

The Obligation to Register as an Electronic System Operator (*Penyelenggara Sistem Elektronik* – “PSE”) with the Ministry of Communication and Informatics of the Republic of Indonesia

On 14 June 2022, the Minister of Communication and Informatics of the Republic of Indonesia (“**MoCI**”) issued Circular Letter of MoCI No. 3 of 2022 concerning Effective Date for the Registration of Private Scope Electronic System Operators (“**Circular Letter 3/2022**”). Circular Letter 3/2022 stipulates that every private scope PSE is obliged to register as a PSE through the Online Single Submission Risk-Based Approach (“**OSS RBA**”) before 20 July 2022. Circular Letter 3/2022 is in line with Article 1 paragraph (1) *juncto* Article 47 of MoCI Regulation No. 5 of 2020 concerning Private-Scope Electronic System Operators as lastly amended with Minister of Communication and Informatics Regulation No. 10 of 2021 (“**MoCI Reg 5/2020**”), which states that every Private Scope PSE is obliged to register with MoCI as a PSE in the 6 (six) months since the implementation of Risk-Based Licensing through OSS became effective.

Government Regulation No. 71 of 2019 concerning Management of Electronic Systems and Transactions (“**GR 71/2019**”) defines Private Scope PSE as management of an Electronic System¹ by an individual, business entity, or the public. The question is, who is included as a Private Scope PSE and required to register as a PSE with the MoCI?

I. Private Scope PSE

Private Scope PSE which are required to register as PSE with MoCI under Article 2 paragraph (2) of MoCI Reg 5/2020 are as follows:

- a. PSE which are regulated or supervised by ministry(-ies) or institution(-s) under prevailing laws and regulations; and/or
- b. PSE which have portals, sites, or applications in a network via the internet that are used to, among others:

- provide, manage, and/or operate the offering and/or trade of goods and/or services;
- provide, manage, and/or operate financial transaction services;
- deliver to the electronic system user's device paid digital materials or content through the data network either by downloading through portals or websites, sending by electronic mail, or through other applications;
- provide, manage, and/or operate communication services including but not limited to short messages, voice calls, video calls, electronic mail, and online conversations in the form of digital platforms, network services and social media;
- provide search engine services, services for providing Electronic Information in the form of writing, sound, images, animation, music, video, films, or games or a combination of some and/or all of them; and/or

¹Article 1 Point 1 of GR 71/2019 defines Electronic System as a set of devices and electronic procedures the function of which is to prepare, collect, process, analyse, store, display, announce, transmit, and/or disseminate Electronic Information.

²Article 1 Point 8 of GR 71/2019 defines Electronic Information as one or a group of Electronic Data, including but not limited to text, voice, picture, map, design, photo, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or similar, letter, sign, number, access code, symbol, or perforation which has been processed and which has a meaning or may be understood by an individual who is capable of understanding it.

- process Personal Data³ for operational activities to serve the relevant community with Electronic Transaction⁴ activities.

Further, Article 4 paragraph (1) of MoCI Reg 5/2020 provides that the obligation of Private Scope PSEs to register with the MoCI also applies to Private Scope PSEs established under the laws of other countries or which are permanently domiciled in another country outside Indonesia but:

- provide services within the territory of Indonesia;
- do business in Indonesia; and/or
- the Electronic System of which is used and/or offered in the territory of Indonesia,

(“**Foreign Private Scope PSE**”).

A Foreign Private Scope PSE which wishes to register as a PSE with the MoCI must prepare the following information:

- identity of Private Scope PSE;
- identity of the head of the company and/or identity of the person in charge;
- information of domicile and/or deed of establishment of the company (certificate of incorporation);
- the number of customers (users) from Indonesia; and
- the value of transactions originating from Indonesia.

