

Indonesia: Breaking down the second amendment to the EIT Law – new provisions on electronic certificate providers, prohibited contents and mandatory use of Indonesian law

In brief

On 2 January 2024, the President of the Republic of Indonesia signed Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions ("**EIT Law**") ("**Amendment Law**"). The Amendment Law was enacted and became effective on the same day. The Amendment Law covers some new provisions that seem to push for localization and domestic protection, such as the requirement for e-certification service providers to be domiciled in Indonesia and the requirement for international electronic contracts to be governed by Indonesian Law. The Amendment Law also elaborates on the prohibited acts under the EIT Law, and contains new provisions on government intervention.

Main changes in the amendment law

The Amendment Law is intended to provide further legal certainty for online practice and activities, and to create a clean, healthy, ethical, productive and fair digital space in Indonesia.

Note that the Amendment Law mandates that several provisions/requirements will be further elaborated in implementing regulations (in the form of government regulations). As such, there are several points that remain unclear, and it remains to be seen how the government will implement them in practice.

The following are some of the main changes to the EIT Law :

1. Electronic certification providers must be incorporated and domiciled in Indonesia.
2. Electronic system operators must implement child protection on their electronic systems.
3. Electronic system operators must use electronic certificates for high-risk electronic transactions.
4. Indonesian law will apply in all standard terms and conditions when Indonesian users access and grant the consent to the terms from Indonesia.
5. The government may intervene to protect fair competition and consumers.
6. Electronic system operators may be compelled to moderate any prohibited content, and to terminate access to accounts/contents.
7. Electronic system operators must consider the updated formulation on prohibited contents (e.g., content against proprietary or misinformation content).

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Incorporation of electronic certification providers

The EIT Law recognizes the concept of foreign electronic certification providers and Indonesian electronic certification providers. Further, before the Amendment Law came into force, the EIT Law stated that a foreign electronic certification provider may operate in Indonesia after registering in Indonesia (although in practice we have not seen this registration requirement being enforced).

The Amendment Law, through Article 13.3, seems to indicate that electronic certification providers that are operating in Indonesia must be incorporated and domiciled in Indonesia. The only exemption from this requirement is if the type of services that use an electronic certificate is not yet provided by electronic certification providers in Indonesia.

We suspect that through this requirement the government intends to force foreign electronic certification providers (including electronic signature service providers) that specifically target the Indonesian market to have a local presence. This way, the government will have more control over electronic certification providers that provide services in Indonesia, including in monitoring their activities and products.

At this point there is no further detail on the requirement, and this is something that will be further regulated in a government regulation (i.e., the implementing regulation of the Amendment Law).

Lastly, the Amendment Law is silent on the consequences for electronic signatures that are made through a foreign electronic signature service provider that is not incorporated and domiciled in Indonesia. We suspect that this is also something that will be covered in the implementing regulation.

Child protection in electronic systems

The Amendment Law requires electronic system providers to provide special treatment or protection for children who use or access electronic systems. The protection is given to children for products, services and features that are developed and offered by the electronic system .

In providing the protection to children, an electronic system operator must provide all of the following:

1. Information on the minimum age of a person who can use its products or services
2. A mechanism to verify a user – no specific details on verification mechanism under the Amendment Law but we suspect the purpose of the mechanism is to know a person's age and to determine whether or not a person is deemed a child in Indonesia, e.g., age gating, credit card verification or other verification mechanism)
3. Mechanism to report a misuse of products, services and features that violates or potentially violates a child's rights

The Amendment Law is silent on who is considered a "child" under the regulation. We suspect that the Amendment Law will take the standard under the Indonesian Child Protection Law, where a "child" is defined as someone who has not reached 18 years of age. Further details of this child protection requirement will be governed in an implementing regulation of the Amendment Law.

Electronic certificates for high-risk electronic transactions

Article 17.2a of the Amendment Law provides that high-risk electronic transactions must use electronic signatures that are secured by electronic certificates. This seems to indicate that the government wants to require the use of an electronic certificate provider that has a license in Indonesia – noting that the Amendment Law requires electronic certification providers that operate in Indonesia to be incorporated and domiciled in Indonesia.

The Amendment Law only provides one sample of what is considered as a "high-risk electronic transaction", i.e., a financial transaction that does not involve a physical face-to-face interaction. This is just a sample, and therefore does not close the possibility of the government deeming other kinds of electronic transactions as "high-risk".

The Amendment Law is also silent on the consequences of high-risk electronic transactions being concluded with electronic signatures that do not use electronic certificates.

