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# The Validity of Business Agreements before the Fulfillment of Risk-Based Licensing in Indonesian Civil Law

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## Abstract

The development of the risk-based business licensing system thru Online Single Submission (OSS-RBA) raises legal issues related to the relationship between administrative obligations and the validity of agreements in civil law. The main issue lies in whether the incompleteness or delay of permits can affect the validity of contracts that have been agreed upon by the parties. This research aims to analyze the position of permits in determining the validity of agreements and to formulate an ideal legal construction in harmonizing administrative law and civil law. The method used is normative legal research with a legislative and conceptual approach, supported by relevant doctrinal studies and legal theories. The research results indicate that the validity of the agreement still refers to Article 1320 of the Civil Code, where the aspect of licensing is not included as a condition for the validity of the agreement as long as the causa does not contravene the law. The failure to obtain permits is more accurately categorized as an administrative violation. Furthermore, obstacles in the OSS system can be classified as a form of relative force majeure that affects the performance of obligations, but does not nullify the validity of the contract. The contribution of this research lies in strengthening the argument regarding the separation and simultaneous interconnection between public and private law in contractual practice. This research concludes that an integrative legal reconstruction is necessary, balancing legal certainty, justice, and utility.

## Keywords
*Validity of Agreements, Risk-based Licensing, Force Majeure, Legal Reconstruction*

## A. Introduction

The transformation of licensing policies in Indonesia has undergone fundamental changes since the enactment of Law Number 11 of 2020 concerning Job Creation, which was later reaffirmed thru Law Number 6 of 2023 concerning the Ratification of the Job Creation Perppu. This regulatory reform is driven by the need to simplify overlapping regulations, expedite bureaucratic processes, and enhance the attractiveness of national investment amid global competition. One significant change introduced is the Risk-Based Business Licensing system, which is technically regulated in Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Licensing and then updated thru Government Regulation Number 28 of 2025 concerning the Implementation of Risk-Based Business Licensing.[1]

This system marks a paradigm shift from a business-type -based permit approach to an activity-risk-level-based approach. This means that the obligation for permits is no

[1] Chika Fatika Sari and Sang Ayu Putu Rahayu, *Analisis Penerapan OSS Berbasis Risiko dalam Mewujudkan Kepastian Hukum bagi Investor di Indonesia*, n.d.

longer uniform, but rather determined based on the potential impact of a business on health, safety, the environment, and resource utilization. Businesses with low risk only need to obtain a Business Identification Number (NIB), while businesses with medium to high risk require compliance with certain standards or permits. Conceptually, this approach is intended to create a balance between ease of doing business and the protection of public interests. The integration of the licensing system thru Online Single Submission (OSS) becomes the backbone of the implementation of that policy. OSS is designed as an integrated electronic platform that connects ministries, agencies, and local governments into a single integrated service system.[2] Thru this system, the government aims to provide transparent, fast, standardized, and accountable licensing governance. Normatively, OSS is also expected to minimize maladministration practices, reduce excessive discretionary space, and enhance legal certainty for business actors.[3]

However, in practice, the implementation of the risk-based licensing system does not always proceed linearly as normatively formulated. Various technical and administrative obstacles often arise in the implementation of OSS, ranging from system disruptions, differing interpretations between agencies, to the slow integration of sectoral data. In Sleman Regency, for example, since October 2025, the OSS system has experienced repeated errors that have caused business actors, including limited liability companies, cooperatives, and foundations, to be unable to process or complete their

[2] Wulan Puspita Puri and Muh Azis Muslim, "Analisis Faktor-Faktor yang Mempengaruhi Implementasi Kebijakan Perizinan Berusaha Berbasis Risiko melalui Sistem Online Single Submission (OSS) dalam Penerbitan Standar Pemenuhan Komitmen Produksi Pangan Industri Rumah Tangga (SPP-IRT) Pangan," *Jurnal Administrasi dan Kebijakan Publik* 8, no. 2 (2023): 150–71, https://doi.org/10.25077/jakp.8.2.150-171.2023.

[3] Bakhrur Rokhman et al., "PENYELENGGARAAN PERIZINAN BERUSAHA BERBASIS RISIKO MELALUI SISTEM ONLINE SINGLE SUBMISSION (OSS)," *Journal of Social and Economics Research* 6, no. 1 (2024): 1562–80, https://doi.org/10.54783/jser.v6i1.399.

permits on time.[4] This condition not only affects the delay in operational activities but also has implications for the contractual relationships that have already been agreed upon. In this position, it becomes apparent that the issue of licensing is no longer merely an administrative matter but has shifted into the realm of private legal relations.

The problem becomes even more complex when a business license is positioned as a prerequisite for the performance of obligations in an agreement. In this context, delays or failures in the issuance of permits have the potential to result in legal consequences in the form of breach of contract allegations. This phenomenon is reflected in the Jakarta Administrative Court Decision Number 264/G/2024/PTUN.JKT, where the revocation of a business license by the government has implications for the impediment of contractual obligations in a distribution agreement. The ruling shows that state administrative actions in the field of licensing can have a domino effect on private legal relationships, even placing one party in a vulnerable position to civil lawsuits. This simultaneously emphasizes the close relationship between public policy in the field of licensing and the stability of contractual relationships in business practice.[5]

In modern business practice, cooperation agreements, investment contracts, construction contracts, and lease agreements are often made before all operational permits are issued final.[6] This is done based on the need for time efficiency and certainty in business relationships. However, when the permits required in certain risk classifications have not been fulfilled or have changed due to regulatory

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[4] Andi Sri Rezky Wulandari et al., *Dinamika Sistem Online Single Submission (OSS) Sebagai Solusi Kebijakan Perizinan Usaha Berbasis Risiko Terhadap Terpenuhinya Pelayanan Publik*, n.d.

[5] Dadang Apriyanto, "PERLINDUNGAN HUKUM BERUSAHA TERHADAP PERUSAHAAN PERTAMBANGAN DALAM KAITANNYA DENGAN KEWENANGAN PENCABUTAN IZIN USAHA PERTAMBANGAN OLEH KEMENTERIAN INVESTASI REPUBLIK INDONESIA," *Jurnal Penelitian* 9, no. 3 (2025).

[6] Zena Dinda Defega et al., *Implikasi Sistem Perizinan Berusaha Berbasis Elektronik (OSS) Bagi Pelaku Usaha*, 2025.

adjustments, questions arise regarding the certainty and binding force of the contract. Does the contract remain valid and binding on the parties, or does the existence of the permit as an administrative requirement affect its validity or enforceability? This question becomes crucial because it concerns legal certainty for the parties, especially in determining their legal position when there is a failure to fulfilll the permit that is not entirely due to their own fault.

In the perspective of Indonesian civil law, according to *Subekti (2005)*, the validity of an agreement refers to Article 1320 of the Civil Code, which requires four elements: the agreement of the parties, the capacity to enter into an obligation, a specific object, and a lawful cause. *Sudikno Mertokusumo (2010)* explains that the element of "lawful cause" is of significant relevance when the object of the agreement is related to business activities that are required to obtain a permit based on legislation. If an activity does not yet have the required permit, a debate may arise as to whether the agreement is contrary to the law or merely facing a temporary administrative obstacle. On the other hand, Article 1338 of the Civil Code emphasizes the principle of freedom of contract and the principle of pacta sunt servanda, which requires the parties to perform the agreement in good faith. When the permit has not yet been issued or revoked, the other party in the contract can still demand performance based on that principle. Here is where the tension between public law and private law arises, where uncertainty in administrative aspects has the potential to disrupt the certainty and validity of contractual relationships. Changing or technically hindered administrative regulations have the potential to disturb the stability of contractual relationships that should be protected by the principle of legal certainty.

