

The Concept of Building Function Feasibility Certificate to Realize SDGs in the Job Creation Law Paradigm

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Abstract. The complicated permit for a Function Worthy Certificate at the regional level becomes an obstacle to the operational process of building construction. The Job Creation Law comes with a Function Worthy Certificate To function at the central level to simplify and accelerate investment for the benefit of the community. This study aims to analyze the building reliability licensing process in the Job Creation Law to obtain the most effective building management, licensing mechanism for realizing reliable buildings with a vision of sustainable development for the community welfare. This type of research is normative juridical with a statutory approach. The research results show that the simplification of the building function feasibility certificate licensing in the Job Creation Law becomes the central government authority with verification carried out by the local government. The most effective licensing mechanism is to create a building certified testing standard to supervise verification at the regional level through a one-door integrated information system integrated between the central and local governments. Besides, it is also necessary to confirm the application of administrative sanctions by establishing a building reliability supervisory board. This research is expected to be useful in building law, state administrative law, and licensing law.

Keywords: Certificate of building function feasibility certificate, job creation law, sustainable development

1 Introduction

The Association for the Development of Housing and Settlements throughout Indonesia (Apersi) stated that the rules regarding the guideline for Function Worthy Certificate (SLF) in the regions are still not in harmony with one another that leads legal uncertainty [1]. Apart from the perspective of the property developer, community is also in disadvantage due to the unreliability of the building, for example the collapse of the IDX Building in Jakarta on January 15, 2018 which injure 77 people that later turned out caused by a negligent supervision of the certificate of building function worthiness [2]. According to Apersi, the uniformity of central and regional government regulations related to Function Worthy Certificate Has created a problem. The Function Worthy Certificate (SLF) as mandated by Law Number 28 of 2002 concerning Buildings grants the regional government an authority to form a regional level regulations regarding the Function Worthy Certificate(SLF) but until 2019 there are only 93 districts/cities that had issued a regional regulations or mayoral regulation about Buildings and

only 48 Regencies/ Cities that had issued building function worthiness certificate [3]. Several problems related to the feasibility of buildings actually arise due to the complicated building permit system in which the authority to grant building permits (IMB) and Function Worthy Certificate (SLF) are at the regional level that are not yet ready, this is evidenced by the absence of regulations at the regional level which also causes obstacles in the building construction process.

Various studies have been carried out in Building function worthiness certificates. Hamka conducted a study on the Analysis of Building Bureaucratic Service Licensing Behavior in Parepare City with the results of the research stating that building permit services still use transactional bureaucracy characterized by a lack of information related to licensing mechanisms, time spent in terms of licensing also costs a lot of money. In addition, from the aspect of bureaucratic professionalism, service discrimination and service interventions still occur. From the aspect of responsiveness, the authorities are less responsive to community concerns, especially in administrative requirements [4]. Research done by Mustaghfiri on the quality of Building Construction Permit Issuance Services at the Surakarta Investment Service and One Stop Integrated Services with the results of research showing that licensing services are conventional and still do not meet the elements of technological progress [5]. Harisun examined the Study of the Building Function Acceptable Certification System in Ternate City, North Maluku Province with the results of the research stating that the Building function worthiness certification process had not been running at all due to the inability of the regional government to carry out the mandate of the Building Law and the Minister of Work Regulation Number 25 of 2007 [6]. From the previous research, it shows that the complexity of the building permit process and the Function Worthy Certificate Are not yet optimal, but no one has yet discussed the clear concept of regulation as a future legal ideal regarding building reliability licensing that takes into account sustainable development and is in accordance with changing times that require short amount of time in the licensing process, especially in the presence of a Job Creation law. For this reason, the author will conduct research on the concept of permitting regulations for a Function Worthy Certificate In the future to create reliable buildings with an environmental perspective to realize SDGs and provide legal certainty.

Furthermore, this research will discuss the problems regarding the complexity of the current Function Worthy Certificate Which is used by researchers to form the basis for formulating a building permit policy, especially regarding Function Worthy Certificate As an important instrument in building construction management so that it can be used as a reference for the government and society in the future.

2 Methods

The research uses normative legal research method. The approach of this research is statutory and conceptual approach in which secondary data is the main data. Secondary data in this study are divided into primary legal materials and secondary legal materials. Primary legal material is a legal material that is authoritative and binding such as Law Number 11 of 2020 concerning Job Creation, Law Number 28 of 2002 concerning Building, Law Number 26 of 2007 concerning Spatial Planning, Law Number 25 of 2009 concerning Public Services. Whereas secondary legal material is legal material which in nature, explains primary legal materials such as journals, books and others. Legal materials mentioned above were collected

through library research techniques with qualitative analysis technique. This qualitative analysis technique is intended to assist the writer in making the correct conclusions.

