



## New Regulation on E-Commerce

### Background

After five long years since the issuance of Law No. 7 of 2014 on Trade (the “Trade Law”), the Government of Indonesia finally issued an implementing regulation on e-commerce on 20 November 2019, through Government Regulation No. 80 of 2019 on Trade through the Electronic System (“GR 80/2019”). This regulation is part of the Government’s efforts to encourage internet-based transactions and trading as part of making Indonesia 4.0.

GR 80/2019 has 19 chapters and an extensive scope. Its aim is to provide legal certainty for the continuous development of electronic-based trading activities (*Perdagangan Melalui Sistem Elektronik – “E-Commerce”*) in Indonesia, and covers, among other things, E-Commerce parties, the general requirements and obligations for E-Commerce, the protection of consumers and personal data and administrative sanctions for violations of GR 80/2019.

This newly issued regulation came into effect on 25 November 2019, and existing E-Commerce business practitioners engaged in E-Commerce business activities before GR 80/2019 became effective are required to adjust and comply with this regulation within two years of 25 November 2019 (ie by 25 November 2021).

### Key Provisions

The following are several key provisions of GR 80/2019:

#### I. Parties engaged in the E-Commerce Business

The four types of party that may engage in E-Commerce business activities are as follows:

- a. E-Commerce business practitioners (*Pelaku Usaha Perdagangan Melalui Sistem Elektronik – “Business Practitioners”*);
- b. consumers;
- c. non-commercial individuals; and
- d. government institutions  
(the “Parties”).

Business Practitioners are defined as individuals or business entities (legal or non-legal entities), established and domiciled in Indonesia (Domestic Business Practitioners) or outside of Indonesia (Overseas Business Practitioners), which engage in the E-Commerce business in Indonesia. The elucidation of Article 5 of GR 80/2019 provides that a payment gateway organizer is also considered as an e-commerce provider, but is subject to a separate regulation.

Overseas Business Practitioners which are actively engaged in offerings and/or E-Commerce transactions with the consumers residing in Indonesia, and meet certain criteria related to the following aspects, are classified as physically present and operating as permanent business establishments (*Bentuk Usaha Tetap – “BUT”*) in Indonesia:

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1. transaction volumes;
2. transaction values;
3. the volume of packages to be transported; and/or
4. the amount of traffic or number of people accessing the electronic system.

The above BUT criteria will be regulated further under a Minister of Trade regulation.

GR 80/2019 divides Business Practitioners into the following categories:

1. **Merchants (Sellers / Pedagang)**

Merchants are Business Practitioners which engage in E-Commerce business activities (make offers through electronic systems) through facilities which they own and control themselves (their own electronic systems), facilities owned by E-Commerce Organizers (PPMSE – see 1.2 below) or other electronic systems which provide E-Commerce facilities. Sellers of goods and/or providers of services on a temporary basis for non-commercial purposes are not defined as merchants under GR 80/2019.

Merchants engaged in E-Commerce business activities through their own electronic systems are also classified as E-Commerce Organizers (*Penyelenggara Perdagangan Melalui Sistem Elektronik* or “PPMSE”). Therefore, in addition to complying with the requirements and obligations of a merchant, they are also required to comply with the requirements and obligations for a PPMSE.

Both the domestic and overseas merchants which engage in E-Commerce business activities using facilities owned by domestic or overseas PPMSEs are required to comply with the PPMSE’s terms and conditions and meet the agreed service quality standards and comply with the prevailing laws and regulations.

2. **PPMSE**

PPMSEs are individuals, business entities, public or government institutions which provide application systems to be used as electronic communication facilities (which perform the function of providing media for information, communications, transaction settlement, payment systems or goods delivery systems) to facilitate E-Commerce business transactions. The business models for PPMSEs under GR 80/2019 are among others, the following:

- a.online retail;
- b.marketplace or platform providers (penyedia platform/pelantar);
- c.online classified advertising (iklan baris);
- d.price comparison platforms (platform pembandingan harga);
- e.daily deals.

Overseas PPMSEs which meet the criteria for a BUT must appoint representatives located in Indonesia to act for and on their behalf.

3. **Intermediary Service Organizers (*Penyelenggara Sarana Perantara*)**

Intermediary Service Organizers are individuals or business entities which provide search engine services, permanent information storage space (hosting) services and temporary information storage space (caching) services.

