

THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

THIRTEENTH EDITION

Editor
Matthew T Murchison

THE LAWREVIEWS

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This article was first published in December 2022
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INDONESIA

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I OVERVIEW

Indonesia, with a population of more than 270 million people, has the largest economy in South East Asia and is, unsurprisingly, one of the largest digital markets worldwide. In Q1 2022, the internet penetration rate was estimated to be at 77 per cent with approximately 210 million active internet users.² This number represents a staggering 5 per cent growth made up of almost 14 million people compared to 2020 and is partly because of the mass adoption of technology caused by the covid-19 pandemic. The rate at which users are starting to move towards internet utilisation is predicted to grow even more considering most users as of this moment hail from the island of Java and Bali, which accounts for only around 56 per cent of the country's population, leaving plenty of room for growth and making Indonesia potentially one of the largest digital markets worldwide.

Some of the challenges that might inhibit this potential of growth in the digital market is down to the infrastructural disparity between islands such as Java and Bali and the rest of Indonesia. Further development within the telecommunications sector is required to get all of Indonesia on par with each other's digital capabilities. Part of the government's efforts in initiating the development of telecommunications in Indonesia has been through fully opening up the sector in a bid to attract foreign investors; this was what resulted from the implementation of Law No. 11 of 2020 on Job Creation (the Omnibus Law). The licensing process for setting up businesses within this sector will also be streamlined for ease and to promote investment going forward.

With increasing numbers of internet users, the risk on data protection also increases. During the past year, Indonesia has seen multiple major data leak incidences, which peaked during the period between August and September 2022, where customer data originating from a state-owned telecom company and electricity company, 1.3 billion telecom sim card activation data, general election commission, and even correspondences information between the state intelligence agency and presidential office were claimed to have been breached. The urgency from continuous and massive data breach issues pushed the Indonesian parliament to finally pass the bill of the Personal Data Protection Law in September 2022, which comprehensively regulates data privacy, similar to that of the European Union's General Data Protection Regulation (EU GDPR).

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2 Indonesian Internet Profile 2022 (Jakarta: Asosiasi Penyelenggara Jasa Internet Indonesia, July 2022).

The topic of digital businesses has also been highly discussed. Earlier this year, the government set a deadline where all electronic systems operators must be registered by 20 July 2022. Following the lapse of that deadline, the Ministry of Communication and Informatics (MCI) took a surprising, decisive action, blocking some major digital companies that were not by then registered, including PayPal, Yahoo! and the Steam gaming platform. While the block received a mixed reception from the public, the move has proven very effective, as many digital platform companies rushed to get their electronic system registered in Indonesia.

II REGULATION

i The regulators

The technology, media and telecommunications (TMT) sector in Indonesia is generally subject to the Ministry of Communications and Informatics' (MCI) auspices. The MCI supervises and regulate the TMT sector, including (1) the management of resources and equipment of post and information technology; (2) the administration of post and information technology; (3) the management of information technology applications; and (4) the management of information and public communication.

On the other hand, the broadcasting sector is supervised by the Indonesian Broadcasting Committee (KPI), an independent regulatory body whose function is in carrying out government policies, supervision, and development of broadcast content, broadcast system structure and broadcast professionalism, and broadcasting implementation in the media industry.

Cyber security is still jointly supervised by the MCI and the National Cyber and Crypto Agency (BSSN); though no independent body currently supervises the misuse or breaches in personal data protection. However, a newly established government body is expected to form and work in tandem with the MCI following the new Personal Data Protection Law's implementation that will tackle this missing link and supervise matters related to data protection in Indonesia.

ii Main sources of law

In Indonesia, the main sources of TMT law are dispersed in many regulations, as described below.

Technology and telecommunication

The main sources of technology and telecommunications laws are:

- a Law No. 36 of 1999 on Telecommunication (the Telecoms Law), as last amended by the Omnibus Law (Law No. 11 of 2020 on Job Creation);
- b Law No. 11 of 2008 on the Information and Electronic Transaction (the EIT Law), as last amended by Law No. 19 of 2016;
- c Government Regulation No. 46 of 2021 on Post, Telecommunication and Broadcasting (GR 46/2021); and
- d Government Regulation No. 71 of 2019 on Electronic System and Transaction Operation (GR 71/2019).

