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The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2018

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A practical cross-border insight into telecoms, media and internet laws and regulations

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EDITORIAL

Welcome to the eleventh edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

Three general chapters. These chapters provide readers with an overview of key issues affecting telecoms, media and internet laws and regulations, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 29 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Arnold & Porter Kaye Scholer LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Indonesia



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1 Overview

1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

(a) Telecoms and Internet

Mobile cellular business remains the largest telecoms industry in Indonesia. The telecoms sector in Indonesia is one of the world's most crowded cellular telecoms markets due to the country's large population and the affordable price in the technology devices market nowadays. There are approximately 278 million mobile subscribers in Indonesia, leaving only 11 million fixed line subscribers. Further, nearly 85% of the Indonesian population own mobile phones while 43% carry smartphones. This leads to the domination of mobile operators in the Internet Service Providers ("ISP") sector as well, meaning that most of the approximately 53 million internet users in Indonesia are utilising their mobile phones to gain internet access. Meanwhile, fixed line ISPs are aiming for corporate and residential customers, and apartment buildings. The fixed line ISPs are currently focused on enhancing their infrastructure by building fibre-optic networks of varying sizes and capacities in several of the largest cities in Indonesia.

Telkomsel, Indosat Ooredoo and XL Axiata are the three major operators for mobile subscribers in Indonesia, which dominate 80% of the telecoms market. Whilst Telkomsel is primarily owned by a publicly listed state-owned telecoms company, namely PT Telekomunikasi Indonesia Tbk (Telkom), the other two major operators are controlled by foreign telecoms companies. Axiata (a Malaysian-based telecoms company) owns 66.4% of XL Axiata's shares, whilst Ooredoo (a Qatar-based telecoms company) owns 65% of Indosat Ooredoo's shares. In respect of the annual revenue, Telkomsel has the biggest annual revenue among their competitors. In 2016, Telkomsel had IDR 86,725 trillion in their annual revenue while Indosat Ooredoo had IDR 29,184.6 trillion and XL Axiata had IDR 21,341 trillion.

(b) Audio-Visual Media Distribution

The rise of online digital advertising has not held back the domineering control of the television sector in the media landscape in Indonesia. With a total audience of almost 240 million people, the television sector is owned by many large and diversified media groups, the most significant of which are, among others, Media Nusantara Citra (MNC) Group and Trans Corp.

Subscription-based television services are also penetrating the market in numerous major cities in Indonesia, along with their

bundled ISP services for residential customers. MNC Group, First Media Group, and recently Telkom, among others, are the big players for bundled cable television-ISP services in Indonesia. However, compared to the annual revenue for ISP service providers through mobile services, the bundled cable television-ISP service providers have been left far behind. For instance, the subsidiary of First Media Group and MNC group for this particular sector, respectively PT Link Net Tbk and PT MNC Sky Vision Tbk, only reached approximately IDR 3 trillion for their 2016 annual revenue.

1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

(a) Telecoms and Internet

- Law No. 36 of 1999 on Telecommunication ("**Telecoms Law**").
- Law No. 11 of 2008 on the Information and Electronic Transaction ("**EIT Law**").
- Government Regulation No. 52 of 2000 on Telecommunications Operation dated 11 July 2000 ("**GR 52/2000**").
- Government Regulation No. 82 of 2012 on Electronic System and Transaction Operation.
- Ministry of Communications and Informatics ("**MCI**") Regulation No. 01/PER/M.Kominfo/01/2010 on Provision of Telecommunication Network, as lastly amended by MCI Regulation No. 7 of 2015 ("**MCI Regulation 01/2010**").
- MCI Decree No. KM 21 of 2001 on Provision of Telecommunications Services as lastly amended by MCI Regulation No. 8 of 2015 ("**MCI Regulation 21/2001**").
- MCI Regulation No. 8/PER/M.Kominfo/02/2006 on Interconnection ("**MCI Regulation 8/2006**").
- MCI Regulation No. 19 of 2014 on the Handling of Negative Contents in the Internet Website ("**MCI Regulation 19/2014**").
- MCI Regulation No. 36 of 2014 on the Registration Procedure of Electronic System Operator ("**MCI Regulation 36/2014**").
- MCI Regulation No. 20 of 2016 on Individual Data Protection in Electronic System ("**MCI Regulation 20/2016**").
- MCI Circular Letter No. 3 of 2016 on Provision of Application and/or Content Services through Internet (Over the Top) ("**MCI Circular Letter 3/2016**").
- MCI Regulation No. 8 of 2017 on Provision of Internet Telephone Services for Public Purposes (VoIP) ("**MCI Regulation 8/2017**").

