

# The Indonesian Legal System Approach to Supervising Private Electronic System Operators

Following the emergence of the COVID-19 outbreak that has developed into a global pandemic and has caused a reduction in direct social interactions to a minimum, the needs to live life through an online system and use electronic systems in all lines of life have been skyrocketing. Considering this situation, the Government of the Republic of Indonesia has implemented exceptional measures to encourage and embrace ongoing developments in internet technology and the constantly high demand for the use of electronic systems.

As an attempt to supervise the ever-growing increase for the use of private electronic systems the Indonesian government through the Ministry of Communication and Informatics ("MoCI") has enacted MoCI Regulation No. 5 of 2020 concerning Private Electronic System Operators ("MoCI Reg. 5/2020") as one of the implementing regulations of Government Regulation No. 71 of 2019 on Implementation of Electronic System and Transaction. MoCI Reg. 5/2020 mainly sets out several obligations that have to be met by the private Electronic System Operators (*Penyelenggara Sistem Elektronik* or "PSE").

## Definition of Private PSE

One of the key differences compared to the previous regulation, i.e., MoCI Regulation 36 of 2014 concerning Procedures for Registration of Electronic System Operators ("MoCI Reg. 36/2014"), is that MoCI now specifically regulates private PSEs, whether private PSEs that are domestic or established under the laws of another country or that are domiciled overseas ("Foreign PSEs"). This could be seen as a way to give more protection to Indonesian electronic system users as previously the Indonesian government required only domestic Indonesian PSE companies to be registered with MoCI, while now Foreign PSEs that (i) provide services within the Indonesian territory; (ii) engaged in business in Indonesia; and/or (iii) operate electronic systems that are used/offered within the Indonesian territory, must also register with MoCI.

It is further relevant to note that this requirement extends to all PSEs that operate internal portals, websites, and applications which are used for the following specific purposes:

- provision, management, and/or operation of any supply and/or trade-in goods/services;
- provision, management, and/or operation of financial transaction services;
- delivery of paid digital materials or content over data networks;



- provision, management, and/or operation of communication services (e.g., emails, video calls, social media);
- search engine services and services relating to the provision of electronic information; and/or
- processing of personal data concerning the operational activities of electronic transactions to serve the general public.

If compared to MoCI Reg. 36/2014, the abovementioned criteria outlined in MoCI Reg. 5/2020 have expanded to include a requirement that every PSE must register with MoCI.

## Registration Requirements and Its Related Matters

MoCI Reg. 5/2020 essentially requires that the overall registration procedures are to be completed via the Online Single Submission (OSS) System and that PSE applicants must submit mandatory information as the requirements, i.e., providing a general description of the operations of electronic systems and ensuring (i) information security, (ii) personal data protection; and (iii) electronic system feasibility testing. We find that MoCI Reg. 5/2020 sets out a more expanded set of registration requirements compared to those set out in MoCI Reg. 36/2014.

After all mandatory and additional information provided under MoCI Reg. 5/2020 has been submitted by the applicant, MoCI will then proceed to issue a registration certificate (*Tanda Daftar*) for private PSE and incorporate it in the list of private PSEs accessible via MoCI website. However, it is also worth noting that the previous regulation, MoCI Reg. 36/2014, set forth a period for MoCI to issue a registration certificate, i.e., a maximum of 3 (three) days after the verification documents are deemed sufficient and complete. Since (i) MoCI Reg. 5/2020 has taken out the obligation to document verification and (ii) MoCI only requires the fulfillment of requirements under Articles 2 to 5 of MoCI reg. 5/2020 for issuance of a registration certificate, we assume that the process should now be quicker, albeit no specific period is set in the newly enacted MoCI Reg. 5/2020.

Another significant difference is that MoCI Reg. 5/2020 no longer provides an expiration date for registration certificate, which was valid for 5 (five) years under MoCI Reg. 36/2014, and therefore, the registration certificate will be valid for as long as the private PSE conducts its business. The same matter has also been confirmed by a MoCI official in an informal consultation, provided that all and any changes of information provided at the time of registration must be informed to MoCI.