As provided in MoCI Reg 5/2020, a Foreign Private Scope PSE such as Google whose portal provides search engine services and Facebook or Twitter each of whose portals process Personal Data and provide, manage, and/or operate communication services such as short messages, voice calls, video calls, and online conversations in the form of digital platforms, network services and social media are also subject to the obligation to register as a PSE with the MoCI. The government authority has confirmed that Google, Facebook, and Twitter are obliged to register as PSE.

The government authority has also confirmed that domestic Private Scope PSEs are obliged to register as PSE as long as the PSE concerned meets the provisions in Article 2 paragraph (2) of MoCI Reg 5/2020. For Foreign Private Scope PSEs, the government authority has also confirmed that Foreign Private Scope PSEs are obliged to register as PSE if the PSE meets the provisions in Article 2 paragraph (2) and Article 4 paragraph (1) of MoCI Reg 5/2020.

In addition, pursuant to MoCI Reg 5/2020, the obligation to register as a Private Scope PSE must be performed before the Electronic System starts to be used by the electronic system user(-s). However, to date, the Indonesia government has given every Private Scope PSE which operates an Electronic System leeway to register as a PSE before 20 July 2022.

II. Sanctions for Non-Compliance with the Obligation to Register as a PSE with the MoCI

As mentioned above, a Private Scope PSE is obliged to register as a PSE with the MoCI. Pursuant to Article 7 paragraph (2) of MoCI Reg 5/2020, any Private Scope PSE which does not register as a PSE with the MoCI will be subject to administrative sanctions in the form of access blocking. The MoCI will block the access of Indonesian electronic system users to the Electronic System of an unregistered Private Scope PSE. Despite the sanction that will be imposed by the MoCI, Article 7 paragraph (4) of MoCI Reg 5/2020 stipulates that after the Private Scope PSE registers as a PSE with the MoCI, the MoCI will restore access to the Electronic System that has been blocked so that the Indonesian electronic system users can access the Electronic System normally.

³Article 1 Point 29 of GR 71/2019 defines Personal Data as any data of an individual which can be separately or collectively identified with other information whether directly or indirectly through an Electronic System or a non-electronic system.

⁴Article 1 Point 1 of GR 71/2019 defines Electronic Transaction as a legal act which is carried out using a computer, computer network, and/or electronic media.

As additional information, administrative sanctions will not only be imposed on Private Scope PSE which are not registered as PSE, but also on Private Scope PSE which (i) already have a registration but do not report changes to the information (including general description of the operation of the Electronic System), and/or (ii) do not provide registration information correctly. Such Private Scope PSE will be subject to administrative sanctions in the form of:

- a. written warnings delivered via electronic mail and/or other electronic media;
- b. temporary suspension of the Private Scope PSE in the event of their not heeding the written warning;
- c. termination of access to electronic systems (access blocking) and revocation of electronic system operator registration certificates in the event that the Private Scope PSE concerned does not provide confirmation within 7 (seven) days after the temporary suspension.

Thus, any Private Scope PSE which meets the provisions mentioned in section I above, must register its Electronic System with the MoCI. Pursuant to Article 21 paragraphs (1) and (2) of MoCI Reg 5/2020, the Private Scope PSE must give the MoCI and law enforcement officers access to the Electronic System and/or Electronic Data⁵ so that the MoCI can ascertain whether the performance of the Electronic System is in accordance whether the prevailing laws and regulations. In addition, Part 5-point h of Circular Letter 3/2022 stipulates that a Private Scope PSE which already had a registration certificate as a PSE before the enactment of MoCI Reg 5/2020 is required to change the registration information by re-registering through OSS RBA.

Last but not least, it is important for each domestic or Foreign Private Scope PSE to (a) complete the PSE registration before 20 July 2022 or (b) immediately submit a notice regarding the change of its electronic system to the MoCI, in order to protect the Private Scope PSE from administrative sanctions.

⁵Article 1 Point 30 of GR 71/2019 stipulates Data Electronic as data in the form of electronic which is not limited to text, sound, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegrams, telex, telecopy or similar, letters, signs, numbers, access codes, symbols, or perforations.

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