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New Regulation on Electronic System Organizers in the Private Sector

The Minister of Communication and Informatics (“**MOCI**”) has finally issued MOCI Regulation No. 5 of 2020 on Electronic System Organizers (“**ESO**”) in the Private Sector (“**MOCI Regulation 5/2020**”) that serves as the new implementing regulation of Government Regulation No. 71 of 2019 on The Organization of Electronic Systems and Transactions (“**GR 71/2019**”) (together, the “**ESO Regulations**”), that revokes 2 (two) previous implementing regulations: MOCI Regulation No. 19 of 2014 on The Handling of Internet Websites Containing Negative Content and MOCI Regulation No. 36 of 2014 on The Procedure for the Registration of ESOs. MOCI Regulation 5/2020 was issued on 16 November 2020 and came into force on 24 November 2020.

MOCI Regulation 5/2020 has 7 chapters and an extensive scope covering, among others, the following areas:

- a. the registration obligations and procedures for private ESOs;
- b. the obligations and liabilities of private ESOs regarding the handling of prohibited electronic information and documents;
- c. requests for the termination or normalisation of access;
- d. access to electronic systems and electronic data for government authorities; and
- e. sanctions.

The following are several keys provisions of MOCI Regulation 5/2020.

The Registration Obligations and Procedures for Private ESOs

According to MOCI Regulation 5/2020, as explained in GR 71/2019, private ESOs are ESO in the form of individuals, legal entities and members of the public that are either regulated or supervised by the relevant ministry or institution according to the prevailing laws and regulations, and those who have internet portals, sites or applications and are engaged in:

- a. the provision, management and/or operation of goods and/or services and/or trading;
- b. the provision, management or operation of financial transaction services;
- c. the delivery of materials or paid digital content through data networks, by downloading them through portals or sites, their delivery through e-mails or through other applications to users' devices;
- d. the provision, management and/or operation of communications services, including but not limited to, text messages, voice calls, video calls, e-mails, online chats in the form of digital platforms, networking services and social media;
- e. the provision of search engines, electronic information in text, audiovisual, animation, music, video, film and game form or any combination of them (either partly or wholly); and/or
- f. the processing of personal data for the operation of public services related to electronic transaction activities.

Under the ESO Regulations, private ESOs must be registered with the MOCI before users can use their services. Based on the above classifications, parties operating private ESOs such as e-commerce platform, social media application and game application operators are subject to the registration requirements. In addition to the private ESO operators above, the registration obligation also applies to private ESO operators that are established under the laws of another country or permanently domiciled in another country, but meet the following criteria ("**foreign private ESOs**"):

1. they provide services within the territory of Indonesia;
2. they do business in Indonesia; and/or
3. their electronic systems are used or offered in Indonesia.

In general, the registration is conducted through the Online Single Submission ("**OSS**") system by completing the registration form with the following information:

1. a general description of the electronic system's operation including:
 - a. the name of the electronic system;
 - b. the sector of the electronic system;
 - c. the URL website;
 - d. the domain name system and/or IP server address;
 - e. a description of the business model;
 - f. a brief description of the electronic system's function and business process;
 - g. information about the personal data processed;
 - h. information about the location of the management, processing and storage of the electronic system and electronic data; and

- i. a statement to the effect that the private ESO guarantees and will comply with the obligation to provide access to the electronic system and electronic data to ensure the effectiveness of supervision and law enforcement in accordance with the prevailing laws and regulations;
2. the obligation to ensure that its information security complies with the prevailing laws and regulations;
3. the obligation to protect personal data in accordance with the prevailing laws and regulations; and
4. the obligation to conduct an electronic system feasibility test in accordance with the prevailing laws and regulations.

Under the regulation, private ESOs which do not have access to the OSS system may be registered by submitting all the above information as well as the following information to the MOCI's online system (<https://layanan.kominfo.go.id/>):

1. the name, address, and form of the legal entity, along with the company's deed of establishment and the latest deed of amendments to it;
2. the tax identification number;
3. the name, residence index number and phone number; and
4. a statement to the effect that the private ESO is has a license to engage in its business activities from the relevant ministry or institution that has authority under the prevailing laws and regulations as evidenced by the relevant documents.

In addition to the above obligation to register, a foreign private ESO also has to submit the following information to the MOCI:

1. the identity of the foreign private ESO;
2. the identity of the company's management or person in charge;
3. the certificate of domicile or certificate of incorporation;
4. the number of users in Indonesia; and
5. the value of transactions originating from Indonesia.

Once a private ESO has successfully registered, the MOCI will issue evidence of registration, and the private ESO will be placed on the list of private ESOs on the MOCI's website. The evidence of registration will be valid indefinitely unless the private ESO violates any provisions under the relevant regulations. Any change to the information provided during registration must also be reported to the MOCI.

The Obligations and Liabilities of Private ESOs regarding the Handling of Prohibited Electronic Information or Documents

Under MOCI Regulation 5/2020, private ESOs are responsible for the organization of their electronic systems and the management of electronic information and/or electronic documents in their electronic systems in a manner that is reliable, safe and responsible. With regard to this, private ESOs are required to provide user guidelines in the Indonesian language.

Mirroring GR 71/2019, MOCI Regulation 5/2020 also requires private ESOs to ensure that their electronic systems do not contain or facilitate the dissemination of prohibited electronic information or documents. Prohibited electronic information or documents are classified as electronic information or documents that:

1. violate the prevailing laws and regulations;
2. are unsettling to the public or threaten public order; or
3. provides ways or access to distribute illegal electronic information or documents.

If a private ESO does not comply with the above obligation, its access to the electronic system will be blocked by the MOCI.

