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Navigating the Second Amendment of the Electronic Information and Transaction Law: Key Insights and Considerations

Introduction

On December 5, 2023, The House of Representatives approved the bill for the second amendment of the EIT Law (Law No. 11 of 2008 on Electronic Information and Transaction, last amended in 2016) (the "**EIT Amendment Bill**").¹ The EIT Amendment Bill is considered as another effort to revamp Indonesia's digital ecosystem regulatory framework.

The Amendment Bill aims to improve the EIT Law to keep pace with the global trends, with the overarching goal of facilitating a more efficient and secure digital ecosystem.

Below we highlight notable amendments contained in the EIT Amendment Bill:

1. Foreign Electronic Certification Provider

The EIT Amendment Bill stipulates various services that may be provided under Electronic Certification Providers (singularly referred to as "**EC Provider**" and collectively as "**EC Providers**") (similar to the services listed in Article 57 of GR 71/2019), namely: (i) digital signature; (ii) electronic seal; (iii) electronic timer; (iv) recorded electronic delivery services; (v) website authentication; (vi) preservation of digital signature and/or electronic seal; (vii) digital identity; and/or (viii) other services using Electronic Certification.²

Under the current regime, Article 13(3) of the EIT Law acknowledges foreign EC Providers in Indonesia, requiring them to register for operational legitimacy within Indonesian jurisdiction.³ However, the EIT Amendment Bill has changed this. Now, the overarching requirement for EC Providers operating in Indonesia is to establish legal domicile and presence within the country.⁴

¹Upon being signed by the President, or automatically within 30 days of approval if left unsigned, the EIT Amendment Bill will officially become law.

²Article 13A of the New EIT Law.

³As also stipulated in Article 53 of Government Regulation No. 71 of 2019 on the Operation of Electronic System ("**GR 71/2019**").

⁴Article 13 of the New EIT Law.

On an exceptional basis, the above requirement may be exempted in the event that the operation of services using Electronic Certificate is not yet available in Indonesia. In such cases, under Article 13(5) of the recently amended EIT Law (the "New EIT Law"), recognition of foreign EC Providers will be based on mutual recognition and based on cooperation agreements.⁵

2. A Call to Strengthen the Protection of Children in the Indonesian Digital Ecosystem

Another noteworthy addition to the New EIT Law is the inclusion of two new articles specifically focusing on protections for children within the digital ecosystem.

Under Article 16A of the New EIT Law, Electronic System Operators (ESO) are required to provide and enforce child protection measures throughout their interactions within electronic systems. This includes implementing appropriate technological and operational safeguards from the design stage through the operational stage to ensure a child-friendly digital environment from the ground up. Further on this, Article 16A(4) of the New EIT Law will also require that ESOs provide certain information and/or features within their electronic systems, namely:

- a. clear information on the minimum age required to use/access the electronic system;
- b. the establishment of a user verification mechanism; and
- c. the establishment of a reporting mechanism to identify and address instances of misuse of products or features that could potentially infringe upon children's rights.
- d. Failure to comply with these new obligations will result in the following administrative sanctions: (i) a written warning; (ii) an administrative fine; (iii) temporary suspension of the electronic system; and/or (iv) cutoff of electronic system access in Indonesia.⁶
- e. The above new obligations are subject to the issuance of a new implementing regulation, as mandated by Article 16A(5) and 16B(3) of the New EIT Law.

3. "High-Risk" Electronic Transaction under the EIT Amendment Bill

The EIT Amendment Bill introduces a new requirement for high-risk electronic transactions to be secured by digital signatures backed by Electronic Certification provided by an EC Provider.⁷

While the intention of the new requirement is to enhance the security of digital transactions, the provision in question does not explicitly detail the criteria for what constitutes a "high-risk" electronic transaction—offering only a rather broad example (i.e., financial transactions that are not performed face-to-face in a physical setting).⁸

⁵The elucidation of the article provides several examples of "cooperation agreements", such as agreements between EC Providers, or agreement between Indonesian Government and another government whose EC Provider will perform mutual recognition, whether bilaterally or multilaterally.

⁶Article 16B of the New EIT Law.

⁷Article 17(2a) of the New EIT Law.

⁸Elucidation of Article 17(2a) of the New EIT Law.

