

THE SIMPLIFICATION OF UPSTREAM OIL AND GAS BUSINESS LICENSE IN INDONESIA

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Abstract: *Oil and Gas is natural resources in Indonesia which is the business related to is regulated in Law Number 22 of 2001 about Oil and Gas. There are two kinds of business related to oil and gas that are upstream and downstream. In upstream oil and gas business, there still a lot problem faced by the government and the enterprises. Thus, it is needed simplification license for upstream oil and gas in order to increase investment which will lead into effective and efficient public services. Normative law here is applied as method to analyse the regulations related to oil and gas industry license. Furthermore, the approach used here are statute approach and conceptual approach. The results reveal that the Licensing for Utilization of Resources and/or Infrastructure of Upstream Oil and Gas Business does not yet have a synchronization of authority in the issuance of these licenses. In order to obtain effective and efficient upstream oil and gas business licensing services, it is necessary to synchronize and harmonize regulations and it is need a one-stop licensing service as referred to the Presidential Regulation Number 97 of 2014 concerning Implementation of One Stop Integrated Services.*

Keywords: *Indonesian law, license simplification, oil and gas business, upstream oil and gas.*

1. INTRODUCTION

Natural resource has strategic position in promoting the public's welfare, so therefore it needs to be well-managed and used for prosperity. It is in line with Article 33 verse (3) Republic Indonesia Constitution 1945 stated that "Earth, water, and natural wealthy are overpowered by the state and thus used for society prosperity." The right to manage earth, water and natural resource means that the state has authority to regulate legal relation between legal subject and the natural resources based on Article 2 Constitution Number 5 of 1960 about Basic Rules of Agrarian Principles (Later known as UUPA or Constitution of Agrarian Principles).

Natural resources contained in the earth include minerals and coal; geothermal, oil and gas are regulated in the Constitution Number 22 of 2001 about Oil and Gas (later known as Constitution Number 22 of 2001). The regulation regarding with oil and gas industry is divided into upstream and downstream. The industry activity for upstream oil and gas is divided into two, namely exploration and exploitation. Exploration is the way

to obtain information about geological condition. Also, to obtain how much the oil and gas supply in the work area determined. Afterwards, exploitation is the way to produce oil and gas in the work area determined. The exploitation process are including drilling and completion of wells, construction of transportation, storage and processing facilities for the separation and refining of Oil and Gas.

In the implementation of upstream oil and gas industry, hence it is need legal instrument in a form of license. The license is such requirement for the owner of industry and as control instrument for each of activities in upstream oil and gas. However, the license regulation in upstream oil and gas industry are still overlapping and thus it becomes a challenge that should be overcome by the government and industry players. The Ministry of Energy and Mineral Resource, since January 2018, has been performed series of simplification steps for regulation and license. On the February 5th, 2018, the government has revoked 32 regulations in which 11 regulations exist in the sub sector oil and gas. Further, the simplification of oil and gas regulation from 7 regulations becomes 6 regulations.

Several efforts in simplification of oil and gas industry license regulation isperformed by the government to improve investment climate and to implement effective and efficient public service. It is in accordance with the government task to serve the resident in fulfilling the right and basic need for public service through license. In the license system contains of several purposes license, including:

- a. Controlling certain activities
- b. Preventing the harm for environment
- c. Willing to protect certain objects
- d. Willing to divide little things
- e. Briefing and selecting certain people and activities (Spelt & Berge, 1993).

According to the note of Special Task Force for Upstream Oil and Gas Business Activities (SKK Migas), the exploration and exploitation of upstream oil and gas should be following 341 licenses process which involving at least 17 institutions, recommendatory, and license issuer. The license arrangement for survey can takes time more than a year. Moreover, the construction process can take for more than 3 years (Setyadi, 2008).

The license simplification have purpose to ease investment and encourage the investor to invest in Indonesia. It can be seen that there are only two licenses regulation for upstream oil and gas industry including survey and utilization permit for oil and gas, and is conducted by online. But in its implementation does not yet conduct through one way as mandated in President Regulation Number 97 of 2014 about One-Door Integrated Services Implementation. It can be seen from several regulations in the Minister dealing with the licensing resource and infrastructure utilization which the characteristic is duplicative and unreachable by the Ministry of Energy and Mineral Resource Number 29 of 2017. Due to the absence of law certainty to regulate and coordinate all the institution and regional government about licensing simplification for upstream oil and gas industry, thus it assumes that there will be another problems faced in the future.

