

Indonesian Electronic Information and Transactions Law Amended

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Law No. 19 of 2016 on the Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (“**Amendment**”) took effect on 25 November 2016.¹ Aiming to accommodate recent developments in the electronic information and transactions (“**EIT**”) sector in Indonesia, the Amendment contains several new provisions that mainly concern law enforcement, sanctions and privacy issues, and clarifies the meaning of various terms in the existing EIT law. We outline some key features of the Amendment below.

What’s new?

The Amendment introduces new provisions to the existing Law No. 11 of 2008 on EIT (the “**2008 EIT Law**”), including, among others:

- *Meaning of Electronic System Provider (Penyelenggara Sistem Elektronik) (“ESP”) clarified:* The Amendment defines an ESP as any person, state administrator, business entity, and society that provides, manages, and/or operates an electronic system, whether individually or jointly, to or for electronic system users for their own or another party’s benefit.
- *“Right to be forgotten”:* The Amendment provides an element of privacy protection, whereby a relevant person has the right to request that an ESP delete any ‘irrelevant’ electronic information or documents under the ESP’s control. Such request should be made based on a court order. Consequently, the ESP will need to have a deletion mechanism in place to deal with such requests. Neither the Amendment nor the 2008 EIT Law specify how or in which circumstances electronic information or documents will be deemed as ‘irrelevant’, nor who will be considered a ‘relevant person’ entitled to request deletion of such information or documents. However, the Amendment does provide that the implementation of the “right to be forgotten” rule will be addressed in a Government Regulation (likely to be issued in early 2017).
- *The Government’s right to terminate access:* The Amendment expressly authorizes the Indonesian Government to terminate access, or order an ESP to terminate access, to electronic information or documents with content that violates applicable laws and regulations, such as immoral content, hate speech, insult or defamation. The relevant provision enhances the scope of the Government’s role in monitoring the use of EIT, particularly in preventing EIT violations and thus protecting the public interest from any abuse or misuse of electronic information or documents. More details on the Government’s role and implementation will be subject to forthcoming Government Regulation.

¹ The Indonesian House of Representatives passed the bill on 27 October 2016.

What has changed?

The Amendment includes definitions of ‘distributing’, ‘transmitting’, or ‘making accessible’ electronic information or documents to avoid multiple interpretations. These three elements are relevant to prohibitions against sharing of any electronic information or documents that contain immoral, gambling, humiliation, extortion or threatening content. Pursuant to the Amendment:

- ‘to distribute’ means to send and/or disseminate the electronic information or documents to multiple persons or parties via an electronic system;
- ‘to transmit’ means to send the electronic information or documents to a single party via an electronic system; and
- ‘to make accessible’ means any action other than distributing or transmitting via an electronic system that results in the electronic information or documents being known by another party or the public.

In addition, the Amendment takes a more reasonable approach towards several EIT violations by reducing the criminal sanctions imposed for such violations. Pursuant to the Amendment, therefore, a party allegedly committing any of these violations should no longer be subject to detention during legal investigation and proceedings until a legally binding court verdict.²

Types of Violation	Criminal Sanctions	
	2008 EIT Law	Amendment
Electronic information or documents that contain insult or defamation	Maximum six-year term of imprisonment and/or maximum fine of IDR 1 billion	Maximum four-year term of imprisonment and/or maximum fine of IDR 750 million
Electronic information or documents that contain threats of violence or frightening information (including cyber bullying)	Maximum 12-year term of imprisonment and/or maximum fine of IDR 2 billion	Maximum four-year term of imprisonment and/or maximum fine of IDR 750 million

Conclusion

Although the Amendment has been legally effective since 25 November 2016, there is some doubt as to whether Indonesian EIT players are ready to comply with the new provisions under the Amendment, such as the “right to be forgotten” rule, and whether the Indonesian Government’s legal infrastructure is ready to adequately enforce it. With regard to access termination by the Government, in particular, social media companies may consider implementing new procedures or improving their current systems to monitor their users’ publication of information on their platforms more closely and thoroughly. Additionally, it is arguable that the Amendment may implicate substantial constraints to the public’s right to information as well as freedom of expression. We look forward to the coming Government Regulation to clarify the details on the implementation of the Amendment.

Overall, while the Amendment does not contain any major change to the 2008 EIT Law (which affects e-commerce industry especially), the Amendment does specify certain additional safeguards that would protect individuals’ right to privacy and preserve public order with respect to EIT. Any party that engages in EIT activities, such as online social media and e-commerce companies, should pay particular attention to these matters.

² Based on Article 21(4) of the Indonesian Criminal Procedure Code, detention during legal investigation and proceedings before a legally binding court verdict can be imposed on a suspect or an accused if, among others, the suspect or the accused has committed a criminal offense that is punishable by imprisonment of five years or more.

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