- (b) Audio-Visual Media Distribution
- Law No. 32 of 2002 on Broadcasting (“**Broadcasting Law**”).
 - MCI Regulation No. 28 of 2008 on the Procedures and Requirements for Broadcasting License (“**MCI Regulation 28/2008**”).
 - MCI Regulation No. 41 of 2012 on Provision of Broadcasting by Subscription Broadcasters through Satellite, Cable and Terrestrial (“**MCI Regulation 41/2012**”).
 - MCI Regulation No. 18 of 2016 on the Procedures and Requirements for Broadcasting Operation (“**MCI Regulation 18/2016**”).
 - MCI Regulation No. 6 of 2017 on Provisions of Internet Protocol Television (“**MCI Regulation 6/2017**”).

1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

- (a) Telecoms
- Minister of Communication and Informatics (*Kementerian Komunikasi dan Informatika* / “**MCI**”), Directorate General for Operation of Post and Telecommunication.
 - MCI, Directorate General for Operation of Post and Telecommunication.
 - MCI, Directorate General for Informatics Application.
 - Indonesian Telecommunication Regulatory Authority (*Badan Regulasi Telekomunikasi Indonesia* / “**BRTI**”).
- (b) Audio-Visual Media Distribution
- MCI, Directorate General for Operation of Post and Telecommunication.
 - Indonesian Broadcasting Committee (*Komisi Penyiaran Indonesia* / “**KPI**”).

1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment?

- (a) **Telecoms and Internet**
- Most of the telecoms sectors, including fixed and mobile telecommunications network providers, telecommunications services providers, and ISP providers are restricted to 67% foreign ownership.
- (b) **Audio-Visual Media Distribution**
- The Private Broadcasting Channel (“**PBC**”) and subscription broadcaster sectors can only be invested in by a local citizen or Indonesian-owned legal entity. Foreign investors may only participate in PBC and subscription broadcaster sectors by means of capital injection, with a 20% foreign shares ownership restriction.

2 Telecoms

General

2.1 Is your jurisdiction a member of the World Trade Organisation? Has your jurisdiction made commitments under the GATS regarding telecommunications and has your jurisdiction adopted and implemented the telecoms reference paper?

Indonesia has been a member of the World Trade Organisation (“**WTO**”) since 1994 and entered the WTO Basic Telecommunication

Agreement in 1997. The Indonesian government has opened up the telecommunications industry to even more than the agreed 35% foreign ownership. See question 1.4 above for details on the foreign ownership restriction in the telecommunications industry.

2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

By virtue of the Telecoms Law, GR 52/2000, MCI Regulation 01/2010 and MCI Regulation 21/2001, the following are the classifications of telecoms operations under the said laws and regulations:

1. The Operation of Telecoms Networks, which consist of:
 - (a) Fixed Telecommunications Networks, which consist of:
 - (i) fixed local networks;
 - (ii) fixed long distance networks;
 - (iii) fixed international networks; and
 - (iv) fixed closed networks.
 - (b) Mobile Telecommunications Networks, which consist of:
 - (i) mobile terrestrial networks;
 - (ii) mobile cellular networks; and
 - (iii) mobile satellite networks.
2. The Provision of Telecoms Services, which, among others, consists of:
 - (a) Basic Telephony Services, which are provided by:
 - (i) fixed local network operators (telephone, facsimile, telex, telegraph and data);
 - (ii) fixed long distance network operators (telephone, facsimile, telex, telegraph and data);
 - (iii) fixed international network operators (telephone, facsimile, telex, telegraph and data);
 - (iv) mobile cellular network operators (telephone, facsimile and data);
 - (v) mobile satellite network operators; and
 - (vi) radio trunking operators (local telephony).
 - (b) Value Added Telephony Services, which, among others, consist of:
 - (i) premium calls;
 - (ii) calling cards;
 - (iii) virtual private phone numbers;
 - (iv) public telephone recordings;
 - (v) store-and-forwards; and
 - (vi) call centres.
 - (c) Multimedia Services, which, among others, consist of:
 - (i) internet service providers (ISP);
 - (ii) internet interconnection services (NAP);
 - (iii) internet telephony for public purposes; and
 - (iv) data communication system services.
3. Special Telecoms Operations, which consist of:
 - (a) Special Telecommunications for Internal Use;
 - (b) Special Telecommunications for National Defence; and
 - (c) Broadcasting.