MOCI Regulation 5/2020 also covers private user generated content ESOs, which was not specifically provided under GR 71/19. Under MOCI Regulation 5/2020, a private user generated content ESO is a private ESO in which the provision, broadcasting, uploading and/or exchange of electronic information or documents is conducted by the electronic system users. Examples of private user generated content ESOs include applications such as *Twitter*, *TikTok* and *Instagram*. Private user generated content ESOs must also ensure that their electronic systems do not contain or facilitate the dissemination of prohibited electronic information or documents. To do so, private user generated content ESOs must:

1. have procedures in place regarding electronic information or documents that cover the following:
 - a. the obligations and rights of electronic system users regarding the use of the electronic system's services;
 - b. the obligations and rights of the private ESO regarding the operation of the electronic system;
 - c. liability related to the electronic information or documents uploaded by the electronic system's users; and
 - d. the availability of facilities and services and the resolution of complaints;
2. provide a reporting mechanism accessible to the public and the private ESOs must:
 - a. respond to any complaint/report;
 - b. conduct an independent examination of the complaint/report or request the verification of the complaint/report it to the MOCI or related ministry or institution;
 - c. notify its electronic system's users of the complaint/report on electronic information or documents uploaded by an electronic system user; and
 - d. reject any complaint/report if the reported electronic information or document is not prohibited.

A private user generated content ESO may be exempt from legal liability regarding electronic information and documents that are prohibited from being transmitted and distributed through its electronic system if the private user generated content ESO:

1. has complied with all its obligations explained above;
2. provides information about the subscriber (whose electronic data is controlled or managed by the private ESO) that uploaded the prohibited electronic information or document; and
3. blocks access to the prohibited electronic information or document.

MOCI Regulation 5/2020 also introduces a cloud computing organizer, which is a private ESO that provides, organizes, manages and/or operates cloud computing. For example, parties that can be categorized as cloud computing organizers may include *Dropbox* and *Google Drive*. Cloud computing organizers must also ensure that their electronic systems do not contain or facilitate the dissemination of prohibited electronic information or documents. To do so, cloud computing organizers must have procedures in place regarding electronic information and documents, that cover the following:

1. the obligations and rights of cloud computing organizer users that are using their cloud computing;
2. the obligations and rights of cloud computing organizers regarding the operation of their cloud computing; and
3. the liability of the cloud computing organizer's users regarding storing electronic information and documents in their cloud computing.

Cloud computing organizers must also provide electronic information and documents regarding their cloud computing organizer users that they own for the purpose of supervision and law enforcement.

Requests for the Termination or Normalisation of Access

Under Regulation 5/2020, private ESOs are required to take down prohibited electronic information and documents, including those that can facilitate the dissemination of prohibited content. Members of the public, ministries, institutions, law enforcement, and the judiciary can submit requests for the termination (taking down) of access to prohibited electronic information and documents. Requests can be submitted through the following media:

1. the website or application;
2. non-electronic mail; and
3. electronic mail,

accompanied by certain information including, at least, the following:

1. the applicant's identity;
2. an image or screen capture that displays the prohibited electronic information or document;
3. a link or URL that links to the prohibited content to which the termination of access is being applied for; and
4. the reason for the application.

Upon instructions from the MOCI, the private ESO in question must process the termination of access order within 24 hours of receiving the instruction, or if the content requires urgent action (eg materials related to child pornography or terrorism, or materials likely to threaten public order), within 4 hours of receiving the instruction from the MOCI. If a private ESO fails to terminate access or takes too long to do so, the MOCI may block the private ESO's access to its electronic system or instruct internet service providers to block access to them through the private ESO's electronic system.

A private ESO whose access to the electronic system has been blocked can submit a request for normalisation to the MOCI. Normalisation is the restoration of access to an electronic system that has been blocked. A request for normalisation from a private ESO must be accompanied by:

1. a written application letter;
2. the person in charge's identity and contact number;
3. a scanned copy of the electronic system's owner/person in charge's identity card;
4. an image or screen capture and link or URL that proves that the electronic system no longer contains prohibited electronic information or documents;
5. a letter of recommendation from the relevant ministry or institution, law enforcement agency, or a court ruling with a permanent legal force; and
6. other evidence supporting its legitimacy as a private ESO.

Access to Electronic Systems and Electronic Data for Government Authorities

Under MOCI Regulation 5/2020, for the purpose of supervision and law enforcement, Indonesian ministries, institutions and law enforcement agencies can request access to a private ESOs' electronic system and electronic data, and the private ESO must provide them access upon receipt of a request from the government authority. For this, private ESOs must choose at least one liaison officer who is domiciled in Indonesia to be in charge of handling requests for access from government authorities.

Sanctions

If a private ESO fails to comply with MOCI Regulation 5/2020, it may have the following administrative sanctions imposed on it:

- a. written warning (through electronic mail/other electronic media);
- b. a fine;
- c. a temporary suspension of business;
- d. the revocation of its evidence of the organizer's registration (through electronic mail/other electronic media); and
- e. the termination of access to its electronic system.

The MOCI can impose all the above administrative sanctions regardless of what legal jurisdiction the private ESO falls under.

Transitional Provisions

All the private ESOs to which MOCI Regulation 5/2020 applies must register within 6 months of MOCI Regulation 5/2020 coming into force ie, by 24 May 2021.

As MOCI Regulation 5/2020 is a relatively new regulation, the practical implementation of some its provisions by the MOCI has yet to be seen (eg whether any additional documents or technical requirements are needed to register and whether the MOCI system is ready to accept applications from

foreign private ESOs). Currently, we understand that the MOCI is still in the process of updating its system in order to be able to accommodate registrations of foreign private ESOs. Therefore, foreign private ESOs need to continue to monitor the MOCI's policies and make sure that they comply with MOCI Regulation 5/2020.

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