

Client Alert

December 2019

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Indonesia Now Has a Specific E-commerce Regulation

Recent Development

The Indonesian Government issued Government Regulation No. 80 of 2019 on Trading Through Electronic Systems ("**GR 80**"). GR 80 is one of the regulations mandated under Presidential Regulation No. 74 of 2017 on the National E-Commerce Road Map 2017 - 2019 (specifically under the consumer protection program) ("**PR 74**"). Despite GR 80 being issued before the end of 2019, it has nonetheless been delayed from the initial target of late 2017 to early 2018.

GR 80 intends to govern the rapid growth of e-commerce in Indonesia, including marketplace and e-retail practices.

Unlike some other IT subject matter regulations that fall under the jurisdiction of the Ministry of Communication and Informatics, GR 80 focuses on trading activities and falls under the jurisdiction of the Ministry of Trade, which is in line with PR 74.

GR 80 became effective on 25 November 2019, with a 2-year transitional period for e-commerce Business Actors to adjust to the regulation.

In addition, GR 80 is the implementation regulation of Law No. 7 of 2014 on Trade ("**Trade Law**"), particularly for e-commerce. By itself, the Trade Law does not provide a comprehensive provision on e-commerce and only states that every business actor trading goods/services on an electronic system shall provide complete and correct data and/or information, and is prohibited to sell goods and/or services through the electronic system that is not in accordance with such data and/or information. Therefore, the issuance of GR 80 is in line with Article 66 of the Trade Law, which basically states that further provisions on e-commerce will be regulated by or under a Government Regulation.

Notable Provisions

GR 80 includes the following provisions specific to an e-commerce practice, which we briefly discuss below, with some of the trade practices taken from conventional physical trading:

1. elaboration on Business Actors involved in an e-commerce practice
2. compliance checklist for e-commerce operators
3. electronic contracts and evidence



4. personal data protection
5. trade practices (e.g., taxation, payment, trading contract, consumer protection, and shipping and logistics)

Parties Involved in an E-commerce Practice

GR 80 stipulates that business actors operating through an e-commerce business ("**Business Actors**") are defined as any individual or entity — whether a legal entity or a non-legal entity, domestic or foreign — that carries out e-commerce business activities.

Classification

Business Actors, consumers, individuals, and government institutions can conduct trading through electronic systems (or "**e-commerce**," the term used in GR 80) .

E-commerce Business Actors, both local and foreign, are classified into three groups, i.e.,:

1. merchants

Merchants are Business Actors that offer goods and/or services electronically, either through their own electronic systems or through the electronic system of an e-commerce operator.

As an aside, GR 80 specifically mentions that a seller that only sells goods and/or services on a one-off basis and not for commercial purposes is not deemed as a merchant. GR 80 refers to this type of seller as "Personal". We suspect this category would include individuals or entities that want to sell their secondhand goods through an e-commerce platform.

2. e-commerce operators

E-commerce operators are Business Actors that provide an electronic system to enable e-commerce transactions. Business models of e-commerce operators include marketplace, online retail/e-retail, online classified ads, price comparison platform, and daily deals.

3. intermediary service operators

Intermediary services operators include Business Actors that provide indirect services to e-commerce practices, such as search engine companies, social media companies, hosting companies and caching companies.

Foreign Business Actors

The GR 80 provisions that apply to local Business Actors also apply to foreign business actors.

The definition of "foreign Business Actors" is broad and includes foreign individuals or business entities incorporated and located



outside of Indonesia that conduct e-commerce business activities in Indonesia.

GR 80 further states the criteria for a foreign Business Actor to be deemed as "conducting e-commerce business activities in Indonesia".

Subject to certain thresholds, foreign Business Actors that actively conduct e-commerce activities with consumers in Indonesia are deemed as physically present in Indonesia and conducting fixed business activities in Indonesia. To the best of our knowledge, the Indonesian Government is currently preparing a new omnibus law to re-define permanent establishment to include the significant economic presence.

These thresholds are related to (i) number of transactions, (ii) transaction value, (iii) number of shipped packages, and/or (iv) volume of traffic or number of users.