Several previous studies on Risk-Based Licensing generally still focus on aspects of policy effectiveness, ease of doing business, and bureaucratic reform following the enactment of the Job Creation Law. For example, a study published in the RechtsVinding Journal by Rika Ratna Permata (2022) examines how the risk-based licensing design thru the OSS system can encourage regulatory simplification and enhance public service certainty, although it still faces implementation challenges at the technical level.[7] Furthermore, Dian Agung Wicaksono in the Indonesian Legislation Journal (2023) highlights that the normative transformation of risk-based licensing has successfully reduced bureaucratic obstacles, but has not yet been fully matched by institutional readiness and inter-sectoral data integration.[8] Another study by M. Hawin and Budi Agus Riswandi in the Journal of Law IUS QUIA IUSTUM (2021) also emphasizes that the digitalization of licensing thru OSS has the potential to increase transparency, but still leaves issues in the consistency of application and legal certainty. Although these studies provide important contributions to understanding the legal framework and implementation of risk-based licensing, most still focus on the perspective of administrative law and public policy. Discussion regarding the implications of licensing on private legal relationships, particularly related to the validity of agreements and the potential for default, has not yet been a primary focus. In practice, however, administrative uncertainties such as delays, changes, or revocations of permits have a direct impact on contract execution. Therefore, studies that specifically link risk-based licensing with civil law aspects are still relatively limited, thus opening up space for more in-depth research to bridge the two legal regimes.

Based on the entire description, this research aims to comprehensively analyze the legal status of business agreements made before the fulfillment of risk-based licensing within the framework of positive Indonesian law, while also examining the implications of changes, delays, or uncertainties in the licensing system on the fulfillment of valid contract requirements according to civil law. This

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[7] Rm Hasbi Pratama Arya Agung et al., "Pendaftaran Perizinan Melalui OSS RBA terhadap UMKM Ditinjau dari Teori Kepastian Hukum," *JURNAL MERCATORIA* 15, no. 2 (2022): 160–66, https://doi.org/10.31289/mercatoria.v15i2.7793.

[8] Puri and Muslim, "Analisis Faktor-Faktor yang Mempengaruhi Implementasi Kebijakan Perizinan Berusaha Berbasis Risiko melalui Sistem Online Single Submission (OSS) dalam Penerbitan Standar Pemenuhan Komitmen Produksi Pangan Industri Rumah Tangga (SPP-IRT) Pangan."

analysis is important because it is directly related to the need for legal certainty in business practices, especially when the dynamics of administrative regulations do not always align with the need for certainty in contractual relationships. This analysis is also aimed at constructing an argumentative framework on how civil law should respond to the increasingly complex dynamics of administrative regulations, as well as how to ensure legal certainty for the parties in a contract without neglecting the obligation to comply with public regulations.

This research uses a normative approach with a literature study method. The analysis is conducted on relevant laws and regulations, court decisions, legal principles, and doctrines that have developed in the literature of administrative and civil law. Primary legal materials include laws and regulations and court decisions that have binding force, while secondary legal materials encompass books, accredited scientific articles, and previous research results relevant to the research theme. Thru this approach, this research is expected to produce a systematic and argumentative analysis, and provide both theoretical and practical contributions in understanding the relationship between risk-based licensing and the validity of agreements in business practices in Indonesia.[9]

## B. Legal Construction of Risk-Based Licensing and Its Obligations

Looking at the regulatory changes in recent years, licensing in Indonesia can no longer be understood in the old way. In the past, permits were often positioned as the "gateway" that had to be passed before a business could operate. Almost all types of businesses were uniformly required to obtain permits first before they could operate. However, since the implementation of the Risk-Based Business Licensing regime, that pattern has begun to shift.

[9] Yati Nurhayati et al., "METODOLOGI NORMATIF DAN EMPIRIS DALAM PERSPEKTIF ILMU HUKUM," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 1–20, https://doi.org/10.51749/jphi.v2i1.14.

This change is not just about procedures, but also involves the underlying legal framework. In Government Regulation Number 5 of 2021, which was later updated thru Government Regulation Number 28 of 2025, licensing is no longer determined solely based on the type of business, but rather on the level of risk of the business activities. This means that the state no longer views all business activities as something that must be strictly controlled from the outset, but rather more selectively depending on their potential impact.

At this stage, licensing is actually starting to shift from the classical concept of preventive control toward a more proportional approach. For businesses with low risk, the licensing obligation is sufficiently fulfilled thru the Business Identification Number (NIB), which functionally is no longer just a permit, but also serves as the identity of the business actor. Meanwhile, for businesses with medium to high risk, the state maintains control mechanisms thru compliance with standards and additional permits.

When examined more theoretically, this approach aligns quite well with the principle of risk-based regulation, where state intervention is adjusted according to the level of risk posed by an activity. In this context, the state no longer adopts an over-regulated stance, but instead tries to position itself more proportionally. This is also often associated with efforts to create ease of doing business without neglecting the protection of public interests.

However, on the other hand, this change in construction also brings consequences for the nature of the licensing obligation itself. If previously permits tended to be absolute and a prerequisite, now their nature has become more layered and conditional. Not all businesses are required to have permits in the same form, and not all obligations must be fulfilled before business activities begin. Here is where deeper questions begin to arise: can licensing in a risk-based system still be positioned as a legal requirement that determines whether an activity can be conducted, or is it shifting toward becoming a more flexible administrative instrument?

In practice, this issue demonstrates normative and implementational complexities that cannot be simplified linearly. For low-risk businesses, the existence of an NIB is often considered sufficient to start business activities. This means that the licensing obligations in this context tend to be administrative and are no longer the main obstacle. However, for higher-risk businesses, these obligations remain more binding and can even determine whether a business activity is legitimate or not. This difference is important because it directly impacts the legal consequences. In the context of administrative law, the failure to fulfilll licensing obligations can lead to administrative sanctions, ranging from warnings to the revocation of licenses. However, when linked to business practices, the consequences do not stop there.

Several cases in the field indicate that obstacles in the OSS system, such as system errors, verification delays, or data synchronization issues, can cause business operators to be unable to meet licensing obligations on time. For example, the OSS disruptions that occurred in several regions, including Sleman, have been reported to have hindered the licensing process since October 2025 and caused business operators difficulties in accessing the system as well as delays in the issuance of business permits, obstructing the licensing process even tho the business operators had already met the substantive requirements. Conditions like this create a situation that cannot be entirely categorized as the fault of the business operators.[10]

In relation to this matter, the nature of the licensing obligation becomes increasingly problematic. Normatively, the obligation must still be fulfilled. However, in fact, its fulfillment is not always within the control of the business operator. This means that licensing obligations in a risk-based system are no longer entirely a strict obligation, but in some conditions can shift to a contingent obligation depending on administrative factors beyond the control of the

[10] "Sistem OSS Bermasalah, Izin Usaha di Sleman Terhambat Sejak Oktober," *Harian Jogja*, 4 Desember 2025, diakses melalui https://jogjapolitan.harianjogja.com/read/2025/12/04/512/1237938/sistem-oss-bermasalah-izin-usaha-di-sleman-terhambat-sejak-oktober

legal subject.

