

# Indonesian regulator set clearer terms for internet platforms (domestic and foreign): Registration, takedown, and (un)blocking

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In an attempt to enhance legal certainty, especially with the rapidly developing digital platforms as the pandemic appeared to linger longer than it was previously speculated, the Ministry of Communication and Informatics of the Republic of Indonesia (MOCI) has issued the [Regulation No. 5 of 2020 regarding Private Electronic System Provider](#) (Regulation) on 16 November 2020, which was promulgated and effective since 24 November 2020.

This Regulation is aimed to complete a regulatory framework regarding the management and supervision of electronic system providers by private entities (private ESPs). This Regulation provides clarification on the terms and requirements for registration, and most importantly removing data localization requirements previously introduced in the draft regulation which sparked controversies.

The Regulation also revokes and replaces the MOCI Regulation No. 19 of 2014 on the Handling of Internet Websites Containing Negative Content and MOCI Regulation No. 36 of 2014 on Registration Procedures for Organisers of Electronic Systems.

We set out below key points of the Regulation:

## **Registration obligation of private ESPs**

The Regulation introduces obligation for private ESPs to be registered with the MOCI through the Online Single Submission (OSS) system<sup>1</sup>. This obligation extends to all private ESPs that operate internet portals, websites, and applications used for specific purposes (the provision, management, and/or operation of trade in goods/services; the delivery of paid digital materials and content; and search engines and cloud computing operators). This obligation also applies to

<sup>1</sup>

Article 3 (1) and (2) of the regulation.

private ESPs domiciled outside of Indonesian territory which meet the following criteria (the foreign ESP)<sup>2</sup>:

1. Provide services within Indonesian territory.
2. Conduct business activity in Indonesia.
3. Operate electronic systems that are used and/or offered within Indonesian territory.

Based on the above, we may expect that each and all companies that fulfil the above requirements are mandatory to comply with this regulation.

Under the Regulation, the registration of a private ESP is conducted by filing a registration form which contains the following information<sup>3</sup>:

1. General description of the electronic systems (name and sector of electronic systems, website URL, description of the relevant business model, etc.).
2. Obligation to ensure information security.
3. Obligation to protect personal data.
4. Obligation to implement electronic system feasibility testing.

In addition to the above information, a foreign ESP is also required to provide the following information<sup>4</sup>:

1. Identity of the foreign entity.
2. Identity of the head of the company and/or person in charge.
3. Domicile information and/or certificate of incorporation.
4. Total number of customers (users) within Indonesia.
5. Total transaction value in Indonesia.

The registration shall be made before the electronic system is being used by the customer/users<sup>5</sup>. Existing private ESPs, however, are given a six-month period after issuance of the Regulation (i.e., until 24 May 2021) to register with the MOCI<sup>6</sup>. The MOCI is authorized to block the private ESP which has not been registered with MOCI<sup>7</sup>.

However, based on our verbal discussion with the MOCI on 18 January 2021, the implementation for such registration obligation is still pending the preparation of platform or infrastructure to facilitate the foreign ESP registration with the MOCI, which they will launch once ready.

## **Content management**

In general, private ESPs are responsible for the organization and management of its electronic system. Private ESPs are also required to provide guidelines for the use of their electronic system in Bahasa Indonesia and ensure that such system (i) does not contain prohibited information

<sup>2</sup> Article 4 (1) of the regulation.

<sup>3</sup> Article 3 (3) and (4) of the regulation.

<sup>4</sup> Article 4 (2) of the regulation.

<sup>5</sup> Article 2 (3) of the regulation.

<sup>6</sup> Article 47 of the regulation.

<sup>7</sup> Article 7 (2) of the regulation.

and/or documents, and (ii) does not facilitate the dissemination of prohibited information and/or documents<sup>8</sup>. Such prohibited information and/or document include<sup>9</sup>:

1. Information and/or documents which violate the prevailing regulations.
2. Information and/or documents which cause anxiety for society and disturb public order, based on government's assessment.
3. Information and/or documents that contain method or provision of access of the prohibited information/documents.

Private ESPs must also remove prohibited content within 24 hours or four hours (the latter is for urgent prohibited content, such as child pornography, terrorism, and content that causes public unrest) after receiving the takedown notice from the MOCI. The MOCI is authorized to block the electronic system of a private ESP which does not comply with the above requirements<sup>10</sup>.

### **Granting of access for government authority**

For supervision purposes by the MOCI and for law enforcement purposes by law enforcer authorities, private ESPs are required to provide access to their electronic systems<sup>11</sup>. To this end, private ESPs are obliged to appoint a contact person domiciled in Indonesia to facilitate access to MOCI and/or a law enforcer<sup>12</sup>. The granting of access to MOCI and/or a law enforcer is confidential and limited in nature. The access must be provided by no later than five calendar days upon request by MOCI and/or the law enforcer<sup>13</sup>.

### **Sanctions and access blocking normalization**

The ultimate sanction introduced in the Regulation is the blocking of access to the private ESPs' electronic systems in Indonesia. Access can be opened again after the private ESPs have fulfilled its obligations. Other administrative sanctions that are included in the Regulation are warning letters, temporary suspension, administrative penalty, and revocation of an ESP registration certificate. Private ESPs can normalize an electronic system blocked by the MOCI by submitting a written application to the MOCI. The application will include several supporting documents, such as a screen capture, which proves that the system no longer contains prohibited information, a recommendation letter from law enforcer, or court decision and other evidence which legitimises the private ESP<sup>14</sup>. However, the MOCI is entitled to reject the electronic system's normalization process which has been blocked more than three times<sup>15</sup>.

### **Specific personal data**

The Regulation defines specific personal data, which is health data and information, biometric data, genetic data, sexual life or orientation, political views, child data, personal financial data, and other data based on prevailing laws and regulations. This definition is similar with the definition of specific personal data under the latest draft bill on data protection, which is currently being discussed and finalized by the House of Representatives expected to be passed into law in the first quarter of 2021.

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<sup>8</sup> Article 9 (2) and (3) of the regulation

<sup>9</sup> Article 9 (4) of the regulation.

<sup>10</sup> Article 9 (6) of the regulation.

<sup>11</sup> Article 21 (2) and (3) of the regulation.

<sup>12</sup> Article 25 of MOCI regulation 5/2020.

<sup>13</sup> Article 31 of MOCI regulation 5/2020.

<sup>14</sup> Article 20 (2) of MOCI regulation 5/2020.

<sup>15</sup> Article 20 (5) of MOCI regulation 5/2020.

## Conclusion

The Regulation is a foundation for the emerging regulatory regime for electronic systems and electronic system organizers in Indonesia. This is the first time the MOCI has clearly imposed the requirements for foreign parties outside Indonesia to register with the MOCI. The existing private ESPs should consider registering their electronic systems by 24 May 2021 to avoid access blocking by MOCI.

In addition to this Regulation, the Indonesian government is also preparing a draft of Government Regulation on Post, Telecommunication, and Broadcasting that will introduce even broader aspects to regulate the telecommunication, media, and technology sector, amongst others on cooperation for Over-The-Top service providers and telecommunication providers, spectrum sharing, passive and active infrastructure sharing, and more.

It is always important to understand, anticipate, and influence the shifting – and often volatile – regulatory landscape. Pandemic changes the way people do their business, including in Indonesia. Internet and digitalization was important, but now they are vital elements to ensure productivity and keep the economy moving amidst the various restrictions, and Indonesian government is trying to keep up.

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