The MCI has expanded and issued a variety of regulations in a number of sectors to organise and regulate the operations and use of telecommunications and the internet, including:

- a* MCI Regulation No. 13 of 2019 on the Organisation of Telecommunication Services, as last amended by MCI Regulation No. 1 of 2021;
- b* MCI Regulation No. 5 of 2020 on Electronic System Provider in The Private Sector, as last amended by MCI Regulation No. 10 of 2021;
- c* MCI Regulation No. 5 of 2021 on Telecommunication Operation; and
- d* MCI Circular Letter No. 3 of 2016 on Provision of Application and/or Content Services through Internet (Over the Top).

Media

The main sources of media laws are:

- a* Law No. 32 of 2002 on Broadcasting (the Broadcasting Law), as last amended by the Omnibus Law (Law No. 11 of 2020 on Job Creation);
- b* MCI Regulation No. 41 of 2012 on Provision of Broadcasting by Subscription Broadcasters through Satellite, Cable, and Terrestrial, as last amended by MCI Regulation No. 6 of 2021;
- c* MCI Regulation No. 6 of 2021 on Broadcasting, as last amended by MCI Regulation No. 11 of 2021; and
- d* MCI Regulation No. 7 of 2021 on the Utilisation of Radio Frequency Spectrum.

Data protection and data privacy

The main sources of data protection and data privacy laws are:

- a* Law No. 27 of 2022 on Personal Data Protection (the Personal Data Protection Law);
- b* the EIT Law (Law No. 11 of 2008 on Electronic Information and Transaction as last amended by Law No. 19 of 2016);
- c* GR 71/2019 (Government Regulation No. 71 of 2019 on the Implementation of the Electronic System and Transaction);
- d* MCI Regulation No. 20 of 2016 concerning Personal Data Protection in Electronic System; and
- e* National Cyber and Crypto Agency Regulation No. 8 of 2020 on Security System in Electronic System Management.

iii Regulated activities

Broadcasting and telecommunication services can only be provided by licensed operators. While there is a slight difference in regulatory particularities between public and private broadcasting, both broadcasters are nonetheless subject to similar provisions under the law. In general, as provided in the Broadcasting Law as well as the EIT Law, all 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 law (e.g., advertisement on alcoholic beverages and cigarette promotion), nor shall it conflict with public order, morality, religion or customs in Indonesia.

Delivery of telecommunication services are also heavily regulated in Indonesia. This includes the organising of telecommunication networks, telecommunication equipment along with its utilisation, spectrums, areas of service and provision and delivery of telecommunications services, which will require prior certification, licence applications and approvals from the MCI.

iv Ownership and market access restrictions

There is a shifting trend in terms of the ownership of some business sectors in Indonesia. Under the Presidential Regulation No. 10 of 2021, last amended by Presidential Regulation No. 49 of 2021 regarding the Investment Business Field (New Investment List), Indonesia sets out new restrictions on foreign investment for various sectors, including media and telecommunications. The New Investment List replaces the previous Investment Negative List last updated through Presidential Regulation No. 44 of 2016 regarding Lists of Business Fields That Are Closed to And Business Fields That Are Open with Conditions of Investment (PR 44/2016), which took effect starting in March 2021. See our elaboration below to understand the ownership restrictions and other related provisions.

Telecommunications

The telecommunications sector is twofold whereby the leading businesses are telecoms and telecommunication towers. Previously in PR 44/2016, the government capped foreign ownership of most telecommunication business to a maximum of 67 per cent. However, the New Investment List eliminates the foreign ownership limitations on several telecoms business activities (e.g., fixed telecommunication networks and internet telephony for public purpose). Furthermore, business activities for telecommunication towers are not restricted with the exception of tower construction service providers that use simple or intermediate technology that are allocated for micro, small and medium enterprises or cooperatives.

Despite the new liberation on maximum foreign ownership, the MCI currently put some telecommunication licences under moratorium, including the basic telephony licence. It remains to be seen when the MCI will resume and open up the affected new licence application, which will undoubtedly boost the domestic telecommunication industry.