The implications of this condition are quite significant, especially when related to private legal relationships. When a business activity is substantively viable but has not yet obtained administrative approval due to systemic constraints, ambiguity arises regarding the legal status of the activity. Is it still considered invalid? Or can it be tolerated as merely an administrative obstacle?

In a broader framework, this condition indicates that the legal construction of risk-based licensing has not been fully accompanied by clarity regarding the nature of its obligations. On one hand, the state strives to provide flexibility and ease of doing business. However, on the other hand, a system that is not yet fully stable has the potential to create legal uncertainty.

This becomes increasingly relevant when linked to the need for certainty in legal relationships, particularly in contracts. If the licensing obligation does not have a clear character, whether as an absolute condition or merely an administrative obligation, then the legal consequences also become uncertain.

Thus, it can be seen that the legal construction of risk-based licensing is essentially an effort to modernize the licensing system to be more adaptive and proportional. However, in practice, the nature of the obligations inherent in this system still leaves issues unresolved, especially in determining the boundary between administrative obligations and legality requirements that directly impact other legal relationships.

### 1. *New Paradigm of Business Licensing Post Job Creation Law*

The regulatory changes that occurred after the Job Creation Law, in fact, the change is not just in the licensing procedures, but in the way the state views business activities themselves. In the past, the approach was generally uniform; every business essentially had to go thru certain licensing stages before it could operate. The logic is simple: the more control at the beginning, the more potential violations can be prevented. But in practice, such an approach often creates new problems, especially regarding slow processes and overlapping authorities.[11]

After the introduction of the Risk-Based Business Licensing system, that approach began to be abandoned. The state no longer views all business activities as objects that must be controlled in the same way, but begins to differentiate based on the level of risk posed. This change is normatively regulated in Government Regulation Number 5 of 2021, which was later updated thru Government Regulation Number 28 of 2025. From this, it is evident that the direction of licensing policy is indeed intentionally pushed to become more adaptive and less rigid. If understood more slowly, the essence of this system actually lies in risk classification. Each business activity is categorized into low, medium, or high risk. This determination is not arbitrary, but based on the potential impact on certain aspects such as health, safety, the environment, and resource utilization. So, the measure used is no longer "what type of business it is," but "how big the impact is."

For low-risk businesses, the licensing requirements are relatively simple. Business operators only need to have a Business Identification Number (NIB), which in the OSS system serves as both an identity and a basic legality to run a business. This is interesting because the NIB is no longer just an administrative registration number, but has a fairly broad function and in some cases is considered sufficient to start business activities without the need for additional permits.[12]

Unlike that, for medium-risk businesses, the obligations that must be fulfilled do not stop at the NIB. There is something called standard compliance. This means that business operators must ensure that their business activities meet certain standards set by the government. These standards can be related to technical, operational, or safety

[11] Syifa Amanda Salsabiila et al., *KEMUDAHAN PERIZINAN BERUSAHA DENGAN PENERAPAN ONLINE SINGLE SUBMISSION RISK BASED APPROACH (OSS RBA) PASCA UU CIPTA KERJA*, 08, no. 1 (2026).

[12] Salsa Mulyana Sari et al., *NOMOR INDUK BERUSAHA (NIB) JEMBATAN MENUJU KESUKSESAN BISNIS YANG LEGAL DAN TERDAFTAR*, 3, no. 3 (2025).

aspects. In practice, compliance with these standards is often carried out thru a self-declaration mechanism, although there is still a possibility of verification by the government.[13]

Meanwhile, for high-risk businesses, the approach is again stricter. In addition to the NIB and compliance with standards, business operators are also required to obtain technical permits from the relevant authorities. This permit is usually granted after a more in-depth evaluation of the business activity plan. In other words, the higher the risk, the greater the state intervention.

If viewed conceptually, this division actually reflects an effort to apply the principle of proportionality in administrative law. The state no longer imposes the same level of control on all activities, but adjusts the level of supervision according to the level of risk. In the literature, such an approach is often associated with risk-based regulation, which emphasizes both efficiency and effectiveness in regulation.

However, on the other hand, this paradigm shift also brings about several implications that are not always straightforward. One of them is related to the position of the NIB itself. On one hand, the NIB is positioned as a basic permit sufficient for low-risk businesses. But on the other hand, in practice, there are still frequent doubts about whether the NIB is truly sufficient as a legal basis, or if it is still considered "incomplete" by some agencies.

This shows that although the system has normatively changed, in practice, there are still adjustments that have not been fully completed. Not all agencies or even business actors immediately understand this shift in the same way. As a result, differences in interpretation arise, especially in determining when a business is considered to have fulfilled its licensing obligations.

In addition, the implementation of a risk-based system also heavily depends on the accuracy of business classification. If a business is classified as low risk, then the consequences of its obligations will certainly be different compared to if it is categorized as medium or high risk. The

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[13] Tri Mulyani, *Rampai Jurnal Hukum Volume 3 No 1 Maret 2024*, 3, no. 1 (2024).

problem is, in practice, this classification does not always go smoothly. There are situations where business actors feel they belong to a certain category, but the system or relevant authorities place them in a different category.

It appears that the new licensing paradigm does offer convenience, but at the same time, it brings new challenges in its implementation. The flexibility provided actually opens up a wider space for interpretation, which in the end could lead to legal uncertainty if not balanced with consistent implementation. It can be understood that the Risk-Based Licensing system is not merely a simplification of procedures, but a fundamental change in the way the state regulates business activities. Licensing is no longer positioned as an initial obstacle that must be uniformly passed, but rather as a control instrument adjusted to the level of risk. However, in practice, the success of this system highly depends on the consistency of implementation, clarity of classification, and mutual understanding between the government and business operators.

### *2. OSS as an Administrative Tool and Its Implementation Issues*

In the Risk-Based Business Licensing system, the Online Single Submission (OSS) is placed as the main tool in the administration of licensing. Thru OSS, the entire process from the issuance of the Business Identification Number (NIB), compliance with standards, to technical permits is carried out in an integrated manner. Normatively, this system is designed to expedite processes, simplify bureaucracy, and provide legal certainty for business actors.

However, when viewed in practice, that function does not always operate optimally. One of the issues that frequently arises is technical disruptions in the system. The case in Sleman Regency in October 2025 showed that errors in the OSS can significantly hinder the licensing process. Business operators who have administratively met the requirements still cannot obtain permits on time due to system constraints.[14]

[14] "Sistem OSS Bermasalah, Izin Usaha di Sleman Terhambat Sejak

In addition, differences in interpretation between agencies in understanding certain requirements are still found. This causes the process, which should be integrated, to revert back to relying on manual coordination. Added to this, delays in the verification process have caused the issuance of permits in some cases to not meet the expected timeline.