2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government?

The Commission for the Supervision of Business Competition (*Komisi Pengawas Persaingan Usaha* / “**KPPU**”) is an independent

governmental body established pursuant to Law No. 5 of 1999 regarding Prohibition on Monopolistic Practices and Unfair Business Competition (“**Anti-Monopoly Law**”). KPPU rules over business competition in any field in Indonesia. With an open-recruitment mechanism, KPPU’s members are inaugurated by the President, with approval by the House of Representatives.

Specifically for the telecoms sector, competition supervisory duty in this area is conducted mutually by KPPU and BRTI. As a semi-independent regulatory body, BRTI runs its tasks and functions through the Committee of Telecommunication Regulation, which consists of seven members. Public participation is manifested through the appointment of five members of the committee from public figures, and two members of the committee from the government.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

In accordance with Law No. 5 of 1985 regarding the State Administrative Court as most recently amended by Law No. 9 of 2004 (“**State Administrative Court Law**”), the decision of the national regulatory authority shall be considered as a state administrative decision, thus able to be appealed at the State Administrative Court.

According to Article 1 No. 3 of the State Administrative Court Law, a state administrative decision is defined as a written decision that is issued by a state administration agency, which contains state administration legal actions based on the applicable laws and regulations. Further, such decision must be concrete, individual, and final in character, and has legal consequences for a specific person or legal entity. Examples of state administrative decision are (i) licences/permits, and (ii) ministerial decrees on legal status, rights and obligations for a certain legal entity.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in your jurisdiction?

In general, telecoms licences for commercial use are issued in three stages, which are:

- (i) **Principal Licence**
A Telecoms Principal Licence will be issued by MCI to give groundwork for the telecoms operator/provider in commencing its initial preparation and developing its facilities and infrastructure for the intended telecoms business activity. The Principal Licence shall be valid for a maximum period of one year.
- (ii) **Fit and Proper Test**
Serves as the basis for the issuance of an Operating Licence, the fit and proper test is a technical inspection conducted by either a team composed by MCI or accredited assessment institutions, whichever is deemed fit.
- (iii) **Operating Licence (Modern Licensing)**
The Telecoms Operating Licence shall be in the form of a contract between the relevant telecoms network/services provider with MCI, consisting of operational rights, obligations, sanctions and report. This contract will be subject to an evaluation every five years.

2.6 Please summarise the main requirements of your jurisdiction’s general authorisation.

The main requirements for both Telecoms Networks and Telecoms Services sectors in obtaining telecommunication licences are as follows:

- (i) a business plan that includes scope of development area and services to be built (roll-out plan), which constitutes a commitment to develop for a five-year period; and
- (ii) a statement letter that it will not change its shareholding structure during the Principal Licence period and, upon obtaining the Operating Licence, before fulfilling at least 50% development responsibility of the total commitment to develop during the five-year period.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?

Currently, there are no individual authorisations used in Indonesia with regard to telecoms business activities.

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

The construction of telecommunication infrastructure in certain areas, particularly in less-developed cities, may be considered as a development for public interest, hence granting the Indonesian government the authority to acquire land by giving proper compensation to the relevant land owners. There are two regulations which are relevant for public and private land acquisition for public interest, namely:

- (i) Law No. 2 of 2012 on Land Procurement for Development for Public Interest and its implementing regulations.
- (ii) Presidential Regulation No. 71 of 2012, as lastly amended with the Presidential Regulation No. 148 of 2015.

Access and Interconnection

2.9 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

Under the Telecoms Law, it is clearly mandated that every telecoms network operator shall provide interconnection, based on demand, to any other operator. The interconnection is further regulated under MCI Regulation 8/2006, which also contains the provision regarding interconnection dispute settlement. Pursuant to Annex V of MCI Regulation 8/2006, disputes related to interconnection issues may be resolved by means of mediation or arbitration, without prejudice to the relevant parties’ rights in seeking a resolution through the Indonesian District Court. In mediation, the mediator team shall be established by BRTI. Meanwhile in arbitration, the arbitral tribunal members shall consist of one or more arbitrators appointed by BRTI.