## II. E-Commerce Requirements and Obligations

In general, the following are the requirements and obligations of the parties related to E-Commerce transactions:

1. complying with tax requirements and mechanism under the prevailing laws and regulations;
2. obtaining and providing clear identities as legal subjects (such as Identity Cards, Business Licenses, Legal Entity Approvals, Bank Accounts or Mobile Phone Numbers);

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3. complying with the prevailing laws and regulations on exporting/importing and electronic information and transactions (if the parties are engaged in E-Commerce cross-border transactions); and
4. obtaining security clearance from the authorized institutions (if the parties are engaged in E-Commerce transactions involving goods and/or services which have the potential to threaten national security (eg cryptography-related products or products used for monitoring and/or surveillance purposes)).

Specifically for Business Practitioners, the requirements and obligations include among others the following:

No.	Matter	Merchants	PPMSEs	Intermediary Services
1.	Assisting Indonesian government programs related to the use of domestic goods and/or services.	✓	✓	✓
2.	<p>Providing correct, clear and honest information which addresses the following issues:</p> <ol style="list-style-type: none"> <li>1. the identities of any legal subjects involved;</li> <li>2. conditions and guarantees related to the traded goods and/or services and the electronic system; and</li> <li>3. compliance with advertising code of ethics (<i>etika periklanan</i>) under the prevailing laws and regulations.</li> </ol>	✓	✓	✓
3.	<p>Obtaining Business Licenses through the Online Single Submission (OSS) system for Business Practitioners doing business in Indonesia.</p> <p>All Business Practitioners are required to obtain business licenses <u>except</u> for Intermediary Service Organizers which are:</p> <ol style="list-style-type: none"> <li>1. not the direct beneficiaries of the E-Commerce transactions; or</li> <li>2. not directly involved in any contractual relationships between the parties conducting the E-Commerce transactions.</li> </ol>	✓	✓	✓ (with an exception)
4.	<p>Complying with general business requirements (such as obtaining technical licenses, a Company Registration Certificate (TDP)/Business Identification Number (NIB), a Taxpayer Registration Number (NPWP), Business Code of Conduct/ Practice, Standardization of goods/services) for Business Practitioners doing business in Indonesia.</p>	✓	✓	✓
5.	Providing at least two working days to exchange the goods or services, or cancel the purchase, starting from the time the goods or services were received by the consumer.	✓ (Domestic and Overseas)	✓ (Domestic and Overseas)	

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No.	Matter	Merchants	PPMSEs	Intermediary Services
6.	Providing a mechanism to ensures that the consumer obtains a refund in the event of cancellation.	✓	✓	✓
7.	Complying with the technical requirements determined by the relevant government institutions and obtaining feasibility certificates ( <i>sertifikat kelayakan</i> ) for electronic systems.	✓	✓	✓
8.	Rejecting merchants (domestic and overseas merchants) which do not comply with the prevailing Indonesian laws and regulations.	✓	✓	✓  (with an exception)
9.	Prioritizing the use of Indonesian high-level domain names (.id) for electronic systems in the form of internet sites and using their IP Addresses in accordance with the prevailing laws and regulations.	✓	✓	✓
10.	Using server equipment placed in a data centre which complies with the prevailing laws and regulations.	✓  (Domestic and Overseas)	✓  (Domestic and Overseas)	
11.	Registering their electronic systems in accordance with the prevailing laws and regulations.		✓  (Domestic and Overseas)	
12.	Submitting data and/or information regularly to the relevant government agencies (ie the government in charge of government affairs in the statistics sector).		✓  (Domestic and Overseas)	
13.	Maintaining data and information related to their E-Commerce activities, including data and information about subscribers, offerings, confirmations (including payment confirmations), shipping statuses, complaints and disputes, electronic contracts and types of traded goods or services. All data and information must be retained for 10 years, if related to financial transactions or for five years, if not related to financial transactions.		ü  (Domestic and Overseas)	

No.	Matter	Merchants	PPMSEs	Intermediary Services
14.	To avoid or respond to illegal electronic information content, both domestic and overseas PPMSEs must: a. present their terms of use or licensing agreement to their users for the use of their electronic systems; and b. provide technological control facilities and/or facilities for receiving reports or public complaints about illegal electronic information content or the misuse of space in the electronic systems they manage.		✓  (Domestic and Overseas)	
15.	Providing and keeping valid evidence of the E-Commerce transactions.		✓  (Domestic and Overseas)	

### III. The Protection of Consumers and Personal Data

In addition to the requirements and obligations in II above, Business Practitioners are also required to protect rights of consumers under the prevailing laws and regulations on consumer protection. Business Practitioners must also provide consumer complaint services through at least the following information:

1. an address and telephone number at which to file complaints;
2. consumer complaint procedures;
3. a complaint follow-up mechanism;
4. competent officers to provide the complaint services; and
5. a timeframe for resolving complaints.