2. RESEARCH METHOD

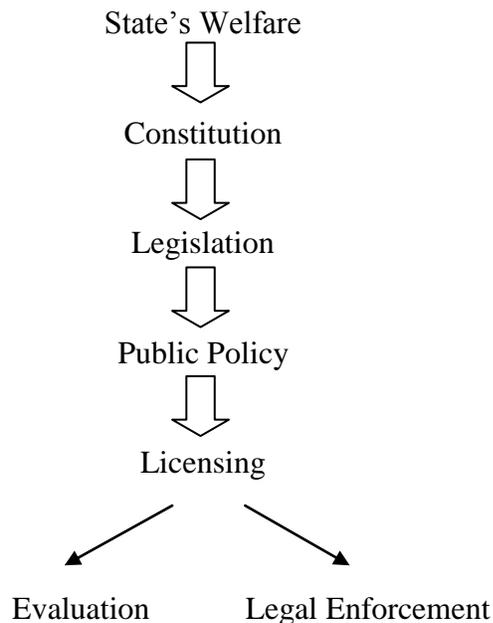
This research includes into normative law research in which aims to find out law regulation, law principals, or law doctrines in order to face law issues faced (Peter Mahmud, 2005). In this case, the normative law is used to analyse the regulations related to oil and gas industry license. Furthermore, the approach used here are statute approach and conceptual approach.

Statute approach is defined as approach used to analyse all regulations related to the law issues. Meanwhile, conceptual approach is an approach related to the doctrines developed in law. By learning the doctrines in law field, the researcher will obtain relevant legislations with the faced issues (Peter Mahmud, 2005).

3. RESULTS AND DISCUSSION

3.1. Political Law in Oil and Gas Business License

Basically, the diagram the regulation of political law licensing in Indonesia flow can be described as follows:



Spelt et al. (1993) distinguish license into broad meaning and narrow meaning. License in the narrow meaning are including dispensation, concession, recommendation, registration mark, license letter and registration letter. Meanwhile, the broad meaning of license is an agreement of the government in accordance with the Legislation or Government Regulation.

The legal meaning for license is a permission given to the forbidden things. Andrian (2010) stated license as one-sided administrative law that applies the concrete rules based on the appointed requirement and procedure in applicable regulation.

License can be described as government tools which has juridical preventive and used as administration instrument to control the society behaviour. Hence, the characteristic of such license is preventive due to its instrumental that cannot be separated from obligation that should be obeyed by the concessionaire. Besides, the license function is repressive in which it can overcome the problem dealing with the human activity under the basic of licensing. As the part of government decision, so licensing can be defined as legal actions of the government based on the public rights which allow an individual or legal entity to conduct activity based on law regulation. Licensing instrument is needed by the government to concretize government authority. This action is conducted through the state administration decision (KTUN).

Licensing as public service should involve the society in the planning, implementation and supervision. The involvement of society considers being important since the society is the inhabitant of the region; so therefore, they had to be familiar with the region itself. Further, it is possible for the government to abuse the authority, thus the role of non-governmental organization is needed to control the performance of the government in providing public service. The ombudsman organization is also obligated to be pro-active in giving comprehensive feedback in the public service implementation through licensing instrumental.

The simplification attempt for licensing system generally has been conducted by the government from the side of regulation and organization. One of the regulations is the Interior Ministry Regulation Number 24 of 2006 about the Guidelines for Organizing One-Door Integrated Service. This regulation has purpose to increase the public service quality and providing broad access to the society. The definition of organizing one-door integrated service is the licensing and non-licensing service in which the processes start from supplication up to publication of document. In fact, the implementation of licensing system is not giving positive impact to the public service, since the licensing system practice is merely collecting the related technical institution in one place.

