



Issue 3 | February 2024

Second Amendment to Indonesia's ITE Law: What's Changed?

Indonesia has again revised its Electronic Information and Transactions Law (ITE Law), aiming to enhance the digital regulatory framework, but questions linger over the clarity and implications of the new amendment. From the impact on foreign certification organizers to defamation, and measures protecting minors, our latest advisory examines the main changes.

On 2 January 2024, the Indonesian government enacted Law No. 1 of 2024 – the second amendment to Law No. 11 of 2008 on Electronic Information and Transactions (the “**Amendment**”). Following criticism over the original law’s ramifications on free speech, the revision seeks to ensure a more just and innovative digital future, aligning with the best interests of the public.

Following are some of the key features of the Amendment.

Foreign Electronic Certification Organizers

Part of the Amendment elaborates on the role and services of electronic certification organizers. These are the entities responsible for issuing and managing electronic certificates, such as digital signatures, timestamps and authentication tokens, to verify the identity of individuals and parties in online transactions and communications.

Unlike the old ITE Law, the Amendment does not distinguish between foreign and domestic electronic certification organizers. However, it mandates that electronic certification organizers operating in Indonesia must be Indonesian legal entities domiciled in the country. Nevertheless, this requirement does not apply if a service using electronic certificates is not yet available in Indonesia.

This raises the question of whether the exemption applies to foreign electronic certification organizers whose services are not yet locally available or to foreign entities offering services not yet accessible in Indonesia using electronic certification. Given that the Amendment requires the issuance of a more detailed government regulation on electronic certification service providers, we anticipate that the current implementing regulation, Government Regulation No. 71 of 2019, will be amended.

Protection for Minors

Prior to the Amendment, protection for minors was only provided through increased criminal penalties for perpetrators. The Amendment introduces a new article specifically addressing minors' safety in their use of electronic systems.

Under the Amendment, electronic system providers are required to ensure the safety of minors using or accessing their platforms. This involves ensuring their physical, mental, and psychological wellbeing against any misuse of electronic information or documents that violates their rights.

To uphold this protection, electronic system providers must: (i) state the minimum age at which minors may use their products or services; (ii) implement mechanisms to verify usage by minors; and (iii) establish a reporting procedure for any misuse of their products, services or features that violate or potentially harm minors' rights. Failure to comply may result in administrative sanctions, ranging from written warnings and administrative fines to temporary suspensions or termination of access.

Application of Indonesian Law to International Electronic Contracts

The Amendment mandates that international electronic contracts containing standard clauses, drafted by electronic system organizers, must be governed by Indonesian law under certain conditions. These conditions include:

- (i) The users of the electronic system organizers' services originate from Indonesia and provide their consent from or within Indonesia.
- (ii) The performance of the contract takes place in Indonesia.
- (iii) The electronic system provider has a place of business in Indonesia or engages in business activities in Indonesia.

An unofficial interpretation by the Ministry of Communication and Informatics suggests that the term 'international electronic contracts' refers to agreements between businesses and customers, rather than agreements between business entities.

Under the Indonesian Consumer Protection Law (Law No. 8 of 1999), standard clauses are defined as provisions and conditions that have been prepared and determined unilaterally by business actors. These predetermined standard clauses are incorporated into binding documents or agreements and must be adhered to by consumers.

The implementation of the above provisions remains unclear, as it is relatively easy to meet criterion (i) – that the users originate from Indonesia and provide their consent from or within Indonesia. Many international contracts are governed by foreign law and choose foreign courts or arbitration as the dispute settlement forum. The above new provision of the Amendment raises questions over whether international contracts are now automatically governed by Indonesian law, and if any disputes must be submitted to the Indonesian courts or arbitration. Enforcing such a requirement will likely pose challenges, so it will be interesting to see how the Ministry of Communication and Informatics (the supervising ministry under the ITE Law) interprets this provision further.