The issue not only affects the administrative aspect but also begins to touch on the realm of private legal relations. In business practice, a business license often becomes a prerequisite for fulfilling obligations in an agreement. When the permit has not been issued, the performance of obligations in the contract is also likely to be delayed. This is where OSS, which is supposed to be an instrument of certainty, can actually create uncertainty. Business actors may already be bound by a contract, such as a distribution, construction, or cooperation contract, but cannot fulfilll their obligations because the necessary permits have not yet been issued by the system. In such conditions, questions arise regarding the legal position of the business actor, whether the delay can be considered a breach of contract, or if it is actually an uncontrollable circumstance.[15]

In this context, OSS is actually in a quite crucial position because it serves as a direct link between the state's administrative policies and the business activities of entrepreneurs. When this system operates optimally, it can expedite the licensing process and provide relatively better legal certainty compared to the previous system. However, on the contrary, when technical disruptions or data synchronization issues occur, the impact is not only administrative but also extends to private legal aspects. This shows that the digitalization of licensing does not completely eliminate risks, but rather shifts their form from conventional

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Oktober," *Harian Jogja*, 4 Desember 2025, diakses melalui https://jogjapolitan.harianjogja.com/read/2025/12/04/512/1237938/sistem-oss-bermasalah-izin-usaha-di-sleman-terhambat-sejak-oktober

[15] Defega et al., *Implikasi Sistem Perizinan Berusaha Berbasis Elektronik (OSS) Bagi Pelaku Usaha*.

bureaucracy to dependence on technology systems. Therefore, in assessing the legal consequences, it is not enough to only look at the formal obligations of business actors, but also to consider the extent to which the state administration system functions effectively in supporting the fulfillment of those obligations. This condition can be linked to the principle of good governance, particularly the principles of legal certainty and precision in the administration of public services. According to *Philipus M. Hadjon*, the state has an obligation to provide administrative services that are not only formally valid but also effective and reliable for the public. When a system like OSS does not function as it should, the state indirectly contributes to the hindrance of citizens' legal activities, including fulfilling their contractual obligations.

From a civil law perspective, this is important because it relates to the fulfillment of performance as stipulated in the agreement. If a party cannot fulfilll its obligations on time, it is generally considered to be in default. However, in the context of OSS, the delay does not always stem from the fault of the party involved, but rather from the state administration system. Thus, there are situations where administrative obligations in public law directly affect the implementation of contractual obligations in private law.[16] When OSS does not operate optimally, the impact does not stop at the delay of permits, but can also disrupt the balance of the agreements that have been made by the parties involved.

This shows that the problem of OSS implementation cannot be viewed merely as a technical issue, but also as a broader legal matter. The instability of the licensing system has the potential to create uncertainty in contract execution, especially when permits are made a primary requirement for performance. Thus, the existence of OSS as an administrative tool has direct implications for civil law, particularly in terms of contract execution. Therefore, a clearer understanding is needed regarding how the law responds to delays or failures

[16] Nida Silvia Lestari and Titi Stiawati, *IMPLEMENTASI KEBIJAKAN SISTEM ONLINE SINGLE SUBMISSION PADA PELAYANAN PERIZINAN BERUASAHA DI DPMPTSP KABUPATEN SERANG*, 15 (2024).

in licensing caused by the system, so as not to automatically disadvantage one party in a contractual relationship.

### 3. *The Nature of Permit Obligations: Administrative or Material?*

In practice, the obligation of permits is often understood as the main requirement before a business activity can be carried out. However, in the context of Risk-Based Business Licensing, this position is no longer entirely straightforward. In analyzing the relationship between licensing and the validity of agreements, it is important to distinguish between administrative violations and substantive violations. *Van Apeldoorn* states that violations of formal legal norms do not always affect the validity of the substance of legal relationships. In line with that, *Philipus M. Hadjon* emphasizes that administrative law essentially regulates authority and procedures, so administrative violations do not automatically nullify rights and obligations in private legal relationships.

If referring to Article 1320 of the Civil Code, the validity of an agreement is determined by four conditions, namely consent, capacity, a specific object, and a lawful cause. In this context, permission is often associated with the element of "lawful cause." This means that if a business activity is contrary to the law, the agreement made can be considered invalid.[17] However, the failure to obtain permission does not always mean it is materially against the law. It is necessary to distinguish between:

- Material breach, which is when the subject of the agreement is indeed prohibited by law; and
- Administrative breach, which is when the activity is fundamentally allowed but has not yet met formal procedures such as licensing.

In many cases, the absence of a permit is more accurately categorized as an administrative violation. This is especially evident in the OSS system, where delays in permit

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[17] Ananda Bunga Neesya et al., *TINJAUAN YURIDIS TERHADAP SYARAT KEABSAHAN PERJANJIAN DALAM HUKUM KONTRAK INDONESIA*, 13, no. 5 (2025).

issuance can be caused by technical constraints, rather than the business object being prohibited. Thus, the agreement made still meets the elements of Article 1320 of the Civil Code, so it is not automatically void.

This approach is also in line with Article 1338 of the Civil Code, which emphasizes the principle of freedom of contract and the principle of *pacta sunt servanda*. As long as the agreement is made legally, it remains binding on the parties. In this case, permission is more appropriately positioned as a condition for the performance of the obligation, not a condition for the validity of the agreement.[18] From the perspective of administrative law, the obligation for permits is regulated in Government Regulation Number 5 of 2021 in conjunction with Government Regulation Number 28 of 2025, which differentiates the level of obligation based on business risk. For low-risk businesses, a Business Identification Number (NIB) is sufficient, whereas for medium and high-risk businesses, compliance with standards or technical permits is required. This difference shows that not all permits carry the same weight in determining the legality of business activities.[19]

However, under certain conditions, permission can be material. This occurs when, without that permit, the business activity cannot be conducted at all. In such a situation, the absence of a permit can imply the failure to fulfilll the lawful cause element, potentially affecting the validity of the agreement. Thus, the nature of the licensing obligation cannot be viewed as absolute. In a risk-based licensing system, permits are generally administrative in nature, so they do not automatically void agreements. However, under certain conditions, permits can have a material nature if they

[18] Didiek Wahju Indarta et al., "Pemisahan Kepemilikan Tanah Dan Bangunan Dalam Perjanjian Jual Beli Ditinjau Dari Pasal 1320 Kuh Perdata," *Jurnal Hukum Sasana* 12, no. 1 (2026): 75–86, https://doi.org/10.31599/sasana.v12i1.4701.

[19] Bakhrur Rokhman et al., "PENYELENGGARAAN PERIZINAN BERUSAHA BERBASIS RISIKO MELALUI SISTEM ONLINE SINGLE SUBMISSION (OSS)," *Journal of Social and Economics Research* 6, no. 1 (2024): 1562–80, https://doi.org/10.54783/jser.v6i1.399.

are directly related to the legality of the substance of business activities.

## C. The Validity of Business Agreements Before the Issuance of Permits According to Article 1320 of the Civil Code

In business practice, it is not uncommon for agreements to be made before all business permits are fully issued. This is usually driven by the need for efficiency and certainty in cooperation. However, from a civil law perspective, this condition raises the question of whether the agreement is legally valid or if it is flawed because the permits have not yet been obtained.

Returning to Article 1320 of the Civil Code, which stipulates four conditions for a valid agreement, namely: the agreement of the parties, capacity, a specific object, and a lawful cause. These four elements must be examined one by one in the context of the agreement made before the permit is issued.[20]

First, from the perspective of agreement and competence, it generally does not become an issue. As long as the parties agree and have legal capacity, these two elements remain fulfilled even if the permit has not been issued. Secondly, regarding specific objects, business agreements are usually clear, such as distribution, construction, or investment cooperation. As long as the object can be determined and is not fictitious, this element is also not affected by the absence of a permit. The main issue actually lies in the element of a lawful cause. Here is where the assumption often arises that without permission, an agreement automatically becomes invalid. However, this assumption needs to be examined more carefully. Not all unlicensed activities are substantially contrary to the law. In

[20] Andita Putri Nabila and Gunawan Djayaputra, "Urgensi Pelaksanaan Kebebasan Berkontrak dalam Merumuskan Perjanjian Guna Mewujudkan Keadilan Bagi Para Pihak," *UNES Law Review* 6, no. 2 (2023): 4072–80, https://doi.org/10.31933/unesrev.v6i2.1246.

many cases, the permit has not been issued not because the business object is prohibited, but because the administrative process is still ongoing.[21]

This approach is in line with the distinction between material and administrative violations. If the object of the agreement is indeed prohibited by law (for example, illegal business), then it is clear that the element of lawful cause is not fulfilled. However, if the activity is fundamentally permitted, but the permit is not yet completed, then it is more accurately understood as an administrative obstacle, not a defect in validity.