3.2. The Mapping of Resource Utilization License and/or Upstream Oil and Gas Infrastructure

By the authorised of Legislation Number 23 of 2014 about Regional Government, it is not merely changing the distribution power or authority from central to region. But, it is also changed the regional authority which formerly become the authority of province government. These authorities are including the authority in the field of mineral and coal mining. For oil and gas mining remain to be the authority of central government and cannot be distributed vertically. These provisions are in accordance with the legislation as follows:

Table 1 The Arrangement of Upstream Oil and Gas Management

Article 33 verse (3) The 1945 Constitution of Republic Indonesia	Law Number 5 of 1960	Law Number 23 of 2014	Law Number 22 of 2001
The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.	Article 2 verse (1) Based on the provision Article 33, paragraph (3) of the Constitution and matters meant in Article 1, the earth, water and airspace, including the natural resources, contained therein are in the highest instance controlled by the State being and Authoritative Organization of the whole People.	Article 14 verse (3) Government Affairs field of energy and mineral resources referred to in paragraph (1) relating to the management of oil and natural gas under the authority of the Central Government.	Article 4 verse (1) Oil and Gas as strategic non-renewable natural resources existing within the Indonesian Legal Mining Territory constitute national assets which are controlled by the state. Article 4 verse (2) The control by the state as referred to in paragraph (1) shall be conducted by the Government as the holder of the Mining Authority.

As stated in the table above, the authority to manage oil and gas in several statutory provisions is the authority of the Central Government. Since the ability of the government in managing oil and gas still limited, thus in accordance with Article 6 Law Number 22 of 2001, the upstream oil and gas business is conducted through mechanism of cooperation contracts with business entities and/or permanent business entities. Given that the upstream business is always conducted in the autonomy region and is very risk, then the upstream oil and gas business performed by the business entity needs licensing from the central government or regional government.

In line with the explanation above, the authority of license issuance can be delegated to the authorized institution in purpose to create simple, effective, efficient, transparent and accountable permission. It can be proved from several arrangement of the legislation provisions bellow:

Table 2 Authority Delegation to Manage Licensing of Upstream Oil and Gas Business Activities

Government Regulation Number 55 of 2009	Government Regulation Number 24 of 2018	President Regulation Number 97 of 2014	Ministry of Energy and Mineral Resource Regulation Number 40 of 2017
Article 86 verse (1): The development and supervision of Upstream Business Activities shall be	Article 3 verse (1) The Central Government determines the policy for the authority implementation in order	Article 7 verse (1) In organizing PTSP in the field of Planting Capital as referred to Article 6:	Article 1 verse (1) The Minister of Energy and Mineral Resources delegated the authority to grant licenses in the field of

<p>carried out by the Government, the implementation of which shall be conducted by the Minister.</p> <p>Article 87 verse (1): The handling of Government affairs referred to in paragraph (2) item a of Article 86 shall include: a. planning; b. license, approval and recommendation; c. Oil and Gas Data management and utilization; d. education and training; e. technological research and development;</p> <p>Article 89 verse (1): The responsibility for the development referred to in Article 87 shall rest with the Department and the related departments in accordance with their respective areas of duties and authority.</p>	<p>to grant Business Licensing as regulated in this Government Regulation and other relevant laws and regulations.</p> <p>Article 3 verse (2) Other related legislation as referred to paragraph (1) is a statutory regulation that regulates sectorial authority or regional authority in Business Licensing as long as it is not regulated in law and does not lead to conflict with the Government Regulation.</p> <p>Article 3 verse (3) Business Licensing as referred to paragraph (1) includes the provision of facilities and/or facilities for conducting business.</p> <p>Article 3 verse (4) The Central Government provides guidance and supervision over the implementation of the authority to grant business licenses.</p>	<p>The Head of the Investment Coordinating Board receives a authority delegation from the technical Minister/ Head of the Institution which has the Licensing and Non-licensing authority which is the Government's business in the field of Investment; The Head of the Investment Coordinating Board may delegate the authority granted by the technical Minister/Head of Institution with substitution rights to the provincial PTSP, district / city PTSP, PTSP Free Trade Zone and Free Port, or Administrator of Special Economic Zones; The technical minister/head of the institution can assign its officials in the Investment Coordinating Board to receive and sign permits and non-permits whose authority cannot be delegated in accordance with the provisions of the legislation.</p> <p>Article 7 verse (2) Delegation of Authority as referred to paragraph (1) letter (a) is determined through a technical Ministerial Regulation/Head of Institution.</p>	<p>oil and gas activities hereinafter referred to Licensing in the framework of implementing Integrated Services One Door to the Head of the Investment Coordinating Board Capital with substitution rights.</p>
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Based on the table above, several regulations related to the authority to grant licenses in the upstream oil and gas business activities are delegated to the competent authority based on the relevant laws and regulations. In this case the type of licensing arrangement in the Upstream Oil and Gas business activities can be explained as follows:

