



Client Alert

On 25 November 2019, the Government has finally issued Government Regulation of Republic of Indonesia No. 80 of 2019 regarding Trade Through Electronic System/*Perdagangan Melalui Sistem Elektronik* ("E-commerce") ("GR 80/2019"), the long-awaited implementing regulation of E-Commerce which we believe will provide more clarity and legal certainty of the E-Commerce business in Indonesia.

GR 80/2019 is essentially an implementing regulation of the Law No. 7 of 2004 regarding Trade ("**Trade Law**"). GR 80/2019 has affected the way the business practitioners carry out E-commerce activities, including the mandatory requirement to have certain business licenses, adherence to the export and import laws and regulations, data protection, e-payment, consumer protection, dispute resolution, monitoring and supervision.

Classification of Business Practitioners in E-Commerce

GR 80/2019 divides business practitioners into two categories, local and foreign business practitioners, and set out below is the classification of business practitioners according to its activities:

- local and foreign merchants, including individual or business entities;
- local and foreign E-commerce providers, including individual, business entity or government agency that provide electronic communication facilities (e.g. online retailers, marketplaces, and online classified advertisements); and

- local and foreign E-commerce intermediary service providers, including individual or business entities that provide search engine services, hosting services and caching services.

It is worth noting that foreign that are actively offering and/or conducting E-Commerce transaction to Indonesian residents is deemed to be physically present, and on this basis, such foreign business practitioners are required to appoint Indonesian representative. These will potentially create a condition of conducting business in Indonesia, and may potentially be treated as a permanent establishment (*bentuk usaha tetap*), thus requiring a tax identification number under the Indonesian tax law.

Business Licenses in E-Commerce

Under GR 80/2019, the business practitioners are required to apply for licenses through the OSS system. The exception for the mandatory requirement to have a business license will only be applicable if:

- the relevant business practitioners have yet to receive any margins from its E-Commerce transactions; or
- the relevant business practitioners are considered as third parties (not directly involved) in any contractual agreement in E-Commerce business.

E-Commerce platforms are also required to meet several requirements, among others: (i) technical license, (ii) company registration certificate, (iii) taxpayer identification number, (iv) business conduct or code of practices, and (v) standardization of goods/services.

In addition, in terms of operation, the local or foreign merchants may use their own electronic system or local/foreign electronic system provided by the E-Commerce providers. We also wish to note that merchants that only sell its goods/services for non-commercial purposes on a temporary basis will not qualify as merchants under GR 80/2019. GR 80/2019 also prohibits local and/or foreign E-Commerce providers to service local and foreign merchants that are in compliance with the said business license requirements. Failure to do so may result in the following administrative sanctions: (i) warning letters; (ii) registered in the priority list of supervision (*daftar prioritas pengawasan*); (iii) blacklisted; (iv) temporary suspension of business; and/or (v) revocation of the business licenses.

General Requirements to Conduct E-Commerce Business

Prior to conducting the E-Commerce business activities, business practitioners are required to fulfill the following requirements:

- register their online stores using high-priority Indonesian commercial domain (.id);
- provide required information with the data centers and servers;
- conduct electronic system registration (*Pendaftaran Sistem Elektronik* or PSE);
- meet technical requirements determined by the relevant agencies and obtaining certificate of reliability (*sertifikat keandalan*) from the Ministry of Communication and Information Technology;
- submit data and/or information periodically to the Statistics Indonesia (*Badan Pusat Statistik*); and
- comply with other sectoral laws and regulations related to E-Commerce business, e.g. Bank Indonesia in terms of providing payment system services through electronic system.

For cross-border E-Commerce transactions, it is advisable to note that some goods are restricted for imports under the Ministry of Trade Regulations on Import-Prohibited Goods. GR 80/2019 requires the business practitioners to adhere to the relevant export and import regulations as well as the electronic information and transactions laws in any cross-border E-commerce transactions.

E-Contract

E-Commerce business may use electronic contract mechanism or any other contractual mechanism ("**E-Contract**"). Business practitioners are required to provide consumers unrestricted access (download and/or save) to the E-Contract. In the event that there is a technical error due to the

electronic system is not safe, reliable and responsible, the said E-Contract becomes null and void. If the aforementioned technical error occurs, the consumers are not obliged to return the purchased products and/or services. Any losses due to the said technical error is borne entirely by the business practitioners.

We will continue to monitor any development of this matter and will let you know accordingly. Should you have any queries, please feel free to contact us.

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