This is also supported by Article 1338 of the Civil Code, which states that a legally made agreement is binding as law for the parties (pacta sunt servanda). This means that as long as the four conditions in Article 1320 are met, the agreement remains binding, even tho its implementation may be delayed due to the permit not being issued yet.[22]

In the context of risk-based licensing, this is becoming increasingly relevant. Based on Government Regulation Number 5 of 2021 jo. Government Regulation Number 28 of 2025, not all business activities require complete permits at the beginning. For low-risk businesses, a Business Identification Number (NIB) is sufficient, while for medium and high-risk businesses, additional permits can be fulfilled gradually.[23] This shows that positive law itself does not always place permission as an absolute initial requirement. It can be understood that a business agreement made before the permit is issued is essentially still valid as long as it meets the provisions of Article 1320 of the Civil Code. The

[21] Deanna Fitri Roshandi, "Analisis Keabsahan Perjanjian Lisan Menurut Hukum Perdata di Indonesia," *Konsensus : Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 2, no. 4 (2025): 114–21, https://doi.org/10.62383/konsensus.v2i4.1195.

[22] Sri Istiawati, "KEDUDUKAN PERJANJIAN DALAM KITAB UNDANG -UNDANG HUKUM PERDATA DALAM SENGKETA KONSUMEN," *Juripol* 4, no. 1 (2021): 208–16, https://doi.org/10.33395/juripol.v4i1.11034.

[23] Fatma Ulfatun Najicha et al., *Reformulasi Kebijakan Perizinan Berusaha di Indonesia: Tinjauan Terhadap Pencabutan PP No. 5 Tahun 2021 dan Penerbitan PP No. 28 Tahun 2025*, 4 (2025).

absence of a permit has more impact on the execution of the agreement, not its validity. However, the parties must remain cautious, because if the required permit is ultimately not obtained, the execution of the agreement may be disrupted and could potentially lead to disputes, including claims of default.

### 1. *Agreement and Competence of the Parties in a Contract Without Authorization*

In assessing the validity of an agreement made before the issuance of a permit, it is important to first separate the subjective and objective elements as regulated in Article 1320 of the Civil Code. The elements of agreement and capacity fall into the category of subjective conditions, so their assessment focuses on the parties involved, not on the object or the administrative legality of the business activities. From the perspective of agreement, as long as the parties reach an agreement without coercion, error, or fraud as regulated in Article 1321 of the Civil Code, this element remains fulfilled. Based on the theory of privity of contract, a contract only binds the parties who make it and does not directly involve third parties, including the state, unless stipulated by law. This shows that contractual relationships are fundamentally within the realm of private law. In practice, the existence or absence of a business license does not directly affect the existence of the agreement. This means that even if the permit has not been issued, as long as the parties freely agree to the contents of the agreement, the terms of the agreement remain valid.

The same applies to the element of capacity. Based on Article 1329 and Article 1330 of the Civil Code, what is meant by capacity is the ability of an individual or legal entity to perform legal acts. As long as the parties do not fall into the category of being incompetent (for example, being underage or under guardianship), they are considered to have the capacity to make an agreement. In this context, a business license is not a determining factor for the legal capacity of the parties.[24]

[24] R. Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2005), hlm.

Thus, it can be understood that the non-fulfillment of a business license does not directly affect the two subjective elements. The permit is more related to the legality of business activities (objective element), not to the will or capacity of the parties in making the agreement.

This approach is important to avoid mistakes in assessing the validity of a contract. If permission is equated with a subjective condition, then any agreement made before the permission is issued will be considered defective from the outset. However, doctrinally, defects in subjective conditions imply that the agreement can be annulled, not void by law. Meanwhile, the issue of permits generally does not touch on the aspects of the will or capacity of the parties.

Therefore, in the context of a contract without permission, as long as the agreement and competence are met, the agreement remains valid from a subjective standpoint. The issues that may arise are more related to the execution of the agreement, not its validity from the outset.

## 2. *Specific Objects and Their Relation to Business Licenses*

In the context of Article 1320 of the Civil Code, the element of a specific object is often misunderstood when related to business licensing. The question that usually arises is whether an agreement fails to meet the requirement of a "specific object" simply because the business activity does not yet have a permit.

If we look at the formulation of Article 1333 of the Civil Code, what is meant by a specific object is that the object of the agreement must be clearly defined, at least determinable. In other words, what is being assessed here is the clarity regarding what is being promised, such as goods, services, or specific achievements, not the administrative status of the activity. As stated by R. Subekti, an object of an agreement does not have to exist concretely at the time the agreement is made, as long as its type and nature can be determined. In practice, business agreements generally already have a fairly clear object, such as distribution cooperation, project

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development, or the provision of certain services. Although the business license has not been issued, the object of the agreement can still be determined. Thus, the absence of a permit does not automatically make the object of the agreement "uncertain."

It is important to distinguish between the clarity of the object and the legality of the implementation. Certain objects speak about what is promised, while business permits are more related to whether the activity can be carried out administratively. So, they are in different realms. However, the issue becomes more interesting when related to the type of agreement. In civil law, a distinction is made between obligatoir agreements and real agreements. In an obligatoir agreement, the agreement only creates a legal relationship in the form of rights and obligations (not yet reaching execution or delivery). In this context, a business license does not significantly affect the validity of the object. The agreement remains valid because the object is clear, even tho its execution may be delayed until the permit is obtained. On the other hand, in real agreements, the element of delivery or execution becomes an important part of the birth of legal consequences. In this condition, permission can have a more significant role. If the agreed-upon activity cannot be carried out without permission, then the absence of permission can hinder or even thwart the realization of that object.[25]

Nevertheless, it should be emphasized that the obstacles are more related to the implementation of the agreement, not the clarity of its object. In other words, the object of the agreement still exists and can be determined, but it has not yet been realized due to administrative constraints. This approach is also consistent with the risk-based licensing system in Government Regulation Number 5 of 2021 jo. Government Regulation Number 28 of 2025. Not all business activities require complete permits from the start, so it is not accurate to directly associate the absence of permits with the ambiguity of the subject of the agreement.

Thus, it can be concluded that the object of the

[25] R. Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2017), hlm. 79–81.

agreement does not become uncertain merely because the business license has not been issued. The absence of a license has more impact on the implementation stage, especially in real agreements, but it does not eliminate the clarity of the object in the agreement itself.

### 3. *The Halal Cause (Oorzook) as an Entry Point for Permission Influence*

Compared to other elements in Article 1320 of the Civil Code, the element of a lawful cause is most relevant when linked to the issue of business permits. At this stage, it becomes more specific whether a business activity without a permit can be considered a prohibited cause.

Pasal 1335 KUHPerdata menyatakan bahwa perjanjian tanpa cause or with a false or forbidden cause has no legal force. Then Article 1337 of the Civil Code states that a cause is considered unlawful if it contradicts the law, morality, or public order. From these two articles, it is evident that the measure of "the legality or illegality of the cause" lies in the substance of the promised activity. If examined carefully, not all unauthorized activities automatically contradict the law in the sense of Article 1337. It is necessary to distinguish between:

1. activities that are substantially prohibited by law, and;
2. activities that are fundamentally allowed, but have not yet fulfilled administrative obligations such as permits.