Media and broadcasting

The Indonesian government has made slight changes in terms of the foreign ownership of media and broadcasting businesses. According to the Chief of the Statistical Bureau, Regulation No. 2 of 2020 on the Indonesian Industrial Standard Classifications 2020 states that certain fields of the media and broadcasting sector (e.g., newspapers, magazines, and other publishing activities) are allowed to have a maximum of 49 per cent foreign ownership for a publicly listed company – listed target company.

However, strict restrictions on foreign ownership remain unchanged in private broadcasting and subscription activities, capping foreign ownership at a maximum of 20 per cent and only permissible when increasing capital or business expansion purposes.

v Transfers of control and assignments

A merger or acquisition (i.e., ‘transfer of control’) can only be carried out by taking into account the interests of the company, minority shareholders, employees, creditors and business partners of the company, as well as the community and fair competition in doing business. The transfer of control must prevent the possibility of a monopoly or monopsony in various forms that are detrimental to society. In addition, foreign acquisitions must also take into account the maximum foreign ownership permissible under PR 10/2021.

In connection with the transfer of control, regulators or state institutions that are tasked to regulate this sort of change in power are the Indonesian Investment Coordinating Board and the Business Competition Supervisory Commission, which has the right to supervise a

company if control is moved or effects to control being collectively held by a single entity with respect to market health and unfair competition. In addition, certain companies such as those that have specifically regulated business activities, including digital payment services need to obtain approval from the relevant authorities; for instance, the Financial Services Authority and Bank Indonesia.

The MCI now also allows for the license to use a radio frequency spectrum to be transferred to another telecommunication network operator. However, the transfer of rights in the use of the radio frequency spectrum must still obtain approval from the MCI based on its evaluation.

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

The provision of internet and IP-based services is regulated differently depending on the type of services delivered. IP-based telecommunication services that utilise networks are regulated in a similar fashion to traditional telephony under the Telecommunication Law, whereas over-the-top, cloud-based services are currently regulated as an electronic system. Nowadays, electronic system operators (ESOs) are enjoying more relaxed requirements, being only required to conduct registration of their electronic systems to the MCI as opposed to regular telecommunication service providers which must obtain licences for their business activities.

Under the current regulatory regime, the government requires all electronic systems to be registered with the MCI, including electronic systems operated by foreign ESOs. For this purpose, the government integrated the platform, which allows foreign ESOs to register their electronic system with the Online Single Submission (OSS) system, the central e-licensing platform maintained by the Ministry of Investment/Investment Coordinating Board. Although for some time the supervision towards electronic systems has been lax in its enforcement, the MCI took a surprising move unpredicted by many in the industry, setting a registration deadline and blocking access to many major digital platform providers that were not registered between July and August 2022, including PayPal, Yahoo! and the Steam gaming platform. The move also shows that the MCI is starting to take the digital industry more seriously.

ii Universal service

Geographical condition has always been a challenge in terms of coverage for the entirety of Indonesia's territory with network access. According to the latest publication from Indonesia's Central Bureau of Statistics (BPS), there are still approximately 6.13 per cent of villages and sub-districts in Indonesia that have yet to receive telecommunication reception.³ As part of the government's effort to equip remote areas with network access, the regulations in Indonesia require all telecommunication network providers to contribute to a universal service obligation (USO) at a rate of 1.25 per cent of its gross revenue.⁴

3 BPS, *Statistik Telekomunikasi Indonesia 2021*, page 61.

4 MCI Regulation No. 17 of 2016 on Guideline of Tarif and Non-Tax State Revenue for Telecommunication Organisation Right and Universal Service Obligation: Article 3(2).

The USO will be utilised by BAKTI, the Indonesian Telecommunication and Informatics Accessibility Agency to subsidise construction of infrastructures to provide network access in remote areas. The Indonesian government may also build the infrastructure and make the infrastructure available for network operators to deliver their services in remote areas.

iii Restrictions on the provision of service

Pursuant to the Telecoms Law, telecommunication network operators have the right to determine the tariff. However, the government may determine the (1) formula to calculate the tariff; and (2) an upper limit tariff or lower limit tariff for the operation of telecommunication with a view on public interest and fair competition. Similarly, interconnection tariffs are decided on the basis of cost by considering the economic value and subject to the standard formulations provided by the government. The principles of interconnection tariff calculation are transparency and fairness, as the calculations shall be included in the interconnection offer document (DPI). Operators are then required to submit the DPI to be reviewed and approved by the Directorate General for Operation of Post and Informatics.