Consumers may also submit reports to the relevant ministry of any loss or harm caused by the E-Commerce activities of Business Practitioners. Business Practitioners which are reported for losses or harm are required to resolve the complaints. Otherwise, they will be placed on a priority supervision list (the "Priority Supervision List") which is open and accessible to the general public. This Priority Supervision List will be regulated further under a Minister of Trade regulation.

Business Practitioners are also required to store personal data obtained in relation to E-Commerce transactions according to the prevailing personal data protection standards or the reasonable development of business practices. Specifically for e-commerce, GR 80/2019 requires certain data protection standards, such as legal grounds for data collection, the purpose limitation of the collection of data, the accuracy of the data (meaning the data must be kept up to date and the data subject can update such data), storage of the data must be appropriate with the initial purpose of data collection and usage, and safety level of data protection to avoid data leakage and unauthorized cross border data transfer.

The elucidation of Article 59(2) of GR 80/2019 further states that the standards of personal data protection that Business Practitioners must adhere will take into account the standards in the European Union (the EU's General Data Protection Regulation) and/or the APEC Privacy Framework. This is the first time that a regulation discussing personal data in Indonesia specifically instructs consideration on the EU and APEC's regulatory frameworks.

## IV. Liability Regarding Illegal Contents or Illegal Electronic Information

The general rule of liability under GR 80/2019 that is provided under Article 22 is that all PPMSEs and Intermediary Service Organizers are responsible for any consequences which may arise from the presence of any illegal electronic information or illegal content within their systems. They will not be held liable if they take prompt actions and measures to remove or take down such illegal contents upon becoming aware of their existence in their platforms or systems.

With regard to Intermediary Service Organizers, GR 80//2019 regulates safe harbours or exemptions from the liability on illegal contents in their systems or platforms. These exemptions seem to mirror the provisions contained in European E-commerce Directive (EU e-Commerce Directive). The Intermediary Service Organizers will not be held liable if the following exemptions on safe harbours under GR 80/2019 apply:

- a. the Intermediary Service Organizers merely act as intermediary parties that pass along any searches for such information (mere conduit);
- b. the Intermediary Service Organizers only store such information temporarily for the sole purpose of streamlining communications (caching);
- c. the Intermediary Service Organizers provide information storage space services (hosting services); or
- d. the Intermediary Service Organizers only act as search engines.

Even though the exemptions on liability for the Intermediary Service Organizers mirror those in the EU e-Commerce Directive, GR 80/2019 takes a completely different approach than the EU e-Commerce Directive in dealing with supervision of illegal content by PPMSEs and Intermediary Service Organizers. Article 23 of GR 80/2019 requires PPMSEs and Intermediary Service Organizers to monitor their contents, establish a technical content control mechanism and/or a mechanism through which users or the public can submit reports of or complaints on illegal content. The EU e-Commerce Directive, on the other hand, prohibits government of the EU member states from imposing an obligation to monitor content on Intermediary Service Organizers.

## V. Administrative Sanctions

Business Practitioners who violate GR 80/2019 are liable to have the following progressive administrative sanctions imposed on them:

1. written warnings (up to three written warnings with a two week grace period after the issuance of the previous written warning);
2. being placed on the Priority Supervision List (if they do not make any improvements after being served the 3rd written warning);
3. being placed on the Blacklist;
4. having their services suspended by the relevant authorized institution; and/or
5. having their business license revoked.

## Conclusion

The issuance of GR 80/2019 is a major step in creating legal certainty and providing safety and clarity in E-Commerce business transactions. However, the Indonesian government (through the relevant ministries) still has a lot of homework to do on the implementing regulations related to the outstanding issues not yet resolved or not yet cleared up by GR 80/2019, such as:

1. the criteria for sellers not to be classified as merchants (GR 80/2019 has not yet defined 'on a temporary basis') and whether or not individual merchants require business licenses or other technical licenses from relevant authorities or the OSS Agency;
2. the criteria for being classified as a BUT for Overseas Business Practitioners;

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3. how the Indonesian government supervises:
  - a. Overseas Business Practitioners which have not yet established or appointed a representative to act for and on their behalf in Indonesia; and
  - b. merchants which have not yet obtained the relevant business licenses (if required as explained in 1 above).

Since existing Business Practitioners have been given a two-year grace period to adjust and comply with this new regulation, it will be interesting to see how the government, especially the relevant ministries (such as the Ministry of Trade and/or Ministry of Communication and Informatics) address the above outstanding issues in the implementing regulations of GR 80/2019.

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