For the first category, such as businesses that are indeed prohibited (illegal trade, activities without legal basis), it is clear why they are not halal. The agreement in this context is null and void by law because it directly contradicts the law. However, for the second category, the situation is different. In many cases, business activities are actually permitted by law, but they do not yet have permits due to incomplete administrative processes. In this context, it is difficult to directly state that the reason for the agreement is prohibited. The issue is not the substance of the activity, but its administrative compliance.[26]

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[26] Tri Wahyu Surya Lestari and Lukman Santoso, "KOMPARASI SYARAT KEABSAHAN 'SEBAB YANG HALAL' DALAM PERJANJIAN

When examined more comprehensively, the determination of whether a cause can be categorized as haram should not stop at a purely formal approach. In practice, there is a tendency to equate the absence of a permit with a direct violation of the law, even tho the two are in different realms. Business activities that are substantively permitted by law but do not yet have permits due to administrative processes cannot automatically be classified as illegal. In this context, it is necessary to distinguish between illegality in substance and illegality in procedure. As explained by Mariam Darus Badrulzaman, not every violation of administrative provisions results in the annulment of an agreement; rather, it must be seen whether the violation touches on the substantive aspects prohibited by law. The first relates to the prohibition against the type of activity itself, while the second pertains more to the procedures or mechanisms that have not been fulfilled.[27] This difference is important because only substantive violations should impact the annulment of the agreement. Thus, an overly rigid approach has the potential to obscure the very purpose of the law itself, which is to create certainty and justice in contractual relationships. This view aligns with Subekti's thinking, which emphasizes that the lawful cause in an agreement should not be understood narrowly as mere administrative compliance, but rather should be viewed in light of the legal objectives that the parties wish to achieve. Subekti stresses that the focus should be on whether the content and purpose of the agreement contradict the law, morality, or public order.

This approach is important, especially when linked to the Risk-Based Licensing system. Based on Government Regulation Number 5 of 2021 jo. Government Regulation Number 28 of 2025, not all business activities need to wait for complete permits before commencing. For low-risk

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KONVENSIONAL DAN PERJANJIAN SYARIAH," *YUDISIA : Jurnal Pemikiran Hukum dan Hukum Islam* 8, no. 2 (2018): 281, https://doi.org/10.21043/yudisia.v8i2.3240.

[27] Mariam Darus Badrulzaman, *Hukum Perikatan dalam KUH Perdata* (Bandung: Citra Aditya Bakti, 2001), 94–96.

activities, an NIB is sufficient, and even for certain risks, compliance with standards can be achieved after the business is operational. This shows that positive law itself does not always position permits as an absolute requirement from the beginning.[28]

Thus, if an agreement is made for a business activity that is legally permitted, the element of a lawful cause is essentially still fulfilled, even if the permit has not been issued. The absence of a permit is more accurately understood as an administrative violation that may result in administrative sanctions, rather than the annulment of the agreement.

However, there still needs to be a limit. In conditions where permission is an absolute requirement to carry out an activity (for example, a high-risk business that cannot operate at all without permission), the absence of permission can approach the realm of material violation. In such situations, as related to the concept of lawful cause in Article 1337 of the Civil Code, an agreement can be considered contrary to the law if its causa violates imperative legal provisions, as explained in the contract law doctrine by *R. Subekti* and *Mariam Darus Badrulzaman*. In line with that, in contract theory, there is also a distinction between substantive and administrative violations, where only violations that touch on substantial legal prohibitions imply the annulment of the agreement, as reflected in literature such as Anson's Law of Contract.[29] From here, it is evident that the element of "lawful cause" becomes the main entry point to assess the extent to which consent affects the validity of the agreement. It cannot be directly generalized. The assessment must consider whether the business activity is fundamentally permitted, whether the absence of a permit is merely administrative, or whether it has already touched upon substantial legal

[28] Syarah Syam Amir et al., *IMPLICATIONS ARISING IN THE EASE OF ISSUING BUSINESS LICENSES BASED ON GOVERNMENT REGULATION NUMBER 5 OF 2021 ABOUT RISK-BASED APPROACH FOR BUSINESS LICENSING*, n.d.

[29] Jack Beatson, Andrew Burrows, dan John Cartwright, *Anson's Law of Contract*, 30th ed. (Oxford: Oxford University Press, 2016), 361–365.

prohibitions.

With this approach, it can be concluded that business activities without permission cannot always be categorized as a prohibited cause. In many cases, the agreement remains valid because the cause is permissible, while the issue of permission more affects the implementation and potential administrative liability.

## D. Implications of Changes, Delays, or Revocation of Licenses on the Implementation of Agreements and the Risk of Breach of Contract

The issue of permits only becomes serious when the agreement is in the implementation stage. As long as the permit is still in process or even changes/cancellation occurs midway, the impact directly affects the parties' ability to fulfilll their obligations. In this context, the issue that arises is no longer about the validity of the agreement, but whether the failure to fulfilll obligations can be categorized as a breach of contract.

In civil law, default is essentially regulated thru Article 1238 of the Civil Code (negligence after a warning/somasi) and Article 1243 of the Civil Code (obligation to compensate for the failure to fulfilll an obligation). This means that a party is considered to be in default if they do not fulfilll their obligations as agreed, even tho they are legally in a position to do so.[30] *In R. Subekti's* view, default essentially requires the presence of negligence that can be attributed to the debtor. The problem is, in the context of licensing, the failure to fulfilll obligations is often not entirely due to the debtor's fault. There are conditions where permits change due to regulatory adjustments, are delayed due to system constraints (such as OSS), or are revoked by the government for certain reasons.[31] These three situations can cause the execution of the agreement to become impossible or at least delayed, even tho the parties had good intentions from the beginning.

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[30] Siti Anisah, "Wanprestasi dan Force Majeure dalam Perspektif Hukum Perdata Indonesia," *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020): 312–315.
[31] R. Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2005), 45–47.

If examined further, such conditions intersect with the concept of force majeure in Articles 1244 and 1245 of the Civil Code. In the provision, it is emphasized that the debtor is not obliged to pay compensation if they cannot fulfilll their obligation due to circumstances beyond their control. According to Subekti, *overmacht* is a situation where the debtor cannot fulfilll their obligation due to an event beyond their control.[32] In this context, it is necessary to analyze whether changes or delays in permits can be classified as force majeure.

The assessment cannot be done in general terms, but must be viewed based on concrete conditions. It is interesting to see that the concept of force majeure in civil law is actually quite flexible to accommodate the developments of modern situations, including those related to technology-based administrative systems like OSS. Although traditionally force majeure is often associated with natural events or extraordinary occurrences, the development of practices shows that administrative obstacles beyond the control of the parties can also be considered within this category, as long as they meet the elements of being unpredictable and unavoidable. This opens up the interpretation that system failures or sudden policy changes do not always have to be attributed to the debtor as a form of fault. If the delay in obtaining permits is caused by factors beyond the control of the parties, such as disruptions in the OSS system or unpredictable policy changes, then there is sufficient basis to categorize it as an administrative force majeure. In this position, the debtor cannot immediately be considered in default.[33]

On the contrary, if the permit obstacle occurs due to the negligence of the business operator themselves, such as not meeting the requirements or not processing the permit properly, then the force majeure reason becomes irrelevant. In this situation, the risk remains with the party concerned and the potential for breach of contract remains open.