Defamation

Previously, under Article 27(3) of the old EIT Law, any activity involving the unlawful distribution, transmission, or making accessible of electronic information or documents containing defamatory content was prohibited. However, the old EIT Law did not provide a clear definition of content that could be deemed insulting or defamatory. This lack of clarity gave rise to multiple interpretations and issues, as it is highly subjective and was widely criticized as a violation of the right to freedom of opinion under Human Rights Law.

What constitutes defamation under the Amendment (Article 27A) is clearer, as it is defined as intentionally attacking the honor or good name of another person by accusing them of something, with the intention of making the matter known to the public through electronic information or electronic documents via an electronic system, subjecting the offender to imprisonment for up to 2 years or a fine of up to IDR400 million, or both.

“Attacking the honor or good name” is defined as an act that demeans or harms another person's good name or self-esteem to their detriment, including by insulting or slandering them.

Interestingly, the article on defamation of the Amendment now works in both directions, as an accuser can be charged with defamation if unable prove their claim, facing imprisonment for 4 years, a fine of up to IDR750 million, or both.

The Amendment provides exemptions from criminal sanctions for violating the decency and defamation articles, if: (i) it was committed in the public interest; (ii) it was committed in self-defense; or (iii) specifically for decency, if the electronic information or electronic documents are works of art, culture, sports, health, or science.

Threat Messages

Under Article 27B (1) and (2) of the Amendment, threatening messages are now defined to include (i) threats of violence and (ii) threats of defamation or disclosure of secrets, with the intent to compel someone to:

- (a) either give something which partially or wholly belongs to that person or another person; or
- (b) settle a debt, acknowledge a debt, or write off a debt.

Violation of this provision carries a penalty of imprisonment for up to 6 years or a fine of up to IDR1 billion, or both.

Government “Intervention” in Electronic Service Providers

The Amendment introduces a new mechanism aimed at creating a fair, accountable, safe, and innovative digital ecosystem by protecting electronic service providers so that they have an equal playing field. Under this mechanism, the government can instruct providers to "make adjustments" to their electronic systems and/or "perform certain actions", compliance with which is mandatory; otherwise, administrative sanctions could be imposed.

The "adjustments", outlined under the Amendment's elucidation, may include limiting or adding features, software, or hardware to electronic systems or prohibiting certain features in Indonesia. The term "perform certain actions" includes affirmative obligations by electronic system providers to communities affected by the use of their software, hardware, and/or features, and adjustments in their business activities to ensure an equal playing field. It will be interesting to see how the implementation of these clauses will unfold, particularly regarding the "adjustment" element aimed at achieving an equal playing field. It remains to be seen whether it will enhance fair competition as intended by the ITE Law or if it fails to benefit businesses that have already implemented more advanced features.

Final Remarks

While the Amendment introduces new provisions and enhances the previous version of the ITE Law, its lack of clarity raises concerns. It is therefore expected that amendments will be made to the current implementing regulation, and new implementing regulations may potentially be issued to add further clarity and details to the Amendment.

ABOUT M&T ADVISORY

M&T Advisory is a digital publication prepared by the Indonesian law firm, Makarim & Taira S.

It informs generally on the topics covered and should not be treated as legal advice or relied upon when making investment or business decisions.

Should you have any questions on any matter contained in M&T Advisory, or other comments in general, please contact us at the emails provided at the end of this article.

A Summitmas I, 16th & 17th Floors
Jl. Jend. Sudirman Kav. 61-62
Jakarta 12190

P +6221 5080 8300
+6221 252 1272

 makarim.com  Makarim & Taira S.



Tania Rahel Hutapea

Associate

tania.hutapea@makarim.com



Mutiara Handaniah

Associate

mutiara.handaniah@makarim.com



Reagan Roy Teguh

Senior Associate

reagan.teguh@makarim.com



Lia Alizia

Partner

lia.alizia@makarim.com