1. Survey Licensing

By the issuance of Minister Energy and Mineral Resource Regulation Number 29 of 2017 about the licensing on the Oil and Gas Business bring several changes on the licensing amount in its relation with the upstream oil and gas business activity which including survey licensing and oil and gas data utilization as regulated in the Article 3 letter (a) and (b). The survey licensing is given for general survey of conventional oil and gas and non-conventional oil and gas survey. The process starts from submitting an application to the Minister through the Directorate General by attaching administrative and technical requirements. Meanwhile, the administrative and technical requirement as well as the procedure of applying survey licensing both conventional and non-conventional is listed in the Ministry of Energy and Mineral Resource Regulation Number 29 of 2017. Afterwards, the General Director will perform evaluation toward obligation fulfilment and completeness of administrative and technical requirement.

2. Oil and Gas Data Utilization Licensing

The license of oil and gas data utilization is including data utilization activity results of general survey activities, joint study, exploration, and exploitation for the purpose of evaluation and data processing in the country or outside and/or in order to interest diversion as stated in the Article 4 verse (2) Ministry of Energy and Mineral Resource Regulation Number 29 of 2017 about upstream oil and gas business licensing.

3. Location Licensing

The location licensing has been regulated in the Minister of Agrarian Affairs Regulation and the Head of National Land Agency Number 2 of 1999 about location licensing. In the provision of Article 1 Number 1 stated that “location licensing is license given to the industry or company to have the necessary land in order to investment as well as for rights transfer licensing. As related to the upstream oil and gas, these businesses are using concession in a form of cooperation contract law, while the investment is based on the investment licensing. Besides, in accordance with the provision on Article 35 about Oil and Gas stated that “the right holder for land is prohibited to allow enterprise or permanent enterprise to perform exploration and exploitation on the land:

- a. before the business activity begins, firstly it suggest to show the Cooperation Contract or a valid copy, and notify the purpose and place of the activity to be carried out;
- b. The settlement or guarantee of settlement should agree first by the holder of land rights or the user of land on state land is carried out.

Noting to the provisions of Article 35 of Law Number 22 of 2001, it is clear that there is no need for a location license anymore, but there is an obligation of landowners to allow legal entities or permanent establishments to carry out activities by firstly completing a settlement with the rights holders or land users on state land, in accordance with statutory provisions laws applied. The applicable laws and regulations is Law Number 2 of 2012 Concerning Land Procurement for Development in the Public Interest.

Afterward, based on the above description as if there is a norm conflict between the Regulation of the Minister of Agrarian Affairs BPN number 2 of 1999 with Law no.

22 of 2001 Jo Law Number 2 of 2012. In the case of conflicting rules which do not have the same degree of principle, the principle that “higher regulations negate lower regulations” (*lex superior derogate legi inferiori*). Thus, land acquisition for upstream oil and gas business interests is categorized as land acquisition for public use. In this case land acquisition does not require a location license anymore.

4. Granting Building License

As stated in the attachment to Law Number 23 of 2012, that the operation of buildings, including the granting of building permits (IMB) and certificates of building-worthy functions are the authority of the Regency/City Government. To carry out this authority, each regency/city has regional regulations governing the granting of building permits. This authority is also stated in Article 3 paragraph (1) letter (a) of the Minister of Domestic Affairs Regulation Number 32 of 2010 concerning Guidelines for Granting a Building Permit (hereinafter referred to as PMDN Law Number 32 of 2010).

In accordance with Article 1 number 5 of Domestic Investment Law (PMDN) Number 32 of 2010 states that, “Building license, hereinafter abbreviated IMB, are permits granted by local governments to applicants to build new, rehabilitate / renovate, and / or restore in order to preserve buildings in accordance with administrative and technical requirements in force.” The meaning of the building consists of building and non-building. Furthermore, Domestic Investment Law (PMDN) Number 32 of 2010, a building is defined as a physical form of the results of construction work that is integrated with the place of domicile, partially or wholly on top and/or in land and/or water, which functions as a place for humans to carry out their activities, both for residential, religious activities, business activities, social activities, culture, and special activities. Meanwhile, non-building construction is defined as a physical embodiment of the results of construction work that is integrated with the place of domicile, partly or wholly on top and/or in land and / or water which is not used for residential areas.