In regard to contents, Indonesia does not recognise net neutrality, and the government from time to time will restrict access to content deemed negative and illegal. While the provisions of services by providers must be fair and indiscriminate, the quality of said service and content must also at all times be in accordance with laws and regulations.⁵ This has, in turn, allowed service providers to restrict access to certain contents that, from the providers' perspective, are considered improper.

Recent development on restriction of services

One recent concern from the MCI is regarding cloud-based voice over internet protocol (VoIP) services and the emergence of virtual numbers. The MCI is noting an increasing misuse of Indonesian local numbers, where calls using local numbers originate from outside the territory of Indonesia, many of which are for unlawful purposes. This has triggered the MCI to circulate warnings to local operators in Indonesia, obliging each operator to ensure their allocated numbers are not used for international manipulation, including cautionary reminders on cloud-based VoIP where calls originate from cloud servers overseas.

iv Privacy and data security

Personal data protection in Indonesia

Indonesia faced two major data breach incidences in 2021, each affecting the National Social Security Agency (BPJS) and Tokopedia, the biggest e-commerce platform in Indonesia. In 2022, Indonesia faced even more major alleged data breach incidences. Reportedly, the bulk of data encompassing customer usage and internet browsing history from a state-owned telecommunication company was leaked. The incidence shocked many, as it raised questions on the extent of customer privacy in Indonesia. Even more shocking is a breach claiming to affect the government's sensitive information, including the central bank and letters between the state intelligence agency and the president's office.

Following multiple major data incidences, the House of Representatives finally passed the long-awaited Personal Data Protection Law in September 2022. The law has been the most

5 GR 46/2021: Article 15(1).

anticipated for the past few years, considering Indonesia did not have any comprehensive data protection frameworks, and most of the data protection regulations were scattered through multiple sector-specific regulations which are not generally applicable in every situation.

The new Personal Data Protection Law is expected to provide a data protection framework similar to that of the EU GDPR. The Personal Data Protection Law introduces both criminal and administrative sanctions for offenders. The administrative sanctions introduced also received a great deal of attention, as they establish joint liability for violations between data controllers and processors.

Today, technical details such as its enforcement framework and authority have yet to be established. However, it is anticipated that the government will establish an independent body in the near future to supervise data protection issues. The independent body will also work in tandem with the MCI, sectoral agency and BSSN, which will be the overseeing governmental body to consolidate and monitor all elements related to cybersecurity.

Protection of children

Child protection online has always been a topic in Indonesia. The covid-19 pandemic especially has driven children closer to technology, with schools in Indonesia opting for distance learning to avoid clusters of covid-19 cases in schools. Along with the increase in adoption of technology by children, the collection and processing of children's data has also increased.

While the regulations do not prohibit children from accessing the internet and providing their data to ESOs, consent for a child's personal data collection is to be provided by their parent or official guardian.⁶ The Personal Data Protection Law also mandates a child's personal data to be specifically processed.

Protection for children online is also regulated under the EIT Law and GR 71/2019. Any content that violates decency towards children is a heavy offence under the EIT Law, and criminal sanctions of up to one-third heavier than normal can be imposed in addition to that of the principal crime. Furthermore, the government shall block access to content that includes violence and indecency towards children. In addition, the principles of child protection under Law No. 23 of 2002 on Children's Protection, which protects children's rights and covers various issues including indecency and violence against children, also apply.

Cybersecurity

Indonesia currently encourage ESOs to certify their electronic system and information protection management system, as provided under GR 71/2019 and BSSN Regulation 2/2020. Part of this certification is to ensure that the electronic system adheres to certain information security standards, such as the SNI ISO/IEC 27001. Even when the data is stored and processed outside Indonesia, the ESO must ensure that the protection and security of the data complies with the data protection standard in Indonesia at least.

Despite requiring ESOs to implement data protection and security measures, threats of cybersecurity risks will always exist. However, with the passing of the Personal Data Protection Law, it will serve as the umbrella legal framework to safeguard the nation's data

6 MCI Regulation No. 20 of 2017: Article 37.

privacy. Furthermore, Indonesia is also expecting a separate new cybersecurity law, which has been discussed for some years. Hopefully, they will pave the way for Indonesia's data protection and cybersecurity formula.

