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For further information please contact

Justisari P. Kusumah

Managing Partner
justi.kusumah@kk-advocates.com

Danny Kobrata

Associate
danny.kobrata@kk-advocates.com

K&K ADVOCATES - Intellectual Property. KMO Building, Fl. 05, Suite 502 Jl. Kyai Maja No. 1, Kebayoran Baru RT03/RW08, Jakarta Selatan DKI Jakarta 12120

Tel: +62 21 29023331

Fax: +62 21 29023107

INDONESIA ENACTS ITS FIRST PRIVACY – FOCUSED REGULATION

Earlier this year, we wrote an article about the government's plan to issue what we called as the "real" Indonesian privacy rules (see our article here). After months of waiting, the government via the Ministry of Communication and Information ("MCI") finally brought this initiative into realisation, after it enacted the MCI Regulation No. 22 of 2016 concerning Personal Data Protection in Electronic System ("MCI 22/2016") on 2 December 2016. The objective of MCI 22/2016 is to specifically address the issues of personal data protection in electronic system and serves as a follow up to the Government Regulation No. 82 of 2012 concerning the Implementation of Electronic System and Transaction ("GR 82/2012") that has been in force since 2012.

Prior to enactment of MCI 22/2016, the rules concerning personal data protection is mainly sourced from GR 82/2012, which only sets out general principles on personal data protection in Indonesia. Serves as an implementing regulation, MCI 22/2016 provides greater details regarding the use and processing of personal data in the electronic system. Some issues that were previously unclear and vague under GR 82/2012 are finally clarified in this new regulation. By the presence of this new regulation, it is expected that rules on personal data protection in Indonesia becomes easier to comprehend and to be implemented.

Scope

In term of scope, there is no significant difference between MCI 22/2016 and GR 12/2012. Both regulations still apply only to personal data in the electronic system and both require compliance from Electronic System Operator ("ESO"). Any personal data that is collected or processed outside the electronic system and not done by an ESO would not be subject to MCI 22/2016.

There is however, a new provision introduced in MCI 22/2016 which further clarifies the scope of activities covered under MCI 22/2016. These activities include acquisition, collection, processing, analysing, displaying, publishing, transferring, dissemination, and obliteration of personal data in electronic system ("Activities").

Content

MCI 22/2016 comprises of 12 Chapters and 39 Articles. Explaining or even summarising the whole regulation will require a long and more comprehensive article. Therefore, for the purpose of this article, we outline only some of the new and salient provisions that we consider important and have been frequently asked by the clients to address issue relating to personal data protection. These new and salient provisions include the following:

- There is now an obligation to certify the Electronic System that is used for the Activities;
- Every ESO who conducts the Activities must implement an internal personal data protection rules;
- Transfer of personal data to party outside Indonesian jurisdiction must be coordinated with the relevant authority. Further, the transfer of personal data must also comply with applicable laws and regulations concerning cross-border transfer of personal data;
- Generally, minimum retention period for storing personal data is 5 years. However, the period may vary for certain type personal data, subject to sectoral regulations;
- ESOs for public service that process personal data are obliged to locate their data centre and data recovery centre within the jurisdiction of Indonesia. A similar obligation is also stipulated in GR 82/2012;
- Personal data owner now has the right to mark his/her data as confidential, correct and update his/her personal data, access his/her personal data history, and request for deletion of certain personal data; and
- MCI 22/2010 introduces a mechanism which allows a personal data owner to file a complaint in case of breach personal data protection. In addition, the personal data owner and ESO may also settle the dispute through alternative dispute settlement or file a civil claim in the court.

Sanctions

Failure to comply with MCI 22/2016 will subject to the following sanctions:

- Verbal warning;
- Written warning;
- Temporary suspension of business activity; and/or
- Publication on online website.

Compliance

MCI 22/2016 has effectively come into force since 2 December 2016. ESOs that have collected, processed, and stored personal data before the enactment of MCI 22/2016 will have 2 years of grace period to adjust with the regulation. However, those who collect personal data after the enactment of MCI 22/2016 will have to comply with this regulation as of 2 December 2016.

For further information feel free to contact

Risti Wulansari, Partner at risti.wulansari@kk-advocates.com

Danny Kobrata, Associate at danny.kobrata@kk-advocates.com