Then, noting to the provisions of Article 7 and Article 8 above, it is clear that the authority of regencies/cities in granting permits to construct buildings is substantially limited by PMDN Number 32 of 2010 means that besides what has been regulated in Article 7 and Article 8 PMDN Number 32 of 2010` does not require a license to build buildings. Bearing in mind that the authority to issue building permits is a regency/city authority which is an autonomous authority, in which to be able to exercise its authority the regency/city must first be stipulated in a regional regulation, so that according to the legal principle, the regional regulations governing the permit to construct the building in substance must not contradict with PMDN Law Number 32 of 2010. Based on this description, there are buildings related to the upstream oil and gas business which necessary to obtain a permit to build buildings. In the case, if the regency/city governments issuing permits to construct buildings as not stated in Article 7 and Article 8 by PMDN Law Number 32 of 2010, then the action contained substantial authority flaws (*onbevoegd hoed ratione materiae*), and also contradicted with PMDN Law Number 32 of 2010.

5. Disturbance License

The disruption Law (Hinder Ordonantie Stb. 1926 Number 226, most recently amended or supplemented with Stb. 1940 Number 450), is a regulation governing the type of licensing that is closely related to environmental pollution before the enactment of Law Number 4 of 1982 concerning Provisions-Principal Provisions for Environmental Management, this law has been replaced by Law Number 23 of 1997 concerning Environmental Management, and most recently Act Number 32 of 2009 concerning Environmental Protection and Management. Hinder Ordonantie Stb. 1926 Number 226 can be considered as one of the regulations that deal directly with the problem of environmental pollution in Indonesia.

In addition to the Hinder Ordonantie as mentioned above, disturbance licenses is also regulated in the Minister of Home Affairs Regulation Number 27 of 2009 concerning Guidelines for Determination of Disturbance Licenses in Regions, Article 1 Number 3 states that, "Disturbance license is the granting of a permit for a place of business/activity to an individual or entity in a certain location that can cause danger, loss and disruption, not including a place of business/activity that has been determined by the Central Government or Regional Government." It is necessary to understand that the upstream oil and gas business in accordance with Article 12 of Law number 22 of 2001 is carried out in the work area determined by the Minister after consultation with the Regional Government. Moving on from the provision of Article 12 of Law number 22 of 2001 is associated with the provisions of Article 1 number 3 of the Minister of Home Affairs Regulation number 27 of 2009, the upstream oil and gas business is a business that does not require a disturbances permit, it is given that the activities the business is in a work area that has been determined by the Central Government or Regional Government.

6. The Use of Radio Frequencies License

The use of radio frequencies is regulated in Law Number 36 of 1999 concerning Telecommunications. This is stated in Article 11 of Law Number 36 Year 1999, that:

- 1) The operation of telecommunications as referred in Article 7 may be held after obtaining permission from the Minister.
- 2) Permission as referred to in paragraph (1) is given by taking into account:
 - a. Simple procedures;
 - b. Transparent, fair and non-discriminatory processes; and
 - c. Completion in a short time.
- 3) Provisions regarding licensing for the operation of telecommunications as stipulated in paragraph (1) and paragraph (2) shall be regulated by Government Regulation.

Telecommunications operations include:

- a. Telecommunications network operations
- b. The operation of telecommunications services;
- c. Special telecommunications operations.

The implementation of this special telecommunications can be intended:

- a. Own needs;
- b. The need for national defence and security;

c. Broadcasting needs.

The provision of special telecommunications can be carried out for the purposes of:

- a. Individuals;
- b. Government agencies;
- c. Special service;
- d. Legal entity.

