

THE DRAFT E-COMMERCE REGULATION TO BE ISSUED IN 2016

The highly anticipated draft e-commerce regulation has been expected to be issued since mid-2015 according to the Minister of Trade ("**MOT**"), and since then becomes the object of major discussion and debate from stakeholders. The draft, one of the implementing regulations for Law No. 40 of 2014 on Trade, will address the issue that most e-commerce players are waiting for, ie the status of e-commerce players domiciled abroad. Under the draft and discussion known to the public, players domiciled abroad that offer goods to Indonesian consumers will be considered to be doing business in Indonesia. Consequently, they will be subject to the e-commerce regulation under which they will require a license and special registration statement issued by the MOT. They will also be subject to the prevailing Indonesian income tax regulation, e.g. through the establishment of Permanent Establishment (*Badan Usaha Tetap/BUT*). This is indicated in the newly issued Minister of Communication and Informatics Circular Letter No. 3 of 2016 on the Provision of Apps and/or Content Services dated 31 March 2016, where Over-The-Top (OTT) provider in Indonesia may be subject of income tax in Indonesia if they form a BUT. We indicate that similar approach may be applied to the e-commerce player in the upcoming draft.

Further, several issues covered in the draft that may impact overseas players and domestic small players are the following:

- mandatory registration for all online vendors (including those selling in the domestic marketplace and overseas players);
- online sellers (vendors), and facilitators (platforms) are directly responsible for the delivery of the products; and
- facilitators (platforms) are directly responsible for the content of their platforms.

There are concerns that the draft does not cover the full variety of e-commerce business figures, and it may contain some seriously problematic requirements that are bad for small players because of the heavy load of obligations that they have to meet, which will hamper e-commerce players. The latest draft has been made available and the MOT says that it has delivered the draft to relevant stakeholders for review and discussion, such as iDEA, an Indonesian association of e-commerce players.

Despite its detailed protection for e-commerce consumers, the draft does not specifically cover the protection of personal data in e-commerce, since it does not provide a definition of the scope of personal data. This will be dealt with in a separate draft Data Protection Law.

The draft is expected to be released in 2016. However, to date, we are not aware of the issuance of this regulation.