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[32] R. Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2005), 55–57.
[33] Didit Darmawan et al., "Analisis Yuridis Normatif Klausul Force Majeure dalam Perjanjian Bisnis di Indonesia," *ISSN* ., n.d.

Moreover, the revocation of the license carries more serious implications. When the license is revoked, the business activities that are the subject of the agreement lose their legal basis to be carried out. As a result, the execution of the contract becomes impossible. In such conditions, the contractual relationship can end thru the mechanism of contract termination, either due to impossibility of performance or thru mutual agreement of the parties.

From the perspective of administrative law, changes or revocations of permits are part of the government's authority as long as they are carried out in accordance with procedures. However, from the perspective of civil law, such actions can disrupt the balance of the contract. One party may be disadvantaged, especially if they have no control over the event. Thus, the implications of changes, delays, or revocation of permits on agreements can be formulated as not automatically canceling the agreement but can hmajeurer obstruct the performance of obligations and, under certain conditions, can serve as a defense against allegations of default, especially if they meet the elements of force majeure.

### *1. Delay of Permit as Force Majeure or Not*

Delays in permits are often directly linked to default. However, not all delays automatically become the debtor's fault. This is where the relevance of the concept of *overmacht* or force majeure becomes important to analyze. Normatively, Article 1244 and Article 1245 of the Civil Code provide a space for exemption from liability if the debtor cannot fulfilll their obligation due to circumstances beyond their control. In essence, as long as the failure is not due to negligence and cannot be predicted or avoided, the debtor is not obliged to compensate for the loss.[34]

If related to licensing, delays can manifest in several forms. One of the most common occurrences is technical disruptions in the OSS system. In a risk-based business licensing system, licensing obligations are determined based

[34] Vita Febiyanti, *TINJAUAN HUKUM TERHADAP KONSUMEN YANG MELAKUKAN WANPRESTASI PEMBELIAN KREDIT SECARA IN-HOUSE*, 9, no. 1 (2020).

on the level of risk associated with the business activity. The higher the level of risk of a business, the more complex the administrative and technical requirements that must be met. This condition directly affects the potential for delays in the licensing process. As for the classification of risk levels and licensing obligations.

Tabel 1. Classification of Risk Levels and Licensing Obligations

| **Business Risk Level** | **Form of Licensing Obligations** | **Nature of Obligation** | **example** |
| --- | --- | --- | --- |
| Low | Nomor Induk Berusaha (NIB) | Administrative (identity requirements) | Consulting Office, Small Grocery Store |
| Medium | NIB + Fulfillment of standards | Administrative with verification | Restaurant, Medium-scale garment factory |
| High | NIB + Technical permits from the relevant authorities | Administrative and Material | Power plants, mining |

In this situation, business operators have essentially submitted their permits and met the requirements, but the process is hindered by system errors or verification delays. As reported by *Kompas (2023)*, the OSS system often experiences disruptions in practice, such as being difficult to access and encountering errors during the permit application process, which causes delays in the licensing process.[35]

[35] Kompas.com, "Sistem OSS Kerap Dikeluhkan Pelaku Usaha karena Error dan Sulit Diakses," *Kompas.com*,

Obstacles like this are beyond the control of the business operator, so it can be considered as administrative force majeure, because the source of the problem comes from the state system, not from the debtor.

In addition, delays can also occur due to regulatory changes. In practice, policy adjustments often impact ongoing licensing processes, even requiring business operators to readjust their applications. This phenomenon is reflected in Bisnis's (2023) reporting, which highlights that policy changes in the OSS system prompt business operators to update their data and meet the new requirements, potentially slowing down the licensing process.[36] If the change could not be predicted at the time the agreement was made, then this situation can be understood as a relative force majeure, because the performance is delayed not due to the fault of the parties.

In contrast, the revocation of permits by the government needs to be viewed more carefully. If the revocation occurs due to violations committed by the business operator, it clearly cannot be considered as force majeure. However, if the revocation is carried out due to policies or factors beyond the fault of the business operator, then the condition may approach the category of force majeure, as the performance of the obligation becomes impossible.

From various conditions, it is evident that the assessment of force majeure cannot be done in general, but must consider whether the obstacle is truly beyond the debtor's control, unpredictable from the outset, and unavoidable despite maximum effort. If these elements are met, then the delay in permission can be used as a defense against the accusation of default. Conversely, if the delay occurs due to the negligence of the entrepreneur, then the

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2023, https://www.kompas.com, diakses 22 April 2026, pukul 13.38 WIB

[36] Bisnis.com, "Perubahan Regulasi OSS Bikin Pelaku Usaha Harus Menyesuaikan Data Perizinan," *Bisnis.com*, 2023, https://www.bisnis.com, diakses 22 April 2026, pukul 14.35 WIB.

reason of force majeure cannot be used. Thus, the delay in obtaining the permit does not automatically constitute a force majeure, but it can be classified as *overmacht* as long as it meets the criteria in Articles 1244 and 1245 of the Civil Code. This assessment must be conducted on a case-by-case basis to avoid harming either party while maintaining balance in the contractual relationship.

### *2. Contractual Responsibilities of the Parties in Situations of Permit Uncertainty*

In an uncertain licensing situation, the main issue is no longer just the existence or absence of a license, but how the parties share responsibility for the arising risks. In practice, agreements are often made while the permit is still in process, so the parties are indirectly aware of the potential uncertainty. In this case, the fundamental principle that should be adhered to is that every agreement must be executed in good faith, as emphasized in Article 1338 paragraph (3) of the Civil Code. Good faith here does not only mean not having bad faith, but also includes an active obligation to strive to fulfilll what has been promised. The principle of good faith plays an important role in determining the responsibilities of the parties in an agreement. *Ridwan Khairandy* emphasized that good faith applies not only during the execution of the contract but also from the stage of forming the agreement[37] Therefore, parties that have made reasonable efforts to fulfilll their administrative obligations should not be considered in breach of contract if obstacles beyond their control occur. In the context of licensing, this means that the party responsible for obtaining the license must make a truly reasonable and maximum effort. If the party is passive or negligent, then the delay in obtaining the permit cannot be used as an excuse to be exempt from responsibility.[38]

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[37] Ridwan Khairandy, *Hukum Kontrak Indonesia dalam Perspektif Perbandingan* (Yogyakarta: FH UII Press, 2013), hlm. 191–193.

[38] Dwi Atmoko and Noviriska Noviriska, "Kepastian Hukum dalam Transaksi Online: Peran Asas Itikad Baik Berdasarkan Hukum Perdata Indonesia," *Binamulia Hukum* 13, no. 2 (2024): 421–28.

In a contractual relationship, the allocation of risk can actually be determined from the outset thru the agreement clause. However, in many cases, the contract does not detail the risk of permit delays. As a result, when obstacles occur, there is ambiguity regarding who should bear the consequences. In such conditions, civil law redirects back to the general principle, which is that the party who fails to fulfilll their obligation due to their fault can be held accountable. This is in line with Article 1239 of the Civil Code, which regulates the obligation to fulfilll performance, as well as Article 1243 of the Civil Code, which opens the possibility of a compensation claim in the event of default.[39] Thus, if one party neglects to obtain the permit, for example, by not completing the documents or not following the proper procedures, they can be held liable for damages by the other party who is harmed.