IV SPECTRUM POLICY

i Development

The planning for the use of the national radio frequency spectrum is stated in the allocation table of the Indonesian radio frequency spectrum (the Allocation Table) as regulated under MCI Regulation No. 13 of 2018. The Allocation Table is prepared by referring to the 2016 Radio Regulation Telecommunication Union (ITU) Radio Regulations. The determination of the radio frequency spectrum aims to avoid interference and to establish protocols for compatibility between transmitters and receivers. The Allocation Table is used as a reference for planning for the use of radio frequency bands (the band plan) and planning for the use of radio frequency channels (the channelling plan).

In 2020 (under the Omnibus Law), Indonesia also made major regulatory changes in various business sectors in an effort to:

- a* create new jobs;
- b* give protection and empower cooperatives, micro, small, and medium enterprises;
- c* improve the investment ecosystem for ease of doing business; and
- d* accelerate national strategic projects, including the telecommunications (spectrum) sector.

This regulation was further followed by the issuance of GR 46/2021, which amended Government Regulation No. 52 of 2000 on Telecommunications Operation (GR 52/2000); and MCI Regulation No. 7 of 2021 on the Use of Radio Frequency Spectrum. Amongst the changes is related to the 'usage of radio frequency spectrum for telecommunications operations', the relevant business licence holder may conduct: (1) a transfer of rights to use radio frequency spectrum with other telecommunications operators; and (2) cooperation in the use of radio frequency spectrum (spectrum sharing) for the application of new technology for the public interest provided that it must not interfere with fair business competition.

ii Flexible spectrum use

Utilisations of radio spectrums and frequencies remain highly regulated activities in Indonesia. Depending on the use, utilisation of radio spectrums and frequencies for telecommunication purposes is subject to specific regulatory assessment for obtaining either (1) a radio frequency band licence (IPFR); (2) a radio station licence (ISR); or (3) a class licence. Where radio frequency is granted through a selection process, the government can also auction the available spectrum to qualified operators.

With the amendment of GR 52/2000 and the enactment of MCI Regulation No. 7 of 2021, the flexibility of spectrum usage has improved. The flexibility focuses on frequency management, as described below.

Transfer of rights (not for a temporary transfer) to use radio frequency spectrum

MCI Regulation No. 7 of 2021 now allows the licence to use a radio frequency spectrum to be transferred to other telecommunication network operators (change of control). However, the transfer of rights in the use of the radio frequency spectrum must still obtain approval from the MCI based on its evaluation and shall not be carried out for a temporary transfer.

Cooperation in the use of radio frequency spectrum with other telecommunications network operators

The intended cooperation is for the application of new technology with other telecommunication network operators or special telecommunication operators, or both, such as (1) for the purpose of operating a mobile cellular network: International Mobile Telecommunications 2020 and the technology developed thereafter; (2) for train signalling purposes: Global System for Mobile communications Railway technology and the technology developed thereafter; and (3) new technology for other purposes.

iii Broadband and next-generation services spectrum use

Today, strategic directions and guidelines in accelerating and expanding comprehensive and integrated broadband development in Indonesia have not been updated and are still following the Indonesia Broadband Plan (RPI) for the 2014–2019 period. The Indonesian government still places infrastructure development as the pillar of digital transformation (a form of acceleration and recovery of the national economy resulting from the covid-19 pandemic). The vision and mission of RPI renewal is to improve the digital connectivity that connects all regions of Indonesia. This concern is proclaimed through the sky toll road (i.e., high-throughput satellite) and sea toll (i.e., broadband sea cables). The development of high-output satellite and broadband sea cables is not only for the sake of the digital economy, but also to accelerate education, for health services and to strengthen the unity and integrity of Indonesia.