Further provisions on the thresholds will be governed in a ministerial regulation. There is no clear timeline as to when the ministerial regulation will be issued.

A foreign Business Actor that meets any of the thresholds must appoint an Indonesian representative that can act on its behalf.

Business License

E-commerce Business Actors, whether domestic or foreign, must have a business license in order to carry out e-commerce business activities.

Intermediary service operators are exempted from the business license requirement if:

1. they are not direct beneficiaries of an e-commerce transaction or
2. they are not directly involved in an e-commerce contractual relation with the parties involved.

The business license application can be filed through an Electronic Integrated Business Licenses (*Perizinan Berusaha Integrasi Secara Elektronik*) pursuant to the prevailing laws and regulations. A further regulation will be stipulated by a ministerial regulation.

One interesting thing to note is that GR 80 requires all Business Actors, whether individuals or entities, to obtain a business license to carry out e-commerce business activities in Indonesia. This requirement could be an issue for:

1. all individuals and Small, Micro and Medium Enterprises (SMEs) engaging in e-commerce in Indonesia, although we note that the government would like to boost economic growth for Small, Micro and Medium Enterprises (SMEs); and



2. how market platform operators will manage their existing sellers and the impact on sellers who fail to obtain business licenses after the 2-year transitional period lapses, i.e., should those sellers be delisted?

E-Commerce Operators' Compliance Checklist

GR 80 includes a list of compliance matters that must be fulfilled by e-commerce operators, both local and foreign.

General Requirements

Local and foreign e-commerce operators must, among other things:

1. prioritize the use of an Indonesian domain name (e.g., .id)
2. use server equipment that is housed in a data center
3. register as an electronic system operator with the Ministry of Communication and Informatics
4. submit periodical data and/or information to the statistics bureau - further provisions will be governed by the statistics bureau

Negative Content Management

E-commerce operators and intermediary service operators are responsible for the impact or legal consequences of negative content on their platforms. This responsibility will not apply if an e-commerce operator acts quickly to remove negative content after becoming aware of it (either through its own monitoring or based on a report from another party).

While Indonesia already has a safe harbor concept, the government wants platform operators to be more proactive and responsible in managing negative content on their platforms. Therefore, the government is imposing responsibility for negative content rather than providing ways to avoid it on the grounds that it is user-generated content.

The responsibility for negative content is withheld from intermediary service operators that (i) are mere conduits of information; (ii) only store data/information, either temporarily (caching) or for hosting purposes; and (iii) only act as search engine operators.

Data Retention Period

GR 80 requires e-commerce operators to retain data for a specific period. For data related to financial transactions, the retention period is 10 years. For other data, the retention period is five years. "Other data" includes data and information on, at least, (i) customers, (ii) electronic offer and acceptance, (iii) electronic confirmation, (iv) payment confirmation, (v) goods shipping status, (vi) trading claims and



disputes, (vii) electronic contracts, and (viii) type of traded goods and/or services.

Electronic Contracts and Evidence

Electronic Contracts

Emphasizing what has been stipulated in the Electronic Information and Transactions Law and Government Regulation No. 71 on the Implementation of Electronic Systems and Transactions ("**GR 71**"), GR 80 stipulates that an e-commerce transaction can be done using electronic contracts. These electronic contracts can be either sale and purchase agreements or licensing agreements.

An electronic contract is valid and binding if:

1. it reflects the terms and conditions of the relevant electronic offer;
2. the information is the same as the information in the relevant electronic offer; and
3. the general requirements to make a contract valid under the Indonesian Civil Code are fulfilled, e.g., consent, competent legal subject, specific object, permissible cause (i.e., it does not contravene the prevailing regulations and principles of public order and morality)

Electronic contracts can be signed using an electronic signature in line with electronic signature provisions under GR 71.

Electronic contracts addressed to an Indonesian consumer must use the Indonesian language. Further, Business Actors must ensure that electronic contracts can be downloaded and/or stored by consumers.

Electronic Evidence

Under GR 80, e-commerce operators are obliged to provide and store valid e-commerce transactions evidence.

GR 80 acknowledges that e-commerce transactions evidence is valid evidence and binds the parties, except if:

1. By law, the e-commerce transaction evidence must be made in a hardcopy document form.
2. By law, the e-commerce transaction evidence must be made in a notarial deed form.

