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# REPLACEMENT TO GOVERNMENT REGULATION NO. 82 OF 2012 IS FINALLY ISSUED

The government through Government Regulation No. 71 of 2019 on Electronic Systems and Electronic Transactions (“**GR 71/2019**”) finally revokes Government Regulation No. 82 of 2012 on Electronic Systems and Electronic Transactions (“**GR 82/2012**”). GR 82/2012 has been famous among the IT industry as it becomes the first regulation to stipulates the obligation to locate data center in Indonesia. The notable amendments following the issuance of GR 71/2019 are as follows.

## Electronic System Provider (“**ESP**”) classification

There is a slight change on the classification of ESP after the issuance of GR 71/2019. Previously, ESP is divided into only ESP for public and ESP for non-public. After GR 71/2019 comes into force, the term “ESP for non-public” is replaced into “ESP for private purpose”. Also, unlike in the previous regulation (GR 82/2012), GR 71/2019 sets limitation on what constitutes as ESP for public and ESP for private purpose.

Pursuant to GR 71/2019, ESP for public now includes only state administrator agency or institution appointed by state administration agency. Financial authority is exempted from the scope of ESP for public. ESP for private purpose is generally defined as person, business entity, and community. It may also include ESP which operates portal, website, or application within internet network.

It is important to determine the whether an ESP falls under the category of ESP for public or ESP for private as it could affect the obligations of the ESP under GR 71/2019.

## ESP registration

The obligation to register as ESP now applies to both ESP for public and ESP for private. Previously, registration as ESP for ESP for non-public is optional. The application to register as ESP must be filed to the Ministry of Communication and Informatics (“**MCI**”) before the electronic system is being used by users.

### Personal data protection

Pending the enactment of Personal Data Protection Act, the GR 71/2019 provides interim provisions to ensure the protection of personal data by giving further details on how the ESP can collect and process personal data. For example, GR 71/2019 requires that collection of personal data must be done in limited and specific manner, legally valid, fair, and with the knowledge and consent of the personal data owner. This provision is previously not stipulated in GR 82/2012.

Furthermore, GR 71/2019 may also be considered as implementing regulation of Article 26 of Law No.11 of 2008 on Electronic Information Transaction Law as amended by Law No. 19 of 2016 (“**EIT Law**”). Article 26 of EIT Law gives personal data owner the right to erasure. GR 71/2019 provides further details on how and under what conditions the right to erasure can exercised by personal data owner. Furthermore, GR 71/2019 also introduces the right to delisting i.e. the right to be delisted from search engine.

### Data Localization

It is now confirmed that the ESP for private purpose can manage, process, and/or store electronic system and electronic data outside Indonesian jurisdiction. If the electronic system and electronic data are managed, processed, and/or stored outside Indonesian jurisdiction, the ESP must ensure allow supervision from the relevant authority and law enforcement agency. Also, the ESP must allow the authority and law enforcement agency to access the electronic system and electronic data.


The financial service authority may stipulate its own requirements in relation to management, processing, and storing of electronic system and electronic data. ESP in financial sector must comply with the requirements set by the financial service authority.

Meanwhile, ESP for public is still obliged to process, manage and/or collect electronic system and electronic data in Indonesia. ESP for public is exempted from this obligation only if the required technology to store the data is not available in Indonesia. Such exemption will be determined by a specific committee.

### Administrative sanctions

In addition to written warning, administrative fine, temporary suspension, removed from the list, MCI now may also terminate the access to ESP.

### Grace period



GR 71/2019 provides 1-year grace period for existing ESP to comply with registration requirement. Whereas for ESP for public purpose, the grace period is 2-year to comply with the obligation to manage, process, and store electronic system and electronic data in Indonesia.