New Personal Data Protection Regulation

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Introduction

The Government of Indonesia through the Ministry of Communications and Information (”**MCI**”) has issued MCI Regulation No 20 of 2016 on Personal Data Protection within an Electronic System (“**Electronic PDP Regulation**”) which was enacted on December 1, 2016.

However, the Electronic PDP Regulation is limited to personal data being stored within an electronic system (in electronic form), as there will be a separate law regulating personal data protection in general, and such law is still being drafted in parliament.

The Electronic PDP Regulation sets out the protection for the acquisition, collection, processing, analyzing, storing, performance, announcement, delivery, distribution and destruction of personal data and all of the above activities should be based on consent. The Electronic PDP Regulation is issued with the aim of protecting and respecting personal data as a matter of individual privacy which is protected under the Indonesian Constitution.

Acquiring and Storing of Personal Data

According to the Electronic PDP Regulation, an electronic system used to process personal data should be an electronic system that has been certified, and the Electronic System Operator carrying out the process should have internal rules on the protection of personal data where the internal rules shall take into account the application of technology aspects, human resources, methods and costs.

As provided in the Electronic PDP Regulation, an Electronic System Operator that carries out processing of personal data is required to provide a form of consent in the Indonesian language when seeking approval from the owner of personal data. However, this does not prohibit the electronic system operator from preparing a bilingual or multilingual form as long as there is an Indonesian language version of the form. In the event the confidentiality agreement does not include disclosure of Personal Data, any person who acquires and collects Personal Data, including an Electronic System Operator, shall maintain the confidentiality of personal data.

Moreover, acquisition and collection of personal data by an Electronic System Operator shall be limited to the relevant information and be in line with its initial purpose. In addition, the acquisition and collection of personal data shall be accurate and respect the privacy of the owner of the personal data. Respect for the owner of the personal data on personal data privacy should be prioritized by giving options to the owner of the personal data, as follows:

(a) Confidentiality or non-confidentiality of personal data; and
(b) Changes, addition or renewal of personal data.

The choice given to the owner of personal data regarding confidentiality or non-confidentiality will be invalid if a relevant law explicitly states that the relevant personal data is considered to be confidential. In addition, personal data that is stored in an electronic system must be in the form of encrypted data.

Acquisition and collection of personal data by an Electronic System Operator shall be based upon consent of the owner of the personal data. In the event the owner of personal data is categorized as a minor, the approval should be made by the parents or the guardian of the minor.

Data Center and Disaster Recovery Center

To implement the rules set out in Government Regulation No. 82 of 2012 on Implementation of Electronic System and Transaction ("**GR 82/2012**") and also to address concerns raised by many businesses, the Electronic PDP Regulation reaffirms the rules stated in GR 82/2012, whereby a data center and disaster recovery center of an Electronic System Operator providing public services should be established within Indonesia.

The nature of the personal data storage in the data center and disaster recovery center can be waived if the period of storage of personal data has exceeded the time limit, unless such personal data will still be used or utilized in accordance with the original purpose of its acquisition and collection.

Transfer of Personal Data

Displays, collection, transmission, distribution, and/or accessibility of personal data within the electronic system can only be done based upon consent and following verification of the accuracy and conformity with the purpose of the acquisition and collection of such personal data.

Transmission of personal data operated by the Electronic System Operator in the territory of Indonesia to an overseas territory requires coordination with the relevant ministers or officials vested with such authority. To implement the above, the Electronic PDP Regulation sets out the following procedures:

a. report on the proposed implementation of the personal data transmission which shall contain at least the country of destination, the name of the recipient, the date of execution and the reason/purpose of delivery;
b. request advocacy, if needed; and
c. report the results of the implementation of the personal data transmission.

In addition to the above, the cross-border data exchange of personal data should also be carried out in accordance with the laws governing cross-border data exchange. However, as this regulation has not been issued to date, the provisions on cross-border data exchange for personal data have yet to be implemented in practice.

Access to Data Owners

The electronic system operator must grant access or opportunity to the owner of the personal data to the following:

a. change or update their personal data without disturbing the personal data management system, unless otherwise specified by the prevailing laws;
b. obtain access or opportunity to obtain the history of the personal data provided to the Electronic System Operator as long as it is still in line with the prevailing laws and regulations;
c. An Electronic System Operator should also have a contact person who can easily be reached by the owner of personal data relating to the management of their personal data.

Destruction of Personal Data

Destruction of personal data within an electronic system can only be carried out if the stored personal data has passed the retention period (which shall at least be 5 years) of being stored and should be based on the prior consent of the owner of such personal data. Destruction can also be based upon a request of the owner of such personal data unless stipulated otherwise by the prevailing laws and regulations. The above destruction shall remove data or document in part or comprehensively, including electronic or non-electronic data managed by the electronic system operator and/or user resulting in the personal data being unable to be displayed within the electronic system, unless the owner of the personal data provides updated personal data.