On the contrary, if both parties are aware from the beginning that the permit is still in process, it can be said that certain risks have been mutually acknowledged. In such conditions, the distribution of risk becomes more flexible. Not immediately can one party be fully held responsible, especially if the delay occurs beyond their control.[40]

On the other hand, it is also important to see whether the parties continue to show good faith in the execution of the agreement. For example, whether they are trying to find solutions, adjusting schedules, or even renegotiating the contract. Such an attitude becomes an important indicator in assessing whether a party is truly responsible or negligent.[41] Thus, in situations of permit uncertainty, contractual responsibility cannot be viewed rigidly. Its determination depends on several factors, namely the presence or absence

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[39] T. N. A. Narwadan, S. Suyani, dan E. F. Thalib, *Buku Ajar Hukum Perdata* (Jakarta: 2025), hlm. 45–47

[40] D. R. Kartikawati, *Hukum Kontrak* (Jakarta: 2019), hlm. 112–115, https://repository.unkris.ac.id/id/eprint/2972/

[41] RR Padhilla dan Asmarani Ramli, "Perlindungan Hukum antara Pendaftar Pertama dengan Pembeli Beritikad Baik Pada Aspek Kepastian Hukum dalam Sengketa Sertipikat Ganda," *Bookchapter Hukum dan Keadilan*,2025.

of fault, the extent of efforts made, and how the parties conduct themselves in good faith in the execution of the agreement. If negligence is proven, the compensation mechanism can still be applied. However, if the obstacle occurs beyond control and the parties have acted in good faith, then the imposition of responsibility needs to be considered more proportionally.[42]

### *3. Reconstruction of Civil Law and Administrative Law Relations for Legal Certainty*

If we look at the overall discussion, the main issue actually does not lie in the validity of the agreement, but rather in the lack of synchronization between administrative law (licensing) and civil law (contracts). Licenses can change, be delayed, or even revoked by the state, while contracts remain binding on the parties based on Article 1338 of the Civil Code. In this context, tensions arise that cannot always be resolved with the current legal approaches.

This is where it becomes important to start thinking about reconstructing the relationship between the two. One relevant idea is the use of the concept of dependency/relational concept, which is the functional relationship between permits as public law instruments and contracts as private law instruments. So far, both have often been positioned separately, whereas in modern business practice, they actually depend on each other.

In this context, it is necessary to emphasize that in certain types of businesses, especially those based on medium and high risks as regulated in Government Regulation Number 5 of 2021 in conjunction with Government Regulation Number 28 of 2025, the existence of permits is not only administrative but also has direct implications for the continuity of contracts. In other words, the law needs to provide space to acknowledge that changes in permit status

[42] R. Zulianty dan A. Sudiro, "Tanggung Jawab Para Pihak dalam Perjanjian Sewa Pembiayaan Excavator di Indonesia," *Kertha Semaya: Journal Ilmu Hukum* (2025), hlm. 6–8, https://ejournal3.unud.ac.id/index.php/kerthasemaya/article/view/1411

can more explicitly affect the execution and even the continuity of agreements.

In the framework of legal reconstruction, the legal system approach as proposed by *Lawrence M. Friedman* becomes relevant to use. Friedman states that the legal system consists of three main elements, namely legal structure, legal substance, and legal culture.[43] In this context, risk-based licensing is part of the structure and substance of administrative state law, while agreements are part of the substance of civil law. The lack of synchronization between the two indicates a disharmony in the legal system, necessitating a reconstruction that is not only normative but also systemic to create legal certainty and justice. Furthermore, the progressive legal approach as proposed by Satjipto Rahardjo emphasizes that law should be oriented toward substantive justice, not merely formal certainty.[44] In this context, the application of licensing regulations should not overlook social realities and the interests of the parties in the contract.

However, the acknowledgment of this connection should not immediately disadvantage one party, especially the innocent party. This is where legal protection becomes important. The principle of good faith in Article 1338 paragraph (3) of the Civil Code actually provides a foundation, but in practice, it is often not enough to protect parties affected by administrative policies beyond their control. for example, when a business operator cannot fulfilll contractual obligations due to delays in the issuance of permits thru the OSS system or changes in licensing policies by the government, while the opposing party still demands performance or even files a breach of contract claim. Therefore, a more concrete reconstruction can be directed toward two things. First, there is a need to strengthen the norm either thru judicial interpretation or the formation of regulations that recognize that changes or revocation of

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[43] Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 15–17.

[44] Satjipto Rahardjo, *Hukum Progresif: Hukum yang Membebaskan* (Jakarta: Kompas, 2009), 5–7.

permits can be the basis for contract adjustments, rather than being immediately considered a breach of contract. Second, it should be emphasized that the party without any contribution to the failure of the permit should not bear the full burden of compensation.

This approach is also in line with the development of modern law, which increasingly emphasizes balance and contractual justice, rather than just formal certainty. In some contemporary contract law literature, protection for parties disadvantaged by external factors is becoming increasingly important, especially in complex business relationships that depend on state regulations. Thus, the reconstruction of the relationship between administrative law and civil law needs to be directed toward recognizing the interconnection between the two while simultaneously strengthening the protection for the parties involved. Without it, uncertainty will continue to arise, and contracts as instruments of legal certainty will lose their function in practice.

## D. Conclusion

The validity of a business agreement before the fulfillment of risk-based licensing is fundamentally determined by the fulfillment of the valid agreement requirements as regulated in Article 1320 of the Civil Code, namely the agreement of the parties, the capacity of the parties, a specific object, and a lawful cause. In the context of risk-based business licensing, the existence of a permit is not always a determining factor for the validity of an agreement, but rather more related to the implementation aspects of business activities. Therefore, agreements made before the issuance of permits generally remain valid and binding on the parties as long as the purpose and object of the agreement do not contravene the law, morality, or public order. The absence of a permit at a certain stage is more accurately understood as an administrative issue that can lead to administrative consequences for the business operator, rather than as a reason that automatically nullifies the agreement. However, if the permit is an absolute requirement that determines the legality of a business activity, then the absence of a permit can affect the execution and even the continuity of the contractual relationship that has been established.

Delays, changes, postponements, or revocations of permits in the implementation of business activities cannot always be categorized as a form of default. In practice, various licensing obstacles can arise due to factors beyond the control of the parties involved, such as disruptions in the OSS system, regulatory changes, adjustments in government policies, or other administrative constraints that could not be predicted at the time the agreement was made. Such conditions indicate that delays in licensing under certain circumstances can be classified as administrative force majeure because they meet the criteria of unavoidable circumstances and are not caused by the debtor's fault. Therefore, the party that cannot fulfilll its obligations due to such obstacles cannot automatically be considered in default. On the other hand, if the delay in obtaining the permit occurs due to the negligence of the business operator themselves, such as failing to complete the requirements, not following the applicable procedures, or not making the necessary efforts, then the *overmacht* reason cannot be used and the party concerned can still be held accountable based on civil law provisions.

The contractual responsibilities of the parties in agreements related to licensing must be assessed proportionally, taking into account the presence or absence of fault, the level of effort made, and the implementation of the principle of good faith during the contractual relationship. The principle of good faith not only requires the parties to avoid actions that harm others but also mandates active efforts in fulfilling the agreed obligations, including in the management of licensing. In conditions of licensing uncertainty, the imposition of responsibility cannot be done rigidly because it must consider administrative factors that are beyond the control of the parties. Therefore, the existence of a risk-sharing clause in the agreement becomes important to provide legal certainty and prevent disputes from arising in the future. Thus, the determination of contractual liability in cases of permit delays must be based on a balance between legal certainty, fairness, and protection for the party that has made efforts to fulfilll its obligations in good faith.

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