Given the above, e-commerce transactions evidence can be presented as evidence in a court proceeding and cannot be rejected just because of its electronic form. E-commerce transactions evidence can also be presented as authentic written evidence (which has a higher evidentiary power) if it uses a certified electronic signature.



Personal Data Protection

GR 80 treats Business Actors that acquire personal data from individuals as the parties responsible for the use and storage of such personal data.

In terms of personal data protection standards, GR 80 provides reference to the standards under the European Union's General Data Protection Regulation and the APEC Privacy Frameworks.

GR 80 also stipulates that personal data cannot be transferred offshore, unless the receiving nation is deemed by the Ministry of Trade as having the same level of personal data standards and protection as Indonesia.

Considering the data privacy law that is still being drafted by the government (under the jurisdiction of the Ministry of Communication and Informatics), this offshore personal data transfer restriction may not be immediately implemented (noting that GR 80 has a 2-year transitional period).

Provisions on Some Trade Practices

E-commerce Trading Interactions

GR 80 stipulates three steps of interaction in an e-commerce transaction between a Business Actor and a consumer, as follows:

1. electronic offer - the goods and/or service offering from a Business Actor to a consumer
2. electronic acceptance - the explicit consent from the consumer to the Business Actor for an electronic offer
3. electronic confirmation - a chance given by the Business Actor to the consumer to confirm its explicit acceptance

Payment in an E-commerce Practice

In an e-commerce practice, payment can be done electronically through a banking system or other electronic payment systems.

E-commerce operators can cooperate with a payment system service provider based on an agreement. The agreement must be reported by the e-commerce operator to the Ministry of Trade.

Logistics in an E-commerce Practice

Apart from the general obligation for a merchant to deliver goods and/or services to its buyers, GR 80 stipulates that in an e-commerce transaction conducted through an e-commerce operator system, the delivery of the goods and/or services is the responsibility of the e-commerce operator.



E-commerce operators can cooperate with a logistics service provider based on an agreement. The agreement must be reported by the e-commerce operator to the Ministry of Trade.

Delivery of digital goods and/or services will be deemed to have been made once the digital goods and/or services have been fully received by the buyer and are proven to have been installed and operational.

Taxation

GR 80 does not touch upon taxation matters in e-commerce transactions. However, it acknowledges that the taxation provisions and mechanism under the prevailing laws and regulations apply to e-commerce business activities, i.e., are subject to Value Added Tax and withholding tax (as applicable).

Consumer Protection and Anti-Competition

As with taxation matters, GR 80 does not specifically touch upon consumer protection and anti-competition matters. It only requires Business Actors to comply with prevailing laws and regulations on consumer protection (including providing a consumer complaint service) and anti-competition.

Electronic Advertisement

In publishing electronic advertisements on its platform, an e-commerce operator must comply with the prevailing laws and regulations on broadcasting, personal data protection, consumer protection and anti-competition.

Sanctions

Violation of the provisions of GR 80 would lead to administrative sanctions, in the form of:

1. warning letters
2. inclusion in a list of prioritized monitoring
3. inclusion in a black list
4. temporary suspension of services of e-commerce operators
5. revocation of business license

Further provisions on the imposition of administrative sanctions will be governed in a ministerial regulation.

Transitional Period

As mentioned above, GR 80 became effective on 25 November 2019, with a 2-year transitional period for e-commerce Business Actors to adjust to the regulation.



Be Alert for Market Development and Enforcement

With the issuance of GR 80, Indonesia now has a specific e-commerce regulation in place to govern the rapid growth of e-commerce practice in Indonesia.

However, some aspects of GR 80 still need to be clarified and confirmed, including the business license requirement and the fulfillment of the requirements by foreign e-commerce Business Actors. We suspect that the government will use the 2-year transitional period to establish an infrastructure for the enforcement of the regulation towards foreign e-commerce Business Actors (as well as to issue the implementing regulations referred to in GR 80).

Clients should stay alert to how GR 80 will be enforced as well as how the market practice will develop following the regulation's issuance.



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