To support next-generation spectrum use, MCI does allow cooperation on the use of radio frequency spectrum, particularly on International Mobile Telecommunications 2020 and the technology developed thereafter. However, in the context of implementation, the current bandwidths allotted for 5G are less than the ideal requirement. In addition, the government also implemented a minimum local content requirement (TKDN) for 5G subscriber station devices in an aim to support the domestic industry, which to a certain extent could affect the adoption rate of 5G technologies. Despite the foregoing, the Indonesian government adopted a neutral technology policy in the implementation of 5G services. Through this policy, the operators are given the freedom to employ and choose the latest technology in the utilisation of radio frequency bands that have been stipulated in their licences. Several initiatives that the government is currently working on are:

- a* increasing the TKDN aspect of 5G devices, synergising with the Ministry of Industry in this regard;
- b* conducting application ecosystem development;
- c* prioritising 5G-oriented digital talent development; and
- d* synchronising policies between the central and regional governments for the deployment of the new 5G infrastructure.

iv Spectrum auctions and fees

Spectrum auctions

For some time, the Indonesian government has adopted selection mechanism when granting the right to use the radio frequency spectrum, particularly when issuing IPFR for radio frequency bands. The selection mechanism is the assortment of radio frequency band users that is carried out in the event that the amount of radio frequency band availability is less than the number of requests or needs, or both. The selection mechanism is in the form of one or both of (1) selection by bidding price (price auction) and (2) selection without price quote (beauty contest).

Spectrum fee

According to MCI Regulation No. 7 of 2021, only IPFR and ISR incur spectrum licence fees in the form of the Right of Frequency Radio Spectrum Fee (BHP). The BHP must be fully paid in advance via bank transfer with host-to-host payment gateway on an annual basis.

The amount of BHP for IPFR could be determined by either the selection process mechanism or the calculation mechanism, in accordance with the formula determined by the MCI. Meanwhile, the amount of BHP for ISR shall only be determined through the calculation mechanism with the regulated formula.

V MEDIA

This year has also been a busy time for the media industry. In 2022, the MCI initiated overseeing the migration of television broadcasting from analogue to digital (analogue switch-off). Despite the predicted increase in broadcast quality, there are concerns from broadcasters pertaining to their channel ratings as a result of the loss of viewers, especially with increasing pressure from the growing digital media companies that deliver their services through the internet.

i Regulation of media distribution generally

Business sectors covering the media, including the distribution of audio-visual media in Indonesia such as radio and television broadcasts, are regulated by the Broadcasting Law. The Broadcasting Law divides broadcasters into public broadcasters, private broadcasters, community broadcasters and subscription broadcasters.⁷ The sector is under the supervision of the KPI, an independent body whose responsibility is to regulate and provide recommendations in the area of broadcasting,⁸ as well as the MCI.

In general, as provided in the Broadcasting Law, both content on broadcasting 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 law (e.g., advertisements on alcoholic beverages and cigarette promotion) or anything deemed to be in conflict with public order, morality, religion or the customs in Indonesia.⁹

In the area of traditional broadcasting platforms, there are several provisions requiring a specific ratio of foreign and local material to be aired. For example, the broadcast content

7 Broadcasting Law: Article 13(2).

8 Broadcasting Law: Article 8.

9 Broadcasting Law: Article 46(3).

of private broadcasters must contain at least 10 per cent domestic programmes.¹⁰ The KPI also issued the Broadcasting Behaviour Guidelines and Broadcasting Programmes Standard to guide broadcasting behaviour.¹¹ Despite the foregoing requirements, the authorities have since adopted a more relaxed approach in terms of content delivered over the internet as a result of the absence of specific regulations on over-the-top (OTT) services.

ii Internet-delivered video content

With the significant increase of internet users in 2021, the OTT service that provides internet-delivered video content has become one of the most sought-after forms of content by Indonesians, and is starting to compete with the traditional presence of video broadcasting distribution.

