

## Client Alert

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## Further Certainty For E-commerce Players (or not?)

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### Recent Development

The Minister of Trade ("**MOT**") finally issued Regulation No. 50 of 2020 on the Provisions on Business Licensing, Advertisements, Development and Supervision of Business Actors in Electronic Systems Trading ("**Regulation 50**") on 19 May 2020, but Regulation 50 was only made available to the public in late May 2020.

Regulation 50 is the implementing regulation of Government Regulation No. 80 of 2019 on Trading Through Electronic Systems ("**GR 80**"), which was enacted on 25 November 2019. You can find our previous client on the issuance of GR 80 [here](#).

For the bigger picture, GR 80 is an implementing regulation of Law No. 7 of 2014 on Trade ("**Trade Law**"), and thus, the Trade Law is the umbrella law for both GR 80 and Regulation 50. It appears that the Indonesian government is now putting more attention on e-commerce transactions by issuing more detailed regulations. E-commerce transactions were not comprehensively regulated under the Trade Law. There are only two articles under the Trade Law regarding trading through electronic systems. One of those articles states that further details would be set out in a government regulation (which is GR 80).

GR 80 has a two-year transitional period. However, despite this transitional period, Regulation 50 will become effective six months after its enactment date (i.e., on 19 November 2020).

As the title suggested, Regulation 50 intends to further elaborate provisions in GR 80, including those that are related to e-commerce business licensing and advertisements. Some of the notable provisions in Regulation 50 are:

1. classification of business actors and the e-commerce activities covered
2. licensing requirements and obligations
3. electronic advertisements
4. administrative sanctions and normalization



## Classification of Business Actors

Categories of Business Actors under Regulation 50 are in line with GR 80, namely:

1. local merchants
2. foreign merchants
3. local e-commerce operators
4. foreign e-commerce operators
5. local intermediary service operators
6. foreign intermediary service operators

Under Regulation 50, the scope of 'local merchants' now includes merchants that perform trading activities through social media platforms.

The trading activities covered under Regulation 50 are quite broad. Regulation 50 has extraterritorial reach as it intends to capture foreign merchants that are offering their goods or services in Indonesia. However, it remains to be seen how the Government will implement Regulation 50.

In brief, the characteristics of e-commerce activities under Regulation 50 are the following (described quite broadly):

- a. They involve the trading of any form of goods and services.
- b. They are performed by local or foreign business actors.
- c. They are conducted through electronic equipment and systems, either on a self-developed platform or on another party's platform.
- d. They involve fees or compensation for the transacted goods and services.

## Business Actors Licensing Requirements and Obligations

We set out the licensing requirements and obligations for each category of Business Actors in the table below.



<b>Business Actors</b>	<b>Licensing Requirements and Obligations</b>
Local merchants	<ul style="list-style-type: none"> <li>Local merchants must obtain a trading business license (<i>surat izin usaha perdagangan</i> or SIUP). If the local merchants only engage in online retail trading services, the business license must follow Indonesian Standard Industrial Classification (KBLI) 4791 - limited for particular goods only.</li> <li>If the local merchants do not engage in general trading activities, they must obtain a business license relevant to the local merchants' business sector (e.g., restaurant, hotel).</li> <li>Local merchants that operate their own e-commerce platforms would be considered as local e-commerce operators, and thus would be required to obtain an SIUPMSE (as defined below).</li> </ul>
Foreign merchants	<ul style="list-style-type: none"> <li>Foreign merchants must obtain a business license from their country of origin, and provide the business license information to the local e-commerce operators.</li> <li>The elucidation of GR 80 categorizes foreign merchants that operate their own e-commerce platforms as foreign e-commerce operators. Therefore, this type of foreign merchants would be subject to the licensing requirement for foreign e-commerce operators under Regulation 50.</li> </ul>
Local e-commerce operators	<ul style="list-style-type: none"> <li>Local e-commerce operators must obtain a business license for trading through electronic systems (<i>surat izin usaha perdagangan melalui sistem elektronik</i> or "<b>SIUPMSE</b>").</li> <li>An SIUPMSE will become effective after certain commitments are fulfilled (e.g., obtaining an electronic system operator ("<b>ESO</b>") registration certificate from the Ministry of Communications and Informatics ("<b>MOCI</b>").</li> <li>An SIUPMSE remains valid as long as the local e-commerce operators still perform their business activities.</li> <li>Local e-commerce operators must store the data of foreign merchants that are registered in their e-commerce platform.</li> <li>Local e-commerce operators must submit data and information to the Indonesian Statistics Bureau (<i>Badan Pusat Statistik</i> or "<b>BPS</b>"). Details on this submission will be further regulated in a BPS regulation.</li> </ul>