3 Results and Discussion

3.1 Critics of the function worthy certificate concept in previous regulations

Feasibility is a building condition that meets administrative requirements and technical requirements in accordance with the defined building function. Meanwhile, what is meant by Function Worthy Certificate is a certificate issued by the Regional Government to declare the proper functioning of the Building as a condition for its use, with the exception for Special Function Buildings that is issued by Central Government [7] Function Worthy Certificate is a type of permit that is still unfamiliar to the public, as evidenced by the fact that from 514 Regencies/Cities in Indonesia there are only approximately 93 City/Regencies that had issued building regulations and only 48 Regencies/Cities have implemented Function Worthy Certificate issuance. Moreover, out of 514 regencies/cities, there are only 75 regencies/cities that carry out data collection on buildings with the number of technical reviewers not more than 50 [3].

Function Worthy Certificate licensing is regulated in Law Number 28 of 2002 concerning Buildings, where the use of the building by the owner or user can be carried out after the building is declared to meet the eligible requirements, namely the fulfillment of the technical requirements [7]. Function Worthy Certificate in Law Number 28 Year 2002 is issued by regions through regulatory instruments at the regional level. The problem then arises due to the fact that not all regions had issued regulations regarding Function Worthy Certificate, which in turn results in the absence of legal certainty while the buildings have been built that would lead to disrupted utilization. Not to mention the regulations' horizontal inconsistencies, such as the rules regarding fire prevention in DKI Jakarta which are not in sync with the Function Worthy Certificate regulations, which caused confusion for practitioners in designing buildings which in turn hampered obtaining recommendations from the Fire and Rescue Office to obtain Function Worthy Certificate [13].

The concept of Function Worthy Certificate licensing in the paradigm of previous building regulations has actually met electronic-based licensing standards marked by the emergence of an Building Management Information System based on Online Single Submission as mandated by Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services where in Article 75 it states that building owners are required to have Function Worthy Certificate in the framework of the building operation. This means that if the business owner cannot submit the Function Worthy Certificate to the Online Single Submission system, then the business operational license cannot be issued or extended. The emergence of the electronic-based licensing era did not immediately solve the existing problems because in the Building Law there were many administrative and technical requirements that required a long time while in the Online Single Submission system, business owners whose operational permits were running low, became hurried in managing Function Worthy Certificate, while in fact the issuance Function Worthy Certificate requires a careful process, including the review process by the construction supervisor or technical reviewer. In addition, after a study or report from a Construction Supervisory Service Provider or a Technical Review Service Provider conducted, the Regional Government still has to re-examine it. In addition, licensing through

Online Single Submission is also hampered by various regulations that are not synchronized with one another [8].

The process of obtaining Function Worthy Certificate which takes requires a rigorous amount of time even though it has been integrated electronically on the one hand and the need for business owners to immediately take care of their business license on the other hand is a problem that must be resolved. Solving the problem regarding the feasibility of the building should not leave another problem that is motivated by the desire to quickly finish the matters regarding the Certificate of Worthiness so that it would lead to corruptive practices which in the long run has an impact on unreliable buildings due to ineffective function which in the end the building stands not in accordance with the principle, objectives and functions as regulated in the law.

The corruptive practices in the licensing sector can be seen from the existence of illegal levies. The practice of illegal levies in the issuance of Function Worthy Certificate is still a major problem in the implementation of building law which causes public misconception from the community regarding the Function Worthy Certificate licensing to be expensive [9]. Even at the level of practice, illegal levies in granting building permits are carried out massively and structurally with bureaucratic logic as an excuse. For example in Samarinda, local officials looked for administrative errors by the applicants, delayed files and threatened to seal buildings as reasons for asking for illegal fees [10].

According to the author, the practice of illegal levies in the midst of the existing electronic-based licensing system indicates that the function of laws and regulations is not optimal in regulating the licensing process, which would then be causing a conflict, disharmony, inconsistencies and even overlapping authority and weak supervision, plus lack of understanding of the implementer in understanding the rules legislation.