There are currently no comprehensive regulations that regulate OTT services. The Broadcasting Law and GR 46/2021 suggest that business actors (both domestic and foreign) who run OTT services including audio or visual content service platforms can cooperate with telecommunication networks and telecommunication service providers based on fair and non-discriminatory principles.¹² However, the provisions regarding cooperation with telecommunication networks and telecommunication service providers are excluded for business actors in the form of owners and user accounts on social media channels or content platform channels.¹³ The structure and material of the cooperation are carried out in a form agreed upon by the parties.¹⁴

Regardless, businesses that deliver OTT services are regarded as electronic service operators and are therefore subject to GR 71/2019. As an electronic systems provider, OTT services are subject to registration requirements in the OSS system.¹⁵ Furthermore, although no MCI Regulation specifically regulates OTT services, OTT service activities are under the control and supervision of MCI, whereby MCI has also issued MCI Circular Letter No. 3 of 2016 as a guide for business actors who wish to sell OTT services that provide internet-delivered video content.¹⁶

VI THE YEAR IN REVIEW

The year 2022 has been a busy one for the Indonesian government in the TMT sector. In 2022 alone, Indonesia enforced mandatory ESO registrations, issued new health record regulation, faced multiple major data breach incidences, and oversaw the analog switch-off of the television broadcasting industry. After years of discussions and debates between the government and parliament, Indonesia finally promulgated its Personal Data Protection Law.

The recent accelerated approach of passing the Personal Data Protection Law may seem unsurprising given Indonesia's many data breaches during the past few months. Regardless, this eagerly awaited Personal Data Protection Law will serve as an 'umbrella' regulation for all

10 GR 46/2021: Article 72(5).

11 KPI Regulation No. 01/P/KPI/03/2021 and No. 02/P/KPI/03/2012 on Broadcasting Behaviour Guidelines Broadcasting Programmes Standard.

12 GR 46/2021: Article 15(1) and (2).

13 GR 46/2021: Article 15(4).

14 GR 46/2021: Article 15(5).

15 GR 71/2019: Article 6(1) and (3).

16 GR 46/2021: Article 15(7).

personal data processing activities horizontally across all sectors while still allowing flexibility for each sector to tailor a specific regulation according to each sectoral characteristic. The Personal Data Protection Law will also be the first comprehensive law in Indonesia to govern personal data protection in both electronic systems and non-electronic systems, with a framework similar to that of the EU GDPR.

The growth potential of digital markets in Indonesia is very big. Along with the significant increase of internet users in 2022 and more comprehensive, investment-friendly regulation, Indonesia has become one of the most sought-after global markets. The high adoption of technology is also giving birth to many new tech startups with unlimited potential for growth. The merging of two enormous tech startups in Indonesia, Gojek and Tokopedia, formed the GoTo Group in 2021, which is hailed as the biggest tech startup merger in Indonesia, with a valuation that is estimated to be between US\$25 billion and US\$30 billion.¹⁷ Just this year alone, the GoTo Group became listed on the Indonesia Stock Exchange and still holds the record as the largest IPO fundraiser of 2022, with a total of US\$1.1 billion.¹⁸ GoTo Group followed Bukalapak, a giant e-commerce company that went public and became listed in 2021, which raised US\$1.5 billion in IPO funds.¹⁹

VII CONCLUSIONS AND OUTLOOK

Since Indonesia passed the Personal Data Protection Law, it will be a massive addition to complement the previously scattered, sectoral data protection regulations in Indonesia. This will also affect the data protection environment in Indonesia considerably, with the expected establishment of an independent body to oversee data protection in Indonesia to work alongside BSSN and MCI and issuance of many data-related sectoral regulations that will be adjusted with the new Personal Data Protection Law.

All stakeholders duly expect that the new Personal Data Protection Law will take on a role as a guardian of the significant increase in internet penetration and the use of digital platforms that are rapidly developing in Indonesia, which also contributes to an increase in cybersecurity risk.

Moreover, digital services have also been a major topic in the MCI. The issuance of GR 46/2021 signals that the government is becoming more aware of OTT being a substitute for telecommunication services. However, regulating OTT could be challenging, considering how OTT operates over the cloud and goes beyond borders and jurisdictions. It would be interesting to monitor how the Indonesian government will approach the OTT going forward, and whether the current registration obligation is enough to regulate it.

17 <https://www.bloomberg.com/news/articles/2021-07-26/indonesia-s-goto-is-in-talks-for-up-to-2-billion-ahead-of-ipo>, accessed on 6 October 2022.

18 <https://www.bloomberg.com/news/articles/2022-04-11/goto-shares-jump-on-first-day-in-boon-for-indonesia-tech-giant?leadSource=verify%20wall>, accessed on 6 October 2022.

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ISBN 978-1-80449-141-6