2.10 Which operators are required to publish their standard interconnection contracts and/or prices?

Operators are required to submit interconnection tariffs offers, which include the Interconnection Offer Document (*Dokumen Penawaran Interkoneksi* / “DPI”) to be reviewed by BRTI. An operator’s DPI with operating revenue of 25% or more from the total revenue of the entire operators in its particular service sector is required to be approved by BRTI.

All operators are also required to publish their DPI and other supporting documents from the interconnection contract for all interested parties and it is advisable to publish the documents on the operator’s website.

2.11 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

Interconnection tariffs are decided on a cost basis by considering the economic value (supply and demand) and are subject to the standard formulation provided by the government. The basis of interconnection tariff calculations are transparency and fairness, as the calculation result shall be included in DPI. Operators are then required to submit the DPI to be reviewed and approved by BRTI.

In calculating the interconnection tariff, reference shall be given to the (i) cost allocation and reporting manual, and (ii) guidelines and calculation formula software for the interconnection tariff, as determined by the Directorate General for Operation of Post and Telecommunication.

2.12 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

In several lines of telecoms business, MCI requires the operator and/or telecoms service providers to conduct accounting separation, e.g., interconnection services. However, the operators are not subject to any sectoral regulations to undertake any functional separation and/or legal separation.

2.13 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or ‘regulatory holidays’?

There is no specific regulation regarding high-speed broadband networks, nor any incentives or regulatory holidays for this matter.

Price and Consumer Regulation

2.14 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

Pursuant to the Telecoms Law, telecom network operators have the right to determine the tariffs and there is no set price control or retail tariffs on the operators. The government only determines the formula to calculate the tariff.

2.15 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?

The Telecoms Law stipulates that in providing its services, each telecoms operator is required to protect its customers’ rights, among others, quality of services (“QoS”), tariffs and compensation. In relation thereto, MCI has set up several regulations on QoS for certain telecoms services.

Further, in the event that the provision of electronic communications services is considered to be public services, the relevant electronic system operator shall be subject to a mandatory registration to the MCI. Based on MCI Regulation 36/2014, provision of the following services shall be considered as public services and subject to registration:

- (a) The web portal, website, or online application via the internet that is used to facilitate offering and/or trading of goods and/or services.
- (b) The electronic system that contains payment facility and/or other financial transaction online by means of communication data or the internet.
- (c) The electronic system used to process electronic information which contains or requires deposit of funds or other similar forms of funds.
- (d) The electronic system used to process, administer, or store data related to facilities that are associated with customer data for public-serving operational activity on financial transactions and trading activity.
- (e) The electronic system used for the delivery of payable digital material through a data network, either by means of download via web portal/website, email transmission, or other application to the user device.

Numbering

2.16 How are telephone numbers and network identifying codes allocated and by whom?

Telephone numbers and network identifying codes are allocated by MCI through the Directorate General for Operation of Post and Telecommunication. Procedures for allocation and designation of numbers are stipulated under MCI Decree No. 4 of 2001 on the National Fundamental Technical Plan 2000, as lastly amended by MCI Regulation No. 17 of 2014. Usage and arrangement of such numbers shall be carried out further by the respective operators.

2.17 Are there any special rules which govern the use of telephone numbers?

Upon obtaining the allocated numbers, the operators are obligated to submit a report of the usage of the telephone numbers every six months.

2.18 Are there any obligations requiring number portability?

Number portability, including local number portability and mobile portability, is not applicable for either individual or enterprise customers in Indonesia.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

MCI, Directorate General for Resources and Postal and Informatics Devices.

3.2 How is the use of radio spectrum authorised in your jurisdiction? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative ‘beauty parades’, etc.?

Based on MCI Regulation No. 4 of 2015 on the Operational Requirements and Licensing Procedures for the Use of Radio Frequency Spectrum (“**MCI Regulation 4/2015**”), every usage of the radio spectrum in Indonesia is required to obtain a usage of radio frequency spectrum licence. There are three types of licences for the usage of radio frequency spectrum, namely:

- Radio Frequency Band Licence (*Izin Penggunaan Pita Radio* / “**IPFR**”), for the usage of radio spectrum in the form of a radio frequency band.
- Radio Station Licence (*Izin Stasiun Radio* / “**ISR**”), for the usage of radio spectrum in the form of a radio frequency channel.
- Class Licence (*Izin Kelas*), granted to individuals and/or legal entities to operate a telecoms device which uses the radio frequency spectrum.

