

DEVELOPMENTS IN REGULATIONS FOR E-COMMERCE BUSINESS ACTIVITIES IN INDONESIA

October 30, 2023

On September 26, 2023, the Minister of Trade enacted Ministerial Regulation No. 31 of 2023 on Business Licensing, Advertising, Guidance and Supervision of Business Actors engaged in Trading through Electronic Systems (“**MOT 31/2023**”).

The enactment of MOT 31/2023 is the recognition by the Indonesian Government that the previous regulation, Minister of Trade Regulation No. 50 of 2020 on the same matter, is no longer adequately aligned with current legal developments in the digital era and the changing needs of society. MOT 31/2023 aims to better regulate the business players in the e-commerce sector, enhance consumer protection, foster the growth of micro, small and medium scale businesses and support the development of local e-commerce enterprises.

In general, MOT 31/2023 contains provisions governing the requirements for carrying out e-commerce activities, electronic advertising, prioritizing domestic products, requirement to appoint representative offices of foreign trading companies in the e-commerce sector, guidance and supervision and administrative sanctions.

Who Is Subject to MOT 31/2023?

MOT 31/2023 has a wide-reaching scope, applying to merchants, e-commerce operators and intermediary service providers (both local and offshore individuals and enterprises). MOT 31/2023 further accommodates various business models of e-commerce players *i.e.*, online retailers, marketplaces, online classified advertisements, price comparison platforms, daily deals and social e-commerce. This to ensure that all e-commerce operators with different business models operate within the same defined legal framework.

Highlighted Rules

In principle, business actors engaged in e-commerce must adhere to a range of provisions regulating business licenses, export/import, national standard requirements and certification for goods and/or services, broadcasting and data privacy and personal data protection. Notwithstanding the technical nature of MOT 31/2023, the following outline key requirements and restrictions set out in MOT 31/2023:

- a) Offshore e-commerce operators shall appoint a local representative residing in Indonesia if they have completed transactions with at least 1000 consumers within one year, have delivered at least 1000 packages to consumers within one year or have generated traffic or access from domestic internet users amounting to 1% of internet users in Indonesia within one year. These criteria will be evaluated by the Ministry of Trade.
- b) Cross-border transactions of finished goods conducted by any e-commerce operator must adhere to a minimum Freight on Board price of USD 100 per unit in its electronic system. Exceptions to this requirement will be subject to ministerial stipulation.

- c) E-commerce operators with marketplace and/or social commerce business models are prohibited from acting as producers according to the distribution rules.
- d) Social commerce platforms are prohibited from facilitating payment transactions within their electronic systems.

Violation of the provisions of MOT 31/2023 may result in administrative sanctions, namely warning letters, being blacklisted, temporary suspension of services or even the revocation of business license.

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