (facilitating ease of doing business and job creation), flexibility in tailoring regulatory responses to diverse business situations (through risk classification), and recognition of the active participation of business actors in ensuring compliance (Blevins, 2017). On the other hand, the weakness of accountability mechanisms and legal protection for disadvantaged parties both business actors and third parties reflects the incompleteness of the reforms, which could reverse the benefits of increased regulatory responsiveness.

A comparison with the experience of licensing reform in Singapore provides valuable lessons (Hallaq, 2016). Singapore, which had earlier implemented a digitally integrated licensing system through the GoBusiness platform, has simultaneously developed an updated administrative law framework explicitly to accommodate digital administrative decisions (Eriza Zuhry et al., 2024). One of the most significant innovations is the formal recognition of automated government decisions as a category of administrative decisions subject to specific accountability standards, including mandatory periodic audits of algorithms and a simplified dispute resolution mechanism (Simin & Saheed, 2019). Indonesia does not yet have a comparable legal framework, and this study identifies its development as the most pressing administrative law reform priority.

Regarding theoretical implications, this research makes a significant contribution to the development of the concept of 'digital administrative law' in the Indonesian context (Bird, 2010). This concept which began to develop in European administrative law literature in response to the increasing use of algorithms in administrative decision-making requires contextual adaptation that takes into account institutional capacity, the legacy of the legal system, and the unique conditions of Indonesia's digital ecosystem (Heinzerling, 2025). Researchers have identified three elements as the foundation of Indonesian digital administrative law: formal recognition of algorithmic administrative decisions, a state responsibility framework adaptive to the ex-post paradigm, and a dispute resolution mechanism accessible to all business segments.

This study proposes a transformative administrative licensing legal adaptation framework (HALPT Framework) as a comprehensive policy recommendation. This framework consists of five components that must be developed simultaneously and synergistically: (a) formal legal recognition of digital administrative decisions through a revision of the PTUN Law that accommodates the algorithmic KTUN category; (b) reconstruction of the doctrine of state responsibility in the ex-post paradigm through the issuance of a special government regulation on state responsibility in the risk-based licensing system; and (c) the establishment of a legally binding Intergovernmental Agreement (IGA) mechanism to resolve conflicts of OSS-RBA authority between the central and regional governments.

**Research Limitations:** This study has several limitations that need to be transparently acknowledged. First, the focus on three large cities (Jakarta, Bandung, and Surabaya) that are relatively advanced in OSS implementation limits the representation of challenges faced by regions with lower capacity. Second, limiting the jurisprudential analysis to PTUN decisions ignores developments in jurisprudence in civil and commercial courts that are beginning to address disputes related to OSS licensing. Third, the rapid dynamics of regulation mean that some findings may change as new technical regulations are issued. Fourth, this study does not explore in depth the criminal law dimensions of the self-declaration-based licensing system, particularly regarding the criminal implications for business actors who make false or inaccurate declarations.

## Conclusion

This research has identified four key legal implications of the transformation of licensing regulations through the OSS-RBA system for Indonesian administrative governance. First, the institutional implications involve an asymmetric redistribution of authority, creating a gray area between the centralization of licensing platforms and the decentralization of substantive implementation, resulting in a legally unresolved conflict between central and

regional authorities. Second, the dogmatic implications involve a conceptual vacuum in Indonesian administrative law, which lacks an adequate framework to regulate algorithmic administrative decisions and state responsibility within the ex-post licensing paradigm. Third, the jurisprudential implications are in the form of inconsistencies in PTUN decisions in determining the legal status of OSS licensing documents and court jurisdiction over digital licensing disputes. Fourth, the accessibility implications are in the form of legal risk asymmetry that is detrimental to MSME business actors in the self-declaration-based licensing ecosystem. The critical findings of this study confirm that the ambitious transformation of licensing regulations through the Job Creation Law and the OSS-RBA system has outstripped the readiness of the administrative legal framework that should serve as the foundation for its accountability.

Further research is recommended to explore several directions not covered by this study. First, a more in-depth comparative study of Indonesia's risk-based licensing system with the experiences of other ASEAN countries—particularly the Philippines with its PEZA system and Vietnam with its one-stop licensing reform—to identify best practices for adapting administrative law relevant to the Southeast Asian context. Second, research that explicitly examines the AI dimension of licensing: as the OSS system's ability to integrate AI-based analysis into risk classification and post-licensing oversight develops, the legal implications of AI-based decisions require more in-depth and specialized study. Third, a longitudinal study to measure the impact of licensing regulatory transformation on access to justice for small businesses over the long term, as a more substantial indicator of reform success than simply the speed and volume of licensing.

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