The holder of the above licence is required to pay the Rights of Frequency Radio Spectrum Fee (*Biaya Hak Penggunaan Frekuensi Radio* or “**BHP**”).

The procedure to determine the candidates entitled to use radio spectrum is based on the selection mechanism and on a “first-come first-served” basis.

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

No, for every usage of the spectrum, one must first obtain the related licences.

3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

According to MCI Regulation 4/2015, only IPFR and ISR are payable with licence fees in the form of Right of Frequency Radio Spectrum Fee (*Biaya Hak Penggunaan Frekuensi Radio* / “**BHP**”). The BHP must be fully paid in advance via a bank with a host-to-host payment gateway on an annual basis.

The amount of BHP for IPFR shall be determined by the following mechanisms:

- selection process mechanism, by taking into account the public’s purchasing power and reasonableness;
- adjustment of selection result mechanism, for the usage of radio frequency spectrum on the same radio frequency band; or
- calculation mechanism, in accordance with the formula determined by MCI.

Meanwhile, the amount of BHP for ISR shall only be determined by the calculation mechanism in accordance with the formula determined by MCI.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

In the event the change of control of the licensee results in (i) the change of name of the licensee, (ii) the person in charge of the legal entity holding the ISR (only for ISRs), and/or (iii) domicile of the licensee, then the licensee must submit the change of licensee data.

The change of licensee data shall be submitted to MCI in the case of IPFR, or the Directorate General of Resources and Postal and Informatics Devices in the case of ISR.

3.6 Are spectrum licences able to be assigned, traded or sub-licensed and, if so, on what conditions?

No, spectrum licences are not able to be assigned, traded or sub-licensed.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework for cybersecurity.

There is no specific law or regulation for cybersecurity in Indonesia. The main reference for cybersecurity in Indonesia still refers to EIT Law, which serves as the principal policy for electronic information in Indonesia.

Nevertheless, the President of the Republic of Indonesia recently issued Decree No. 53 of 2017 on Cyber Body and National Encryption Agency (*Badan Siber dan Sandi Negara* / “**BSSN**”), a non-ministerial agency which is directly accountable to the President through the MCI for cybersecurity issues. The main role of BSSN is to effectively and efficiently implement cybersecurity in Indonesia and carry out the function of drafting and implementing technical policy in the field of identification, detection, protection, countermeasures, control, monitoring, evaluation, control of e-commerce protection, coding, screening, cyber diplomacy, cyber crisis management centre, cyber contact centre, information centre, mitigation support, vulnerability recovery, incident and/or cyber-attacks.

Additionally, provisions regarding data protection are scattered throughout several ministerial regulations. For instance, MCI Regulation 20/2016 requires all electronic system operators in Indonesia to store all personal data in their possession in an encrypted form, although there is no further stipulation on the encryption mechanism to be implemented. Further, MCI Regulation 4/2016 requires electronic system operators for public services that utilise strategic or high-level electronic systems to employ SNI ISO/IEC 27001 as their standard of information safety management system.

4.2 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

Lawful interception is permitted and applicable in Indonesia, provided that such interception is conducted by an authorised law enforcer for the purpose of law supremacy and national security. The legal basis for lawful interception is scattered throughout several laws and regulations. Among others, the following are regulations which authorise lawful interception:

- EIT Law;
- Law No. 30 of 2002 on Corruption Eradication Commission;

- Law No. 35 of 2009 on Narcotics; and
- MCI Regulation No. 11/PER/M.Kominfo/020/2006 on Information Obtained through Confidential Interception.

4.3 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

Telecoms Law and GR 52/2000 permit the telecoms services provider, for the purpose of criminal proceedings, to record any information delivered or received by it, as well as providing any necessary information upon the following conditions:

- written request from the Attorney General and/or Head of the Indonesian Police Force for certain criminal acts with five years or more of imprisonment, a life sentence or the death penalty; and
- a request from the lawful investigator for certain criminal acts pursuant to the prevailing laws and regulations.