Breaches of Personal Data and Settlement of Disputes

The owner of personal data, as described in the Electronic PDP Regulation, is entitled to the confidentiality of his own personal data. Should there be a failure of the Electronic System Operator to maintain confidentiality of such personal data, the Electronic System Operator is required to notify the owner of the Personal Data in writing and follow these rules:

a. The Notification should state the reasons or causes of the failure to protect the confidentiality of the personal data;
b. The Notification can be conducted electronically if the owner of such personal data has consented to such, as per a declaration made during the initial acquisition and collection of the person's personal data;
c. The Electronic System Operator shall ensure that such notification is received by the owner of such Personal Data if there is the possibility that such failure may harm the personal data owner; and
d. The Notification must be in writing and shall be delivered to the personal data owner by no later than 14 days from the time of the discovery over such failure.

Personal data owners and Electronic System Operator are also entitled to file a complaint to the MCI over the failure to protect the confidentiality of personal data. Claims can be submitted based on the following reasons:

a. if an electronic system operator does not provide the above written notice following a failure to protect the confidentiality of personal data of the personal data owner or another Electronic System Operator relating to such personal data, whether or not there is a possibility that such failure may cause harm; or
b. losses have been suffered by the owner of the personal data or other Electronic System Operators resulting from a failure to protect the confidentiality of the relevant personal data, notwithstanding the fact that a written notification regarding such failure has been sent but has passed the 14-day notification period.

The disputes will be handled by the Directorate General in the MCI overseeing informatics applications where the Directorate General will form a panel to settle personal data disputes.

In the event the dispute settlement by mediation or through another alternative dispute settlement method cannot resolve the dispute over a failure to protect the confidentiality of personal data, the owner of the personal data and the Electronic System Operator may file a civil lawsuit.

Administrative Sanctions

Any person who acquires, collects, processes, analyzes, stores, displays, announces, transmits, and/or distributes personal data without any consent of the owner of the personal data or not in accordance with the Electronic PDP regulation, and other Indonesian prevailing laws, will be subject to the following administrative sanctions:

a. verbal warning;
b. written warning;
c. temporary suspension of activities; and/or
d. announcement issued online.

Transitional Provisions

If an Electronic System Operator has provided, stored, and managed personal data prior to the enactment of the Electronic PDP regulation, the relevant Electronic System Operator is still obliged to maintain the confidentiality of the existing personal data and will be subject to the requirement to comply with the Electronic PDP regulation by no later than 2 (two) years after the issuance and the enactment of the Electronic PDP regulation.

Should you have any further inquiries, please do not hesitate to contact our Oka Anantajaya at oka.anantajaya@mkklaw.net

Internship Scheme: Manpower Regulation No. 36 of 2016

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The Ministry of Manpower has stipulated and promulgated a new regulation on internship, namely Minister of Manpower Regulation No. 36 of 2016 on the Carrying Out of Domestic Internship ("**MoM Reg 36**") which revokes the previous regulation, Minister of Manpower Regulation No. PER.22/MEN/IX/2009 ("**MoM Reg 22**").

MoM Reg 36 is a good initiative by the government to combat violations against the rights and obligations of interns. Regardless of the good intentions, however, it appears that the newly issued MoM Reg 36 has fallen short on some crucial points. For instance, there is no clear limitation on the internship period. Further, there is yet to be a clear mechanism of governmental supervision and sanction scheme for the implementation of internships. Thus, questions arise as to whether fulfillment of the requirements in MoM Reg 36 would ultimately be subject to a company's mere discretion. Nevertheless, up to the present time, the government appears to be of the view that MoM Reg 36 remains the guideline applicable to all parties intending to provide internship opportunities. Below please find a summary of MoM Reg 36.

The new Regulation was officially stipulated and promulgated on December 14, 2016 and sets out, *inter alia*, the following:

- MoM Reg 36 defines internship as an integral part of the vocational training system that includes training at a training institute while working directly under the guidance and supervision of an instructor or a more experienced worker in the course of production of goods and/or services in the company in order to master a certain skill or specific expertise.
- In order to carry out internship programs, a company is required to observe a number of requirements. Some of the salient points of the requirements are as follows:
    - having a Training Unit;
    - providing programs, facilities, and supervisors for the internship;
    - notifying the relevant state agencies regarding the proposed internship agreement and internship plan; and
    - observing the rights and obligations of the interns.

