

DRAFT AMENDMENTS TO THE ITE LAW PASSED

The highly anticipated draft amendment to Law No. 11 of 2008 (“ITE Law”) which was anticipated in 2015, was finally passed by the House of Representatives of the Republic of Indonesia (Dewan Perwakilan Rakyat Republik Indonesia (DPR RI) – “House”) on 27 October 2016 (“Draft Amendments”). The draft will automatically enter into force if the President has still not signed it within 30 days of it being passed by the House. These Draft Amendments therefore came into effect on 28 November 2016.

The Draft Amendments address the following matters:

1. Electronic Systems Providers;
2. Electronic Information and/or Documents as Valid Legal Evidence;
3. The Protection of the Public’s Rights;
4. The Government’s Role in relation to ITE Violations;
5. Investigation Procedures;
6. Prohibited Actions and Sanctions for violations.

Electronic Systems Providers

The Draft Amendments finally provide a definition of an Electronic Systems Provider (“**Provider**”) which was lacking from the ITE Law. According to the Draft Amendments, a Provider is an individual, state administrator, legal entity or the public, who, separately or jointly, provides, manages and/or operates electronic systems for users of electronic systems for their own interests and/or those of other parties.

Electronic Information and/or Documents as Valid Legal Evidence

The Draft Amendments clarify that electronic information and/or documents may only be obtained as a result of interception, tapping, or recording for the purpose of law enforcement, at the requests of the police, the public prosecutor’s office and/or another relevant authority whose authority is determined by law. Further, instead of being provided in a Government Regulation (as stated in the ITE Law), the procedure for such interceptions will be provided in a Law.

Protection of the Public’s Rights (“Right to be Forgotten”)

In order to protect the public's personal data privacy rights, under the Draft Amendments, under a court ruling, the owners of the information can ask Providers to erase any irrelevant electronic information and/or documents under the Providers' control. The procedure for this will be provided in a Government Regulation.

The Government's Role

In order to prevent the dissemination and use of electronic information and/or documents which violate the prevailing laws and regulations, the Draft Amendments give the Government (i.e. the minister or other relevant authority appointed by the President) authority to directly cut off access and/or ask the relevant Provider to cut off access to any prohibited electronic information and/or documents.

Investigation Procedures

Under the ITE Law, (i) searches (*penggeledahan*) and/or seizures (*penyitaan*) of electronic systems suspected of being involved in crimes require permission from the Head of the relevant District Court, while (ii) to arrest and detain (*penangkapan dan penahanan*) suspected perpetrators, a court order issued by the relevant District Court is required beforehand within twenty-four-hours of the arrest. However, according to the Draft Amendments, searches and seizures of electronic systems and the arrest and detention of suspected perpetrators should comply with the prevailing criminal procedural laws and regulations.

The Draft Amendments give civil servants the following two additional authorities:

1. to cut off access to any data and/or electronic systems which are related to criminal activities; and
2. to ask the relevant Provider to provide information contained in or generated by electronic systems which is related to criminal activities.

Prohibited Actions, and Sanctions for Violations

The Draft Amendments amend Article 45 of the ITE Law and add the following criminal sanctions:



The Draft Amendments also provide the following definitions in the elucidation of Article 27:

1. the **distribution of electronic information and/or documents** means the transfer

and/or dissemination of electronic information and/or documents to the public via electronic systems;

2. the **transmission of electronic information and/or documents** means the transfer of electronic information and/or documents to specific parties via electronic systems; and
3. **making electronic information and/or documents accessible** means any action, other than distribution or transmission, which enables electronic information and/or documents to be recognized by other parties or by the general public.