From the description above which is sourced from the provisions of Law Number 36 Year 1999 relating to upstream oil and gas business activities, the telecommunications operations carried out by business entities or permanent business entities are special telecommunications operations organized by legal entities. The use of these radio frequencies for telecommunications operations is also clearly stated in Article 7 of Government Regulation Number 53 of 2000 concerning the Use of Radio Frequency Spectrums and Satellite Orbits. The article states:

- (1) The use of a radio frequency spectrum for the operation of telecommunications must obtain a Ministerial license;
- (2) License for the use of radio frequency spectrum as referred to paragraph (1) is a determination of the use of radio frequency spectrum in the form of radio frequency band or radio frequency channel;
- (3) Provisions regarding licensing procedures and operational provisions for the use of radio frequency spectrum as referred to paragraph (1) shall be regulated by a Ministerial Decree.

Ministerial Decree as referred to Article 7 paragraph (3) of Government Regulation Number 53 of 2000 is the Regulation of the Indonesian Minister of Communication and Information Number 4 of 2015 concerning Operational Provisions and Procedures for Licensing for the Use of Radio Frequency Spectrums. The spirit of the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 4 of 2015 is to simplify licensing, as referred to in Article 11 paragraph (4) letter (a), that “Changing ISR to IPFR as referred to paragraph (4) is carried out at least taking into account: a. simplification of licensing; b. increased utility in the use of radio frequency spectrum; and c. the economic value of the radio frequency spectrum.” Although the Ministerial Regulation is intended to provide simplification of procedures, however, with the limitation of the validity period of the permit as referred to Article 9 of the Minister of Communication and Information Regulation of the Republic of Indonesia Number 4 of 2015, this will result in inflation in licensing. Article 9 of Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 4 of 2015 states more clearly:

- (1) The validity period of IPFR as referred to in Article 6 paragraph (1) letter (a) is for 10 (ten) years and can be extended 1 (one) time for 10 (ten) years.
- (2) The validity period of the ISR as referred to in Article 6 paragraph (1) letter (b) is for 5 (five) years and can be extended 1 (one) time for 5 (five) years.
- (3) The validity period for the use of radio frequency spectrum with the Class Permit category ends with the revocation of the Ministerial Regulation as referred to in Article 6 paragraph (4).

Referring to the provisions of Article 9 above which are related to oil and gas upstream business activities that have a long period of time, hence by the existence of a license with a clear term there will be inefficiency for legal entities or permanent business entities in the upstream oil and gas business. This is clearly stated in paragraph (1) and paragraph (2), where the license can only be extended once, absolutely this is contrary to the principle of efficiency in the administration of government. In addition, the license for the use of radio frequency can also be categorized as a material decision, meaning that the decision is not based on the quality of the applicant (individual), but the nature of the material is related to the activity, where the license is still valid as long as the activity is carried out. In addition, the material license can be transferred if the upstream oil and gas business activities take management action, or transfer ownership.

4. CONCLUSION

Based on the discussion explanation, it is clear that related to the Licensing for Utilization of Resources and/or Infrastructure of Upstream Oil and Gas Business which includes Survey License, Oil and Gas Data Utilization License, Location License, Building Construction License, Disturbance and Usage Permit Radio Frequency License as regulated in the relevant laws and regulations does not yet have a synchronization of authority in the issuance of these licenses. Besides, the general principle of license issuance procedures cannot be carried out optimally, thus it is very far from the implementation of the principles of public service delivery and general principles good governance.

5. SUGGESTIONS

In order to obtain effective and efficient upstream oil and gas business licensing services, it is necessary to synchronize and harmonize regulations and it is need a one-stop licensing service as referred to the Presidential Regulation Number 97 of 2014 concerning Implementation of One Stop Integrated Services. In accordance with Article 1 number 1 of Presidential Regulation Number 27 of 2014, “One Door Integrated Services, hereinafter abbreviated as PTSP, is an integrated service in a single process starting from the application stage to the completion of service products through one door.”

To simplify the licensing service, the Government has issued Government Regulation Number 24 of 2018 concerning Electronic Integrated Business Licensing Services, which is an arrangement of electronic licensing service systems or often referred as the Online Single Submission. Although licensing services are generally facilitated by using Online Single Submission, in accordance with Article 85 of Government Regulation Number 24 of 2018, only regulates only certain licenses that can be served using the Online Single Submission system, whereas for licensing in the oil and gas sector, specifically the upstream oil and gas business permit is not included as a permit that can be served using the Online Single Submission system. For this reason, it is necessary to amend the Government Regulation Number 24 of 2018 to enter the upstream oil and gas business licensing by Online Single Submission.

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