

Client Alert February 2024

New Development on e-Commerce Restrictions and Regulations

Minister of Trade Regulation Number 31 of 2023 on Business Licensing, Advertisement, Development and Supervision of Business Actors in Electronic Systems Trading (“MOTR 31/2023”)

Background

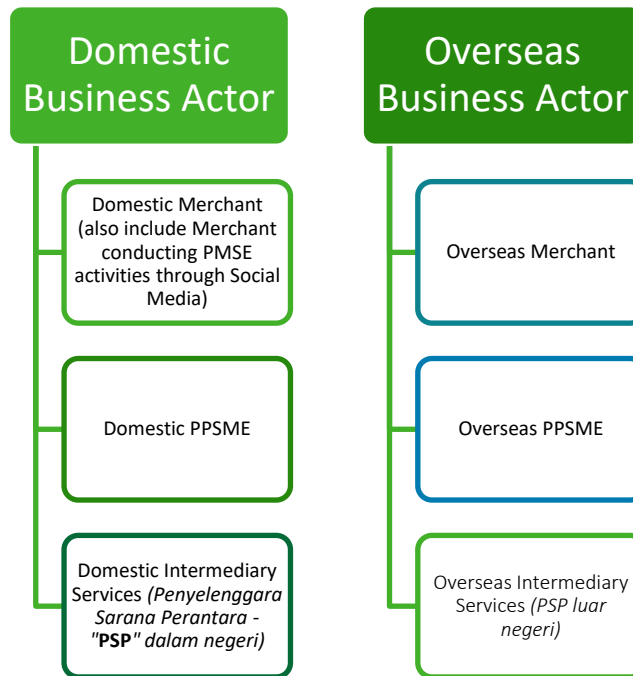
In principle, MOTR 31/2023 was issued to update the existing provisions regarding business licensing, advertisement, development, and supervision of business actors in electronic systems trading which revokes the Minister of Trade Regulation Number 50 of 2020 on Provisions on Business Licensing, Advertisement, Development, and Supervision of Business Actors in Electronic Systems Trading (“MOTR 50/2020”).

The essence of MOTR 31/2023 is to support the empowerment of Micro, Small and Medium Enterprises (“MSMEs”), as well as trading businesses through domestic electronic systems (e-commerce), consumers protection, encourage the development of trade through electronic systems, and pursuing the dynamic technological developments.

MOTR 31/2023 was enacted on 25 September 2023 and came into effect or promulgated on 26 September 2023.

Overview

MOTR 31/2023 regulates Trading Activities Through Electronic Systems (*Perdagangan Melalui Sistem Elektronik – “PMSE”*) and Trading Organizers Through Electronic Systems (*Penyelenggara Perdagangan Melalui Sistem Elektronik – “PPMSE”*), where transactions are carried out through a series of electronic devices and procedures. Business Actors in the PMSE sector are divided into the following scope: ¹



New provisions being introduced under MOTR 31/2023 are briefly summarized in the table listed below:

No.	Categories	MOTR 31/2023
1.	Minimum Price on Freight on Board (“ FOB ”)	There is a minimum price (Freight on Board – FOB) of USD 100 per unit for finished goods from overseas which are directly sold by Merchants to Indonesia through cross-border e-commerce platforms (Article 19 of MOTR 31/2023).
2.	SNI, halal certification, and mandatory to use Indonesian language labels on products from abroad, and the origin of the goods being delivered.	There are special requirements for foreign Merchant for domestic marketplaces, namely submitting proof of business legality from the country of origin, fulfilling mandatory Indonesian National Standards (<i>Standar Nasional Indonesia – “SNI”</i>) and halal certification, including Indonesian language labels on products from abroad, and the origin of the goods being delivered. (Article 5 paragraph 4 of MOTR 31/2023).
3.	Prohibitions on Marketplace and Social Commerce.	There is a prohibition on Marketplace and Social Commerce from acting as producers (Article 21 paragraph (2)).

¹ Article 2 of MOTR 31/2023

		PPMSE with a Social Commerce business model is also prohibited from facilitating payment transactions on its electronic system. (Article 21 paragraph (3)).
4.	Prohibition of data control by PPMSE and Affiliates.	Prohibition of data control by PPMSE and Affiliates. PPMSE's obligation is to ensure that there is no misuse of data control of its users for the utilization by PPMSE or its affiliated companies. (Article 13 paragraph (3b)).
5.	Social Media transaction.	Social media is allowed to carry out trading activities through electronic systems in the form of Social Commerce. (Article 2 paragraph (2) of MOTR 31/2023).
6.	Payment Transaction restriction for Social Commerce business model.	There is restriction for Social Commerce business model, in facilitating payment transaction within Electronic System. (Article 21 paragraph (3)).
7.	Interconnection between electronic systems and misuse of data control.	Social Commerce is obliged to ensure that there is no connection between the PMSE electronic system and those outside the PMSE facilities (Article 13 paragraph (3a)), as well as safeguarding social media user data and must not use it for PMSE or affiliated companies (Article 13 paragraph (3b)).

The domestic and overseas PPMSE business model includes the following activities: ²



Business Licensing

In carrying out trade business activities, Business Actors as categorized above are required to obtain a Risk-Based Business License, issued by the Online Single Submission (“OSS”) system, including sectoral business licenses. The obligation to secure a Business License is excluded for the PSPs under the following conditions: (i) the PSP is not a beneficiary party from the transaction; or (ii) the PSP is indirectly involved in the contractual relationship between the parties conducting PMSE.³

However, domestic PPMSE, PSP which is not being exempted and domestic Merchant who have their own PMSE facilities, are required to acquire a PMSE Business License. Furthermore, consumer complaint services (including the obligation to display contact information for the Consumer Complaints Service of the Directorate General of Consumer Protection and Trade Order on a page that is visible for the consumers to read) must also be secured and carried out, both by the PPMSE and PSP who are not being exempted from the obligation to acquire a Business License.

