

DATA LOCALIZATION: COMING TO YOU SOON IN INDONESIA

As globalization and growth in the digital economy continues, a trend has emerged worldwide of some national governments seeking to assert control and stop the flow of data across borders. These laws intended to keep personal data in-country and subject to local regulation. Indonesia is now one of the countries where data will be required to be stored locally by 1 December 2018.

Electronic System Providers (“**ESPs**”) that provide public services are required to store data in local data centers and arrange for disaster recovery centers for law enforcement and data protection purposes. Specific data localization requirements for certain industries also apply, primarily in the financial sector.

The regulations relevant for ESPs are Government Regulation Number 82 of 2012 concerning System Operations and Electronic Transactions (“**Reg. 82/2012**”) and, more recently, a Ministry of Communication and Informatics (“**MOCI**”) Regulation Number 20 of 2016 concerning Personal Data Protection in Electronic Systems (“**Reg. 20/2016**”). Compliance with Reg. 20/2016 is required by 1 December 2018, allowing the market time to implement the provisions of Reg. 20/2016.

Qualifying services and data

For the purpose of determining which services and types of data are subject to data localization, the definitions of the various regulations are relevant.

An ESP is defined as any party that provides, manages, and/or operates a series of devices and electronic procedures that serve to prepare, collect, process, analyze, store, display, publish, transmit, and/or distribute electronic data (Reg. 82/2012).

The regulations only require ESPs that provide *public services* to store data locally. The relevant regulation does not clearly define public services. If the definition would be applied broadly, this could include any party (including privately held entities) that makes a service available to the public. Implementing regulations may provide further guidance in this respect.

The regulations seem to be intended to cover the protection of personal data. However, there are indications that the data localization



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requirement may not be limited to personal data alone and may in fact be applied to all data (Reg. 82/2012 and Reg. 20/2016).

Taken the various definitions as whole, data localization requirement will potentially apply to any party that provides information technology to the public and stores (personal) data of Indonesian citizens. As is common, the various regulations refer to implementing regulation(s) that will contain further provisions. To date, no implementing regulations have been issued that provide further clarification in this respect.

Operation of data centers and data export

An ESP is not required to own its own data centers (Reg. 20/2016). It is allowed to lease a data center from a third party or to store data with a third party service provider. Commercial offerings have been announced for cloud services that use data centers in Indonesia, seemingly anticipating a need for such services.

Data can be mirrored/exported to data centers outside Indonesia as long as certain requirements have been met proper customer consent has been obtained, the ESP has coordinated with MOCI and has submitted the required plans and reports (Reg. 20/2016). The regulation also provides that the transfer must comply with cross-border personal data exchange legislation, however no such legislation is in effect to date.

Applicability to foreign businesses

The various regulations do not clearly determine to what extent foreign businesses that store data of Indonesian citizens are

subject to the requirement of data localization. It seems to be the objective to capture all data of Indonesian citizens that is processed by ESPs providing a public service. However, some government officials have taken the view that as a matter of general principle, there is insufficient basis to enforce the data localization requirements against foreign businesses. At the same time and for various purposes, the government is encouraging foreign businesses to establish a presence (be it as a permanent establishment for tax purposes or by incorporating an Indonesian legal entity). An argument could be made that if such presence is established, the data localization requirements would apply. Also in this respect, further implementing regulations are not yet issued and the precise obligations for foreign businesses are not clear cut.

In respect of e-commerce, the government has issued a roadmap, which refers to the mandatory registration of e-commerce service providers (Presidential Regulation 74/2017). MOCI has also announced a registration requirement for providers of Over-The-Top services (MOCI Circular Letter No. 3/2016). In both respects, implementing regulations are either in draft form and/or still need to be implemented.

Financial sector

Data localization requirements apply to certain sectors that pre-date Reg. 82/2012. Most notably, several regulations issued by the Indonesian Financial Services Authority (“**OJK**”) require conventional banks, insurance companies and electronic lending service providers to store data locally. Conventional banks can apply for an approval from OJK to use a data and disaster recovery center outside Indonesia. Certain requirements apply. Reportedly, OJK is taking a more strict approach in respect of insurers and electronic lending service providers.

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