3.2 Licensing certificate of acceptability of function in the job creation law

Omnibus Law is a way to simplify licensing law. Reports issued by the World Bank stated that Indonesia is ranked 91 out of a total of 190 countries in terms of ease of doing business or it is often called Ease of Doing Business (*EoDB*) [11]. The ease of doing business in Indonesia is hampered by the number of disharmonious regulations that cause legal uncertainty because these regulations are made without clear objectives to be achieved so that the regulation is said to be a red tape. Bozeman states that red tape regulation is a regulation that contains a very high degree of formalization and barriers, unnecessary rules and procedures, inefficiency, and unclear delays so that they are considered as obstacles to the performance of public sector organizations [12]. Pandey and Scott state that in red tape some regulations do function, but in some cases, these regulations become a burden on compliance and can have a negative effect on organizational performance. Regional governments on one hand as implementers of national (sectoral) policies, and on the other, also has the authority to formulate regulations or exercise discretion regarding business licensing services. Finally, there will be various and many types of permits in the regions so that the licensing procedure will become more complicated, especially if the regulation is in conflict with the national policy on the paradigm in working copyright law in building permits is that the RBA Risk Based Approach concept is no longer based on a license approach, the RBA concept will have an impact on the implementation of licensing issuance that is more effective and simpler. Supervision activities also become more structured, both in terms of the period and substance that must be supervised. However, it is not clear how it will be implemented. This means that the new regulations should not be able to

solve the problem of SLF licensing considering the importance of SLF in a building for building reliability.

In the working copyright law, the rules regarding administrative and technical requirements are abolished but regarding the certificate of eligibility to function still exists and becomes a factor in the simplification of the basic requirements for business licensing as regulated in Article 13 of the Job Creation Law. Certificate of eligibility to function in the Job Creation Law issued by the Central Government or Regional Government according to their authority based on a statement of feasibility of function submitted by the Construction Supervision or Management Service Provider to the Pusa Tatau Regional Government according to their authority through an electronic system operated by the Central Government, based on norms, standards, procedures, and the criteria set by the Central Government.

The concept that the author offers is the integration of building permits into an electronic system under the responsibility of the Ministry of Public Works and Public Relations and integrated with national planning agency (Bappenas), the Ministry of Agrarian Affairs and Spatial Planning (ATR BPN) and Capital Investment Coordinating Board (BKPM) as well as district / city governments. The PUPR Ministry is responsible for building reliability, Bappenas is related to building construction in accordance with development planning, BKPM is related to one-door licensing and the Ministry of Agrarian Affairs is related to accuracy with the spatial planning agenda so that building construction does not violate spatial planning, especially in The Building Work copyright law refers to the detailed spatial plan (RDTR). Furthermore, the role of the regions must be involved because regions that understand the objective conditions of their territory, its role is the filtering of buildings to be granted a permit which is registered at the beginning of the year which will later be integrated into the annual regional development plan. This filtering is useful so that there are no illegal buildings and makes it easier to monitor them. The results of the filtering will be entered into the building electronic system. To carry out its technical functions, it is better if an independent building supervisory institution is formed consisting of certified building experts so that it is necessary to have a building expert certification body integrated in the building electronic system in order to avoid reactionary building construction experts who will lead to illegal fees and corrupt actions. Furthermore, the authors assess the need for a Government Regulation which regulates those buildings do not have sustainable development aspects and harmony with nature which includes energy conservation and efficiency, water conservation and efficiency, indoor air quality and thermal comfort, land and waste management, implementation of the construction period. on buildings, and pay attention to the elements of climate change adaptation. If these aspects are not fulfilled, then no building operation permit and SLF will be granted. In Indonesia, there are still many buildings that are not environmentally friendly and do not have green open spaces, so it is not too late to fix them. water conservation and efficiency, indoor air quality and thermal comfort, land and waste management, implementation of the construction period for buildings, and attention to elements of climate change adaptation. If these aspects are not fulfilled, then no building operation permit and SLF will be granted. In Indonesia, there are still many buildings that are not environmentally friendly and do not have green open spaces, so it is not too late to fix them. water conservation and efficiency, indoor air quality and thermal comfort, land and waste management, implementation of the construction period for buildings, and attention to elements of climate change adaptation. If these aspects are not fulfilled, then no building operation permit and SLF will be granted. In Indonesia itself, there are still many buildings that are not environmentally friendly and do not have green open spaces, so it is not too late to fix them.

4 Conclusion

Building permits are long and complicated that has been occurring so far has resulted in a slow building utilization process which has led to corrupt practices that have resulted in building unreliability. The Job Creation Law facilitates business licensing, one of which is by presenting regulations regarding building permits, including SLF, which is the authority of the central government to avoid complicated licensing at the regional level. In order for the application of the Job Creation Law to be good and not cause new problems, an electronic-based licensing system is needed that integrates between related sectors including the region as a verifier, this system is also accompanied by the existence of an independent building supervisor certification for buildings who are competent in their fields.

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