Business Licensing for domestic Merchants in the PMSE sector who only carry out wholesale/retail activities online by an Electronic System, shall abide to the Standard Classification of Indonesian Business Fields (*Klasifikasi Baku Lapangan Usaha Indonesia – “KBLI”*) in particular for Wholesaler/Retailer through postal order, or the internet. Meanwhile, Business Licensing for domestic PPMSE uses KBLI for web portals and/or digital platforms for commercial purposes.

² Article 2 paragraph (3) of MOTR 31/2023

³ Article 3 of MOTR 31/2023

Overseas Merchant who carries out PMSE activities at PPMSE which provides facilities for overseas Merchants, are required to submit the following information and documents to the domestic PPMSE which provides facilities for the overseas Merchant in question, namely:

- a. identity of the overseas Merchant in the form of name and address of the country of origin of such overseas Merchant (should be accompanied by a certificate or inspection report regarding the correctness of the data issued by an independent survey agency/institution in the country of origin);
- b. business license issued by the authorized institution in the country of origin (should be accompanied by a certificate or inspection report regarding the correctness of data issued by an independent survey institution in the country of origin) which is legalized by:
 - (i) the competent authority for the country participating in the Convention on the Elimination of Requirements Legalization of Foreign Public Documents; or
 - (ii) representative officials of the Republic of Indonesia in the country of origin for countries which is not the party to the Convention on the Elimination of Legalization Requirements for Foreign Public Documents;
- c. evidence to comply with mandatory standards or technical requirements for Goods and/or Services (can be in the form of:
 - (i) fulfillment of Indonesian National Standards (SNI) or other technical requirements for Goods and/or Services to which SNI or technical requirements have been applied compulsorily;
 - (ii) fulfillment of standards or technical requirements in the country origin for Goods and/or Services for which SNI or technical requirements have not been applied mandatorily; and
 - (iii) halal certificate for Goods and/or Services that must be halal certified.
- d. bank account number used for transactions;
- e. utilizing *Bahasa Indonesia* that is easy to understand in the description of Goods and/or Services that are being traded; and
- f. displays information on the country of origin of delivery of Goods and/or Services.

PPMSE which provides facilities for foreign Merchant is obliged to reject requests for registration of overseas Merchant due to lack of the documents. In addition to the foregoing, PPMSE which facilitates overseas Merchant is also obliged to store overseas Merchant's data and registered on the PMSE facility owned.

Subject to Article 21 of MOTR 31/2023, in performing the PMSE activities, all Business Actors shall adhere to the following:



It should also be noted that Article 21 of MOTR 31/2023 provides the restrictions for the Business Actors in performing the PPMSE activities for the following:

Restrictions	PPMSE Form	
	Social Commerce	Marketplaces
Acting as manufacturers relating to distribution of goods.	√	√
Facilitating payment transactions through their electronic systems.	√	

Equal Business Opportunities Involving Business Actors

MOTR 31/2023 obliges the Business Actor to support Government's program, such as:

- (i) prioritizing trade in Goods and/or Services produced domestically;

- (ii) increasing the competitiveness of domestically produced Goods and/or Services (including through education either online or offline medias, online and offline meetings such as workshops, seminars, discussions, communication forums, technical guidance, and trade counseling to MSMEs' Business Actors and/or other forms of activities); and
- (iii) domestic and overseas PMSE must provide facility for the promotion of domestically produced Goods and/or Services.

The priority supports mentioned above can be implemented in the form of (among others) business meetings, trade forums, Aggregation of Goods, local or other types of trade missions (either online or offline), and/or marketing access for MSMEs' products.

Transitional Provisions

Business License acquired by domestic PPMSE, domestic Merchants, domestic PSP, and Foreign Trade Company Representative Office (*Kantor Perwakilan Perusahaan Perdagangan Asing – KP3A*) in the PMSE sector prior to the enactment of the MOTR 31/2023, will remain valid to the extent: (i) the validity period has not expired or has not been revoked; and (ii) being registered within the OSS System.

Supervisions and Relevant Sanctions

The administrative sanctions under MOTR 31/2023 are ranging and will be gradually granted based on the level of violations, starting from: (i) written warnings (under the supervision of the Directorate of Trade Order); (ii) be included in a list of priority; (iii) blacklisted; (iv) temporary suspension either on domestic and/or overseas PPMSE services by the relevant authorized institution (under the supervision of the Directorate of Consumer Protection and Trade Order); and/or (v) business licensing revocation.

Key Takeaways

1. In performing the PMSE activities, all Business Actors shall adhere to the following aspects: (i) Business Licensing; (ii) Evidence of fulfillment of technical standards or requirements for certain goods and/or services; (iii) trading of certain goods and/or services restrictions; (iv) distribution of goods; and (v) taxations.
2. There are restrictions for Business Actors in performing the PPMSE activities, particularly in the form of:
 - (i) acting as manufacturers relating to distribution of goods, both apply for Social Commerce and Marketplaces; and
 - (ii) facilitating payment transactions through their electronic systems, in which this restriction is solely for Marketplaces.
3. Equal business opportunity shall be prioritized under MOTR 31/2023, particularly by providing efforts such as education, workshops, seminars, discussions, technical guidance, and trade counseling to MSME's Business Actors and/or other forms of activities, implemented by domestic and overseas PMSE.
4. The relevant KBLI for domestic Merchants in the PMSE sector who only carry out wholesale/retail activities online by an Electronic System is Wholesaler/Retailer through postal order, or the internet, while domestic PPMSE may use KBLI for web portals and/or digital platforms for commercial purposes.

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