<b><i>Business Actors</i></b>	<b><i>Licensing Requirements and Obligations</i></b>
Foreign e-commerce operators	<ul style="list-style-type: none"><li>• The licensing requirement would only be applicable if one of these criteria is fulfilled:<ul style="list-style-type: none"><li>(i) The foreign e-commerce operators annually transact with more than 1,000 consumers in Indonesia.</li><li>(ii) The foreign e-commerce operators annually deliver more than 1,000 packages to consumers in Indonesia.</li></ul></li><li>• If one of the criteria is fulfilled, foreign e-commerce operators must establish a trade representative office for e-commerce activities in Indonesia.</li><li>• A representative office can only represent one foreign e-commerce operator, and it is only permitted to conduct the following activities:<ul style="list-style-type: none"><li>(i) fulfill consumer protection obligations</li><li>(ii) develop competitiveness of products and/or services</li><li>(iii) settle disputes</li></ul></li><li>• While Regulation 50 states that the representative office must be able to act on behalf of the foreign e-commerce operator, the list of permitted activities above indicates that the purpose of the representative office is more to attend to claim related matters, whether consumer claims or legal disputes.</li><li>• The representative office must obtain a representative office trade business license (<i>surat izin usaha perwakilan perusahaan perdagangan asing</i> or "<b>SIUP3A</b>").</li><li>• An SIUP3A remains valid as long as the representative office still performs its representative activity.</li><li>• The representative office is also required to obtain an ESO registration certificate from the MOCI.</li><li>• Foreign e-commerce operators are required to submit data and information to BPS, subject to future BPS regulations on this matter.</li></ul>



<b>Business Actors</b>	<b>Licensing Requirements and Obligations</b>
<p>Intermediary service operators (<i>penyedia sarana perantara</i> or "PSP")*</p> <p><i>*covers both foreign and local PSPs</i></p>	<ul style="list-style-type: none"><li>• PSPs must obtain an SIUPMSE, which will become effective after the commitments are fulfilled (e.g., obtaining an ESO registration certificate from the MOCI).</li><li>• An SIUPMSE remains valid as long as the PSPs still perform their business activities.</li><li>• PSPs are exempted from the licensing requirement if one of these criteria is fulfilled:<ul style="list-style-type: none"><li>(i) They are not direct beneficiaries of the e-commerce transactions.</li><li>(ii) They are not directly involved in a contractual relationship between parties to e-commerce activities.</li></ul></li><li>• It remains unclear under Regulation 50 what would constitute a 'direct beneficiary'. Further assessment of the business model of the PSP should be made to identify the existence of a 'direct beneficiary'.</li></ul>

## Electronic Advertisements

Business Actors may create, publish and distribute electronic advertisements through their own platform or other parties' e-commerce platforms. The content of the electronic advertisements must comply with the prevailing laws and regulations on broadcasting, data privacy, consumer protection and competition principles.

Regulation 50 stipulates that every Business Actor is responsible for the content in the electronic advertisements that it creates, publishes or distributes. Further, the provisions of Regulation 50 are not clear on the liabilities for electronic advertisements that are considered as user-generated content, but they indicate that e-commerce operators and the merchants are liable given the broad definition of Business Actor. This could be an issue for e-commerce operators that take the form of an online marketplace, where the merchants may create promotion materials for their own products.



It appears that Regulation 50 focuses more on the creation, publication and distribution of electronic advertisements rather than the contents of electronic advertisements. As discussed above, it is stipulated that the contents of electronic advertisements must comply with prevailing laws and regulations in the sectors of broadcasting, privacy and personal data protection, consumer protection, and fair business competition principles. From the consumer protection perspective, the contents of the electronic advertisements must follow the requirements under Law No. 8 of 1999 on Consumer Protection, such as that it must not contain misleading information regarding (i) price or tariffs of goods/services, (ii) function of goods/services, (iii) discounted offers or attractive prizes offered, etc.

## Administrative Sanctions and Normalization

In general, Regulation 50 sets out three stages of administrative sanctions, which come in the following sequence: (i) three written warnings, each having a duration of a 14-calendar day period, (ii) inclusion in a list of prioritized monitoring or a blacklist, and (iii) temporary suspension of services. Only a breach of the electronic advertisements requirement could lead to revocation of a business license.

The Business Actors could submit an application of normalization to the MOT in order to be excluded from the list of prioritized monitoring or blacklist, or released from the temporary suspension.

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## Actions to consider

Several outstanding items under Regulation 50 are still not clarified and require further clarification by the MOT, such as how the MOT will track foreign e-commerce operators' transaction thresholds and treatment for foreign merchants that do not require a business license in their country of origin. Clients should stay alert to how the MOT will set policy in enforcing Regulation 50.

Despite the issuance of Regulation 50, it remains unclear how foreign investors can enter into these e-commerce activities through their foreign investment companies in Indonesia. Further assessment and analysis will be needed - especially on what e-commerce activities could be done by the Indonesian subsidiaries, and what the suitable KBLI(s) would be. These are not stipulated clearly under Regulation 50 and further clarity will be needed from the MOT. It remains to be seen if there will be a separate regulation or a written guideline to be issued by the MOT on these.

Moreover, the issuance of GR 80 and Regulation 50 is closely related with the anticipated new tax regulatory framework for e-commerce activities. Please also check our client alert on VAT obligations in transactions through electronic systems [here](#).

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