### **Content Moderation and Prohibited Content**

In addition to a more elaborate regulation on sanctions and normalization, MoCI further regulates content moderation for electronic information and/or documents where private PSEs shall be deemed as the party responsible for the operation of electronic systems and the proper and responsible management of electronic information and documents, thereby imposing the following obligations under MoCI Reg. 5/2020 on private PSEs:

- a) provide user guidelines in the Indonesian language;
- b) ensure that no electronic systems contain any prohibited electronic information and/or documents;
- c) ensure that electronic systems do not facilitate the spread of any prohibited electronic information and/or documents.

Regarding point (2) above, MoCI Reg. 5/2020 has established a set of classifications as to what is considered 'prohibited electronic information and/or documents', namely information and/or documents that (a) violate the statutory regulations, (b) disturb the society and disrupt public order, and (iii) contain information on how to get or provide access to prohibited electronic information and/or documents. These classifications are more specific than those provided under MoCI Reg. 36/2014.

### **Management of User-generated Content and Cloud-Computing by Operators**

MoCI Reg. 5/2020 also accommodates regulations on private PSEs that manage user-generated content and/or cloud-computing systems and services whereby such PSEs are obliged to provide management of electronic information and/or documents and provide appropriate reporting tools that are accessible to the public to lodge complaints and/or reports, failing which the PSEs will have their access to the relevant electronic system blocked.

### **Access to Private PSE's Electronic System or Data**

For the purpose of protecting the society and maintaining public order, private PSEs are also required to take down any prohibited electronic information and/or documents, including any information and/or documents that may facilitate the spread of prohibited content. The request for taking down prohibited electronic information and/or documents may be filed by the general public or by government institutions, such as ministries, agencies, law enforcers and/or judicial agencies. In addition to the foregoing, MoCI Reg. 5/2020 has also accommodated requirements and technicalities for private PSEs to provide access to their electronic system and/or data if requested by ministries or government agencies for supervision purposes and/or law enforcement officers for criminal law enforcement purposes.

### **Sanctions**

Before the enactment of MoCI Reg. 5/2020, MoCI through MoCI Reg. 36/2014 only specified that any failure to report the change of data or violation of the prevailing laws and regulations by a PSE would result in the revocation of the registration certificate of the said PSE. However, MoCI Reg. 5/2020 has introduced us to a more comprehensive list of administrative sanctions in case of noncompliance to be imposed on any private PSEs, which sanctions take form as follows:

- a) Failure to register a business before the prescribed deadline shall result in the blocking of electronic system access;
- b) Failure to report any changes in the relevant registration information or give correct registration information shall result in sanctions in the form of (a) written warning; (b) temporary suspension of private PSE's business; or (c) blocking of electronic system access and revocation of the registration certificates.

MoCI Reg. 5/2020 has also introduced normalization procedures should a private PSE that has their access blocked intends to unblock it, by way of implementing the following:

- a) Properly fulfilling the registration requirements;
- b) Correctly updating the required registration information; and
- c) Re-registering by providing correct registration information.

MoCI Reg. 5/2020 is deemed valid, binding, and effective as of 24 November 2020 under which MoCI requires private PSEs that have not yet registered with MoCI but have met the criteria set forth therein to register within no later than 6 (six) months after MoCI Reg. 5/2020 comes into effect. For private PSEs that have already registered before MoCI Reg. 5/2020 is enacted and comes into effect, according to the confirmation we obtained from a MoCI official in an informal consultation, such private PSEs are not required to re-register, provided that all and any changes of information provided at the time of registration must be informed to MoCI. Should their registration certificate have expired, they have to re-register to obtain a new registration certificate as provided under MoCI 5/2020 that no longer has an expiration date and will be valid so long as the said private PSEs conduct its business activities.

In our view, the most significant changes are the existence of the requirement for Foreign PSEs to register and the requirement for PSE applicants to ensure (i) information security, (ii) personal data protection, and (iii) electronic system feasibility testing. Given the above understanding of the regulation, we find that MoCI Reg. 5/2020 would be beneficial as it provides an in-depth umbrella which has been long-awaited in Indonesia. Although the enactment of the foregoing has expanded the obligations of private PSEs, it certainly provides more protection and clarity for electronic system users, which may attract more foreign companies to invest in Indonesia.

*The article above was prepared by **Maurice Maulana Situmorang** (Partner), **Nike Astria Malik** (Senior Associate), **Natasya Nurul Amalia** (Associate), **Inaya Safa Nadira** (Associate), and **Rovi Fremi Raturandang** (Associate).*

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