The ambiguous definition has evoked concerns among industry players. The broad interpretation of the term "high-risk" electronic transaction, as given in the EIT Amendment Bill, has opened up a Pandora's box of potential interpretations, leading to a degree of uncertainty. Many fear that such vagueness could lead to compliance challenges or even inadvertent violations for parties involved in electronic transactions.

The full implementation of these new rules will ultimately depend on the forthcoming implementing regulation of the New EIT Law.⁹ Many in the industry hope that this new regulation will provide the much-needed clarity on this requirement. Until then, the industry is likely to remain in a state of cautious anticipation, keen to ensure they operate within the confines of the existing legal framework.

4. Government's New Authorities within the Indonesian Digital Ecosystem

Another key change introduced by the EIT Amendment Bill is the expansion of the Government's power within the Indonesian digital ecosystem. Under Article 40A of the New EIT Law, the Government has the authority to order ESOs to modify their systems or undertake specific actions. Non-compliance will result in administrative sanctions as follows: (i) a written warning; (ii) an administrative fine; (iii) temporary suspension of the electronic system; and/or (iv) cutoff of electronic system access in Indonesia.¹⁰

Pursuant to Article 40A(1-2) of the New EIT Law, the aim of the above provision is to foster a digital ecosystem that is fair, accountable, safe, and innovative. However, the enigmatic nature of this provision, i.e., its lack of clear limitations, leaves much to be revealed. The full enforcement of this provision rests on an implementing regulation to be formulated after the issuance of the EIT Amendment Bill.

From an industry standpoint, the broad language of the new provision raises substantial concerns as it could potentially grant the government extensive powers to intervene, without defined limits. This apprehension is not without grounds, as such unlimited powers may disrupt the balance between regulatory oversight and entrepreneurial freedom, potentially hindering innovation and growth within the digital sector.

Therefore, it is essential for the forthcoming implementing regulation to address these concerns. By setting clear boundaries to the government's powers and laying down explicit guidelines for implementation, the regulation could provide the desired clarity while ensuring that the digital ecosystem remains a space that is fair, accountable, secure, and primed for continued innovation. Ensuring a balance between government oversight and industry autonomy will be crucial in shaping a thriving and robust digital landscape in Indonesia.

5. Changes relating to Defamation and Other Prohibited Actions within Indonesian Digital Ecosystem

The EIT Amendment Bill has also made some changes to the formulation of the prohibited actions within Indonesian Digital Ecosystem.

⁹Article 17(3) of the New EIT Law.

¹⁰Article 40A(5) of the New EIT Law.

Article 27 of the New EIT Law will now only cover prohibitions relating to indecent and gambling content in the form of electronic information and/or electronic documents. Meanwhile, defamation and online extortion are addressed separately under the newly formulated and enhanced provisions, as follows:

1. Article 27A of the New EIT Law on online defamation stipulates the prohibition against intentionally attacking the honor or reputation of another person by making accusations towards such person with the intent of publicizing such accusations in the form of electronic information and/or electronic documents through an electronic system.
2. Article 27B of the New EIT Law on online extortion stipulates the prohibition against intentionally and unlawfully distributing and/or transmitting electronic information and/or electronic documents with the intention of benefitting oneself or another person, or forcing another person with threats of violence, defamation, or threats of revealing secrets in order to:
 - a. give an item, a part of it or all, belonging to that person or another person; or
 - b. give debt, acknowledge debt, or write off a receivable

In addition to the newly formulated provisions above, the EIT Amendment Bill also revises some of the existing prohibited actions, for example, under Article 28 (fake announcements/misleading information, hate speech, and fake news that may cause unrest in society) and Article 29 (violent threats) of the New EIT Law.

Key Takeaways

To wrap up, the EIT Amendment Bill, with its wide-reaching amendments that touch upon electronic certification services, children's protection in digital space, new rules for electronic transactions/contracts, expansion of governmental powers, and a list of prohibited actions, certainly brings noteworthy changes to the Indonesian digital ecosystem.

Notwithstanding, the EIT Amendment Bill has also sparked a wave of apprehension within the industry, particularly due to ambiguities and unclear limitations in the new provisions/rules that are introduced by the EIT Amendment Bill. It is hoped that an implementing regulation to be issued following the EIT Amendment Bill will bring about the much-needed clarity for such provisions.

In light of this, organizations with businesses that are subject to the EIT Law are advised to identify the changes and take appropriate actions to ensure compliance with the new regulatory requirements.

If you have any questions in relation to the issues raised in this briefing, please contact the authors in the left-hand column.

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