

Indonesia's New E-Commerce Regulation Aims to Bolster Small Business

As e-commerce continues to play an increasing role in the Indonesian economy, the Government has introduced a new regulation that seeks to nurture and protect the interests of Indonesian micro, small, and medium enterprises (*Usaha Mikro, Kecil dan Menengah* – “**SME**”). The Minister of Trade (“**MOT**”) recently issued MOT Regulation No. 31 of 2023 on Business Licensing, Advertising, Development, and Supervision of Business Activities in Trading through Electronic Systems (“**MOTR 31/2023**”).

The main legal instruments on the internet and e-commerce are Law No. 11 of 2008 on Electronic Information and Transactions, as amended by Law No. 19 of 2016 (the “**ITE Law**”) and its key implementing regulation, Government Regulation No. 71 of 2019 on the Operation of Electronic Systems and Transactions (“**GR 71/2019**”). Another part of this legal framework is Government Regulation No. 80 of 2019 on Trading through Electronic Systems (“**GR 80/2019**”). In 2020, the government also issued its implementing regulation, MOT Regulation No. 50 of 2020 on Provisions on Business Licensing, Advertising, Guidance, and the Supervision of Business Entities in Trading through Electronic Systems (“**MOTR 50/2020**”).

Due to growing concerns over the negative effects of e-commerce toward SME, the government in September 2023 revoked MOTR 50/2020 and replaced it with MOTR 31/2023. The following are some of the key points and changes brought about by the new regulation, including licensing requirements for foreign e-commerce operators.

General Overview of MOTR 31/2023

MOTR 31/2023 regulates businesses, referred to as merchants, engaged in trading through electronic systems, whether they operate through their own system or rely on third party platform providers. It also covers e-commerce platform providers (*Penyelenggara Perdagangan Melalui Sistem Elektronik – “PPMSE”*). MOTR 31/2023 outlines six distinct PPMSE business models:

1. **Online Retail:** merchants who conduct e-commerce through a commercial website or application that they create, manage, and/or own.
2. **Marketplace:** a facility provider in which part or the entire transaction process takes place within an electronic system in the form of a commercial website or application. It serves as a platform for merchants to display their offers of goods and services.
3. **Online Classified Advertisements:** a platform for running an electronic system in the form of a website or application, with commercial objectives. It brings together sellers and buyers, and the entire transaction process occurs outside the website or application.
4. **Price Comparison Platform:** a means to run an electronic system in the form of a website or application with commercial objectives. It displays price comparisons of goods and services sold on other websites or applications.
5. **Daily Deals:** a means to run an electronic system in the form of a website or application with commercial objectives. It involves selling discount coupons and/or other facilities that consumers can use to purchase goods and/or services from other business entities.
6. **Social Commerce:** the provision of social media platforms that provide specific features, menus, and/or facilities that enable merchants to post offers of goods and services.

Business License Requirements

Similar to MOTR 50/2020, MOTR 31/2023 maintains the requirement for business operators or merchants and PPMSE to hold business licenses. Under MOTR 31/2023, merchants must obtain trading business licenses aligned with their specific sectors. If a merchant exclusively engages in online trading activities, it must have a business license corresponding to the relevant Indonesian Standard Business Classification (*Klasifikasi Baku Lapangan Usaha Indonesia – “KBLI”*) for business activities under retail trade via mail order or the internet.

For foreign merchants, the following documents are required when offering their goods/services to a local PPMSE:

1. **Identity of the Foreign Merchant:** This includes their name, address, and country of origin, as well as a certificate or inspection report from an independent survey institution in the country of origin, verifying the accuracy of the data.
2. **Legalized Copy of Business License:** This is issued by the authorized institution in the

country of origin, supported by a certificate or inspection report from an independent survey institution in the country of origin, verifying the accuracy of the data.

3. **Evidence of Compliance with Standards or Technical Requirements:** This involves providing evidence of adherence to standards and technical specifications for goods and services, including compliance with the Indonesian National Standard (*Standar Nasional Indonesia* – “**SNI**”); compliance with the relevant standard and technical requirements in the country of origin for goods and services that do not yet have an SNI requirement; and a halal certificate for goods and services requiring such certification under Indonesian regulations.
4. **Bank Account Number:** This is for the account used for the transactions.

For local platform providers or PPMSE, a business license for the relevant KBLI is required for conducting business activities related to web portals and/or digital platforms with commercial purposes. Meanwhile, foreign PPMSE must establish a representative office in the form of a Foreign Trade Company Representative Office (*Kantor Perwakilan Perusahaan Perdagangan Asing* – “**KP3A**”) if it meets any of the following criteria:

1. It has conducted transactions with a minimum of 1,000 consumers within a one-year period.
2. It has delivered at least 1,000 packages to consumers within a one-year period.
3. It has had traffic or access from at least 1% of internet users within Indonesia within a one-year period.

The KP3A must obtain a Business License for Foreign Trade Company Representative (*Surat Izin Usaha Perwakilan Perusahaan Perdagangan Asing*) in the field of e-commerce, which will be issued by the Online Single Submission (OSS) Agency.

New Restrictions

MOTR 31/2023 introduces several new restrictions on PPMSE, summarized in the following table.

1. Article 13

Restriction: To ensure fair competition in the market and prevent price manipulation practices (such as predatory pricing), PPMSEs must ensure that there is no connection or interconnection between the electronic systems they use for e-commerce purposes and any other electronic systems they operate outside of the e-commerce facility. Furthermore, PPMSEs must prevent the misuse of user data within their electronic systems or by affiliated companies.

2. Article 19

Restriction: In order to protect the business activities of UMKMs in Indonesia, pursuant to Article 19 of MOTR 31/2023, PPMSEs engaged in cross-border trading activities must apply a minimum price for goods on their electronic systems. This applies to merchants selling finished goods of foreign origin directly to Indonesia. This minimum price is set at Freight on Board USD100 per unit. In relation to this, the MOT may prepare a Positive List, which will specify the imported goods allowed to be directly sold from abroad to Indonesia through e-commerce platforms. Cross-border goods priced below the minimum threshold can only be sold in Indonesia through PPMSEs as determined by the MOT.

3. Article 21

Restriction: PPMSEs with the marketplace and/or social-commerce business models are prohibited from acting as manufacturers (*produsen*). Furthermore, PPMSEs with the social-commerce model are also prohibited from facilitating payment transactions through their electronic systems.

4. Article 37

Restriction: A foreign PPMSE's KP3A may not represent more than one foreign PPMSE.

The spirit of MOTR 31/2023 is to protect SME businesses in Indonesia, as the government views that foreign e-commerce merchants without a legal presence in Indonesia will adversely impact the growth of SMEs. In parallel, with this regulation, the government will supervise the activities of foreign merchants offering products online in Indonesia.

Further to MOTR 31/2023, the government is expected issue implementing regulations, including the positive list of imported products, which is currently under discussion by the relevant ministries.

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MOTR 31/2023 is a public policy that is regulated by the MOT. For more information, please contact us at info@makarim.com.