

Summary of the Indonesian Ministry of Communication and Informatics Regulation No. 11 of 2022 Concerning the Governance of the Organization of Electronic Certification

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Technological advances made by humans over time are increasingly developing. Currently, we are preparing ourselves to start entering the industrial revolution 5.0. Our daily activities and behavior have changed, as well as our ways in proceeding a transaction. As a result of these changes, many legal problems related to the delivery of information, communication and/or transactions electronically, especially in terms of evidence and matters related to legal actions carried out through the electronic system, are often encountered.

For the matters mentioned above, Indonesia has issued a legal framework, namely Law No. 11 of 2008 concerning Electronic Information and Transactions (“**IT Law**”) with its derivative regulation, namely Government Regulation No. 71 of 2019 concerning the Organization of Electronic Systems and Transactions (“**GR 71/2019**”).

Pursuant to the IT Law, the existence of electronic information and/or electronic documents is binding and recognized as valid evidence to provide legal certainty for Organization of Indonesian Electronic System. Further, what can be done by business actors in order to be able to strengthen evidence of electronic information and/or electronic documents is to have Indonesian Electronic Certificates. Therefore, The Minister of Communication and Informatics Regulation (“**MoCI**”) has issued MoCI regulation No. 11 of 2022 concerning the Governance of the Organization of Electronic Certification (“**MoCI 11/2022**”).

By law, MoCI 11/2022 is designed to replace the Ministry Regulation No. 11 of 2018 concerning the Organization of Electronic Certification which is no longer in accordance with the public’s outgrowth. In essence, the existence of MoCI 11/2022 is to fulfill the requirements mandated by Government Regulation No. 71 of 2019 concerning the Organization of Electronic System and Transactions (“**GR 71/2019**”), where the organization of the electronic certification and electronic certification will be further regulated by a Minister Regulation.

The Organization of Indonesian Electronic Certification

Pursuant to MoCI 11/2022, Organization of Electronic Certification is defined as the act of providing, managing, and operating infrastructure and services of Certification Authority, and providing and auditing Electronic Certificates.¹

The Organization of Electronic Certification is executed by a Certification Authority (*Penyelenggara Sertifikasi Elektronik* – “**PSrE**”).

In principle, PSrE is divided into:

1. Indonesian PSrE

Indonesian PSrE is a Certification Authority in the form of Indonesian legal entity domiciled in Indonesia and has received acknowledgement from the MoCI.

PSrE Indonesia is further divided into:

i. Agency

Agency is a legislative, executive, and judicial institution at the central and regional level and other agencies formed by the law.

¹Article 1 paragraph 21 of MoCI 11/2022

ii. Non-Agency

Private Indonesian legal entity which has already obtained Private Sector Electronic System Provider (“PSE”) and is capable to perform Electronic Certificate services.

Further, Non-Agency Indonesian PSrE with investment and/or participation of foreign shares is required to fulfill certain conditions in the field of investment including ownership limitations of foreign shares in accordance with the provisions of the law.²

2. Foreign PSrE

Foreign PSrE according to MoCI 11/2022 is a legal entity established by the foreign law, the primary business sector of which is to conduct electronic certification and/or provide services using Electronic Certificate outside Indonesian territory.³

Pursuant the above, PSrE that is allowed to perform Electronic Certificate services in Indonesian territory is Indonesian PSrE. However, there is an exception for Foreign PSrE to perform Electronic Certificate services in Indonesia territory specifically for the purpose of performing a mutual recognition and/or intercountry collaboration to identify Electronic Certificates issued by other countries. It shall also be noted that such Foreign PSrE are required to registered as PSrE with the MoCI.

Authority of Indonesian PSrE

The authority of Indonesian PSrE is:

No.	Authority	Note
1.	Validating the identity of prospective holder and/or holder of the Electronic Certificate	It can be done by: a. examination by Indonesian PSrE itself; b. cooperation with a notary as a registration authority; and/or c. cooperation with other parties as a <i>registration authority</i>
2.	Issuing the Electronic Certificate	
3.	Extending the validity period of Electronic Certificate for Electronic Certificate holder who applies for an extension of the validity period	It can be done by: a. examination by Indonesian PSrE itself; b. cooperation with a notary as a registration authority; and/or c. cooperation with other parties as a <i>registration authority</i>

4.	Blocking and/or revoking Electronic Certificate	It can be done by: a. examination by Indonesian PSrE itself; b. cooperation with a notary as a registration authority; and/or c. cooperation with other parties as a <i>registration authority</i>
5.	Validating Electronic Certificate	
6.	Creating a list of active and revoked Electronic Certificates by managing Electronic Certificate verification system (validation authority)	
7.	Placing and publishing Indonesian PSrE Electronic Certificates in a repository	
8.	Creating, verifying, and validating services of Electronic Signature and/or other services using Electronic Certificate	
9.	Collecting service fees from users of Electronic Certificate	
10.	Creating and/or managing Electronic Signature Creation Data and Electronic Signature Verification Data in the event that Electronic Signature Creation Data is entrusted to Indonesian PSrE	
11.	Processing <i>certificate signing requests</i> (CSR) from prospective Electronic Certificate Holder	

Indonesian Electronic Certificate

The organization of Indonesian Electronic Transactions requires an Indonesian Electronic Certificate issued by Indonesian PSrE. Moreover, PSE are also required to have an Indonesian Electronic Certificate issued by Indonesian PSrE.

²Article 8 of MoCI 11/2022

³Article 1 paragraph 24 of MoCI 11/2022

Pursuant to MoCI 11/2022, an Indonesian Electronic Certificate is an electronic certificate that contains Electronic Signature and the identity that indicates the legal status of the parties of the Electronic Transaction issued by PSrE.⁴

Indonesian Electronic Certificate functions as:

1. authentication and verification tools for identifying Electronic Certificate holder; and
2. supporting the security of the implementation of the Electronic System that can maintain confidentiality, authenticity, integrity, and non-repudiation.

Indonesian PSrE Services

Indonesian PSrE provides certified services including:

1. Electronic Signature.
2. Electronic Seals;
3. Electronic Timestamps;
4. Electronic Delivery Services Recorded;
5. Website Authentication; and/or
6. Preservation of Electronic Signatures and/or Electronic Seals.

Enforcement of the Certification Services

According to the IT Law, electronic information and/or electronic documents and/or their printouts are a valid and legal form of evidence which gives legal certainty to electronic transactions. Hence, MoCI 11/2022 also states that the certified services provided by Indonesian PSrE are a valid and legal form of evidence unless proven otherwise.

Conclusion

Indonesian PSrE is the only legal entity that may conduct any certification services in Indonesian territory except for Foreign PSrE specifically for the purpose of performing a mutual recognition and/or intercountry collaboration. Further, every Electronic Transaction in Indonesian territory requires an Indonesian Electronic Certificate issued by Indonesian PSrE in order to give a valid and legal form of evidence to transactions in the future.

⁴Article 1 paragraph 12 of MoCI 11/2022

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The article above was prepared by Dentons HPRP's lawyers

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