Telecoms Law and GR 52/2000 expressly state that any kinds of information may be recorded and disclosed for criminal proceeding purposes. Accordingly, this interception covers all types of communications facilitated by the relevant telecoms services provider.

4.4 How does the state intercept communications for a particular individual?

Since the telecoms services provider must cooperate for criminal proceeding purposes, the lawful authority may cooperate with the network operators or ISPs to intercept the communications for a particular individual.

4.5 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

MCI Regulation 20/2016 requires all electronic system operators in Indonesia to store all personal data in their possession in an encrypted form. However, the regulation does not further stipulate the encryption mechanism that needs to be implemented.

With the obligation of the service providers to cooperate with the state under Telecoms Law and GR 52/2000, the telecoms services provider must cooperate during criminal proceedings by providing the state with any encryption keys required in order to provide any necessary information in an encrypted form.

4.6 What data are telecoms or internet infrastructure operators obliged to retain and for how long?

Should there be no statute that specifically governs it, MCI Regulation 20/2016 sets out that the retention period of personal data shall be at least five years. By the time a personal data owner is no longer considered a user, the electronic system operator is obliged to store the relevant personal data starting from the last date of the personal data owner that is considered a user.

In particular for telecoms and internet operators, GR 52/2000 requires them to maintain and store a customer data record (“CDR”) or details of the telecommunication usage. Storage of the CDR shall be kept for a period of at least three months.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in your jurisdiction?

Media sectors, including the distribution of audio-visual media in Indonesia such as radio and television broadcast, are regulated under Broadcasting Law. The Broadcasting Law divides broadcasters into public broadcasters (“PubBC”), PBC, community broadcasters and subscription broadcasters. The broadcasting sector is under the auspices of KPI, an independent body whose responsibility is to regulate and provide recommendations in the area of broadcasting.

5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

In general, as provided in the Broadcasting Law as well as the EIT Law, both content broadcast via traditional media (e.g., television and radio) and digital media (e.g., the internet or other digital platforms) shall not violate the limitations provided by laws (e.g., advertisement on alcoholic beverages and cigarette promotion) or in conflict with public order, morality, religion or the customs in Indonesia. However, in the area of broadcasting, there are several provisions concerning the minimum local content required to be aired. For example, broadcast content of PBC and PubBC television must contain at least 60% domestic programmes. The KPI also issued the Broadcasting Behaviour Guidelines and Broadcasting Programs Standard (“P3SPS”) in order to guide broadcasting behaviour.

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

MCI Regulation 28/2008 sets out that in order to conduct its broadcasting activities, a company shall obtain a broadcasting licence. A broadcasting licence for radio shall be granted for five years, while for television broadcasting licences shall be granted for 10 years, and both licences are extendable. Prior to obtaining a permanent broadcast licence, a radio broadcaster must pass a broadcasting probation period (which can be as long as six months), while a television broadcaster must pass a one-year broadcasting probation period.

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

No, a broadcasting licence is not assignable.

The change of control on a PBC is restricted for a maximum 20% of shares of foreign capital. See question 1.4 above for details on PBC foreign ownership restriction.

6 Internet Infrastructure

6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

Generally, the content shown in their networks are not under the responsibility of telecoms operators and/or ISPs. However, MCI Regulation 19/2014 requires telecoms operators and/or ISPs to block all of the IPs/URLs contained in the TRUST+Positif List, which is a list made by MCI, Directorate General of Informatics Applications, of websites with negative content (pornography, racism, etc.). Accordingly, telecoms operators and/or ISPs are only liable for the IPs/URLs contained in the TRUST+Positif List.

6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. to provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

Not without an instruction from the MCI, as the telecoms operators and/or ISPs are only under the obligation to block IPs/URLs contained in the TRUST+Positif List. However, content owners may report the domain or URL that contains any rights infringement to the MCI, hence the relevant domain or URL may be included in the TRUST+Positif List.

6.3 Are there any 'net neutrality' requirements? Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks?

No, currently there are no net neutrality requirements applicable to Indonesia. Telecoms operators and/or ISPs are granted the rights to block different types of traffic over their networks.

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?

Yes, telecoms operators and/or ISPs are under the obligation to block access to certain sites as per the TRUST+Positif List. Currently, there are no regulations regarding customer access to VPN services.



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Indonesia



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