We suspect that further details of this requirement will be governed in an implementing regulation of the Amendment Law.

Application of Indonesian law in standard terms and conditions

Under Article 18A of the Amendment Law, application of Indonesian law and Indonesian language will be mandatory for standard terms and conditions of products and services offered by electronic system operators in any or all of the following situations:

- The user is based in Indonesia and grants his/her consent from within the Indonesian territory.
- The contract (e.g., provision of service) is carried out within the Indonesian territory.

The electronic system operator has a business premises or carries out its business in Indonesia – this may include electronic system operators not establishing a business premises in Indonesia, but generating revenue (business) from Indonesian users through making standard terms and conditions in Indonesian language with the aim of attracting Indonesian users. This article would override a foreign governing law provision in the standard terms and conditions set out by offshore electronic system operators from the effective date of the Amendment Law onwards.

The Amendment Law is silent on the consequences for international electronic contracts that are governed by foreign law. The government is still discussing this, but the possibilities are (i) the contract is deemed as being governed by Indonesian law (regardless of its governing law provision), or (ii) the contract is deemed null and void. We suspect this is something that will be further elaborated in the upcoming implementing regulation.

Government's intervention – fair competition and consumer protection

Under Article 40A of the Amendment Law, the government may order electronic system operators to implement changes in their systems for the purpose of creating digital ecosystems that are fair, accountable, safe and innovative. Further in the elucidation of Article 40A, it is explained that the aim of the provisions is to ensure equal opportunity for all players in a digital ecosystem to do business and innovate while adhering to the principles of fairness, reasonableness and non-discrimination (FRAND).

The orders that the government can make are:

- Order to **make adjustments** to electronic systems, such as restricting or adding to features of software or hardware in an electronic system or prohibiting the use of certain features in an electronic system in Indonesia
- Order to **carry out specific actions**, such as ordering an electronic system provider (i) to take affirmative actions to aid members of society that are affected by software, hardware, and/or features and (ii) to adjust its business activity to enable a level playing field

Failure to abide by the order may lead to administrative penalties, including blocking of access.

The procedures and requirements for the government to impose the above-mentioned orders will be set out in an implementing government regulation. So the details of this new measure are unclear at this point. We may be looking at a wide range of possible orders, tailored to the business models of the specific players that are subject to them.

Also, given the reference to accountability and safety, in theory these orders may be used for consumer protection reasons such as to prevent fraud, not just for the sake of fair competition.

More elaboration on content moderation requirement

Article 40 (2)(c) now confers authorizations on the government to instruct electronic system operators to terminate access and to carry out content moderation of electronic information and documents containing prohibited contents (pornography, gambling and others), as part of the government's duties to prevent dissemination of prohibited content. Under Article 40 (2)(d), electronic system operators may also be ordered to moderate content endangering the safety and health of individuals and the public that may cause substantial material or physical harm, such as content showing acts of suicide or life-threatening challenges that may encourage others to commit similar acts. The Amendment Law mandates the issuance of a government regulation that may elaborate how the government will discharge its duties and authorities under Article 40 and compliance actions required from electronic system operators.

In the context of investigations into criminal actions under the EIT Law, investigators from the Ministry of Communications and Informatics are now equipped with authorities to order electronic system operators to terminate access (temporarily) to social media accounts, bank accounts, e-money and digital assets.

Reformulation of prohibited contents

Some types of EIT Law related prohibited contents and actions have been reformulated in the new Criminal Code, which was enacted last year amidst concerns about overcriminalization of online content. Since the new Criminal Code will only come into force in 2026, the Amendment Law aims to fill the regulatory gap, and provides clarity on how some prohibited contents should be construed.

Article 27 paragraph (1) clarifies that an act can be considered as a prohibited act of "*disseminating content that is against propriety*" if the act is intended "*to be known by the public*", while "*against propriety*" should be perceived as acts displaying nudity, genitals and sexual activities that are contrary to the values of society in the place and at the time the act is committed according to contemporary community standards. The Amendment Law also introduces a new principle that acts against propriety under Article 27 paragraph (1) may be exempted from criminal prosecution if (i) the acts are committed for the public interest, (ii) the acts are committed in self-defense, or (iii) the Electronic Information or Electronic Documents are works of art, culture, sports, health and/or science.

Going forward

Many of the provisions in the Amendment Law should be further elaborated in the upcoming implementing regulation. We were informed that this implementing regulation will be an amendment to Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions. However, in the meantime, companies should familiarize themselves with the new (and updated) requirements, and start considering adjusting their practice to comply with the Amendment Law.

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