- A company conducting an internship program is required to have a Training Unit, namely a unit that is responsible for carrying out training in the company in order to fulfill the needs of the company and society. The training unit must establish an organized composition of management, competent company personnel as training supervisors, room(s) for theoretical and practical training and internship programs. In the event that a company does not have a training unit, the company may enter into cooperation with an accredited job training institute which has an equivalent program scheme.
- As stated above, companies conducting internship programs must provide: (i) an internship program; (ii) internship facilities; and (iii) internship supervisors. According to MoM Reg 36, the internship program is to contain:
  - name of the program;
  - purpose(s) of the program;
  - competence to be transferred;
  - estimated internship period;
  - requirements for the internship participants;
  - requirements for the internship supervisors; and
  - curriculum and syllabus.

The program is to refer to the relevant standard competency schemes, i.e. the (i) Indonesian National Work Competency Standards or *Standar Kompetensi Kerja Nasional Indonesia* ("**SKKNI**"); (ii) Specialized Work Competency Standards or *Standar Kompetensi Kerja Khusus* ("**SKKK**"); and/or (iii) International Work Competency Standards or *Standar Kompetensi Kerja Internasional* ("**SKKI**").

As to the facilities for the internship program, the company is to provide room(s) for theoretical and practical training, appropriate equipment for work safety and health, and a logbook for the participants, which includes the program schedule, evaluation plan, daily report of the internship activities and the final assessment of the participants.

In the case of internship supervisors, they are required, among others, to be permanent employees of the company and have the technical competence for the proposed internship program.

- Pursuant to MoM Reg 36, internship agreements are to be prepared in a written form in reference to the format provided in the Regulation and shall set out the following:
  - rights and obligations of internship participants;
  - rights and obligations of internship provider;
  - internship program; and
  - amount of allowance.

The above internship agreements shall be notified to and legalized by the relevant district/municipal agency within three (3) business days at the latest. Should there be no legalization within the aforesaid period, the internship agreements may still be implemented.

- Companies planning to conduct internship programs must also convey, their internship plans in writing to the Director General of Training and Productivity Development for implementation of inter-provincial internship, head of the provincial manpower services office for inter-district/municipal internship, or head of the district/municipal manpower services office for internship within one (1) district/municipality. The notification shall set out the proposed internship program, internship plan and draft of the internship agreement.
- In addition, several other points that need to be considered for the implementation of internship programs are as follows:
  - the operational time of the internship should be adjusted to the working hours in the company and cannot be conducted during overtime hours, official holidays and in the evening.
  - a company can only accept internship participants up to thirty percent (30%) of the total number of employees;
  - The minimum required age for an internship participant is seventeen (17) years old, and the maximum period for the internship program is one (1) year (although note that the program may exceed the one (1) year period if it is necessary to achieve a certain competence level, noting, however, that there is no limitation on the extension of internship programs);
  - allowance for internship participants should cover transportation costs, meals and incentives for the said participants;
  - internship participants are entitled to obtain protection in the form of employment security (coverage for death and work accidents) and a certificate on completion of the program.

In addition to the abovementioned provisions in MoM Reg 36, companies intending to carry out internship programs are still subject to other regulations in terms of employment aspects, i.e. working time and rest periods, social and healthcare security, including occupational health and safety, among others.

Competition and construction services

(MKK competition law team with research by Anderu Bionty, S.H.)

A KPPU study of 2011* set out that in the construction service industry, major players have the potential to breach Law Number 5 of 1999 by:

- Engaging in tender collusion;
- Establishing cartels;
- Carrying out Boycotts;
- Creating an entry barrier through certification process; and
- Using association membership as a barrier to entry.

General issues of business competition in the area of construction services:

a) Associations may be tempted to abuse their authority to issue certificates in order to stifle business competition. Associations might carry out this action by:
   a. only issuing legal certification to a certain group;
   b. using the terms and conditions of issuing a certificate as a barrier to entry.
b) Institutions also have the tendency to establish new associations that possess a more and more specific scope. The particular action could have the following impact:
   a. The presence of associations could influence the tender process;
   b. New associations are more likely to be used for vested interests by a close-knit group of businessmen

KPPU's position paper on the construction services industry

In its Position Paper, KPPU stated the need to evaluate the government's policy in the construction services sector. The evaluation is considered as a necessity, especially due to its correlation with the current development of the construction service sector and also the role of LPJK, the National Construction Services Development Board. In undertaking the evaluation, KPPU expects to establish better regulations for the sector, which are in line with Law Number 5 or 1999, concerning Ban on Monopolistic Practices and Unfair Business Competition.

Public participation

Over the years, KPPU has tried to raise public awareness regarding unfair business competition in the construction services sector. Both the KPPU and the new construction services law have provided a platform for the public to participate both online and offline. By raising public awareness, KPPU hopes the public will participate in identifying monopolistic practices and unfair business competition.

*Source: KPPU Press Release: "KPPU: Terdapat Persekongkolan Tender di Proyek RSU Sulawesi Tenggara"

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