



June 30, 2016

Ministry of Trade of the Republic of Indonesia
Jl. M. I. Ridwan Rais No. 5, Jakarta Pusat, 10110
Indonesia

Agenda: **AIC Comments on Draft E-Commerce Government Regulation Under Public Consultation**

Dear Sir/Mdm,

The Asia Internet Coalition (AIC) appreciates the opportunity to submit our comments to the recently released draft government regulation on e-commerce released on June 3, 2016.

The AIC is a policy voice of the digital industry in the Asia-Pacific comprising Apple, Facebook, Google, LinkedIn, Twitter and Yahoo!. Our aim is to ensure users can enjoy the maximum economic, social and cultural benefits from the online world in the years ahead, and that they can do so safely, securely and confidently.

The AIC shares the Indonesian government's vision for Indonesia to be a leading digital economy. The digital economy is and will be an important driver of growth for Indonesia. In 2014, the contribution of the ICT sector to overall GDP growth exceeded all other sectors, growing by 10 percent compared to 5 percent for the entire economy.

E-commerce, in turn, is a critical component of the digital and traditional economy. The expansion of retail onto the Internet helps individuals and small and medium businesses market and sell their goods and services to a wider customer base. The e-commerce sector in Indonesia is estimated to be worth US\$18 billion in 2015 – up from US\$12 billion in 2014 – and is poised for tremendous growth.¹

With the potential for Indonesia's digital economy in sight, it is critical for the Indonesian government to put in place the right conditions to safeguard the vitality of the Indonesian e-commerce sector while protecting consumers, and to incentivize investment.²

As leaders of the digital industry, AIC stands ready to work with the Indonesian government and to share the expertise and views of our industry, and international best practices. After closely studying the draft regulation, AIC respectfully offers our comments below for consideration.

¹ All eyes in Indonesia's e-commerce pie. *The Straits Times*. March 2016. <http://www.straitstimes.com/asia/se-asia/all-eyes-on-indonesias-e-commerce-pie>

² The Impact of Internet Regulation on Investment. *Fifth Era*. January 2016. <http://goo.gl/71g7zN>



Sincerely,

A handwritten signature in black ink, appearing to read 'H. Vriens', is positioned below the word 'Sincerely,'.

Hans Vriens
Secretariat, Asia Internet Coalition



AIC Comments to the Draft E-Commerce Government Regulation Under Public Consultation

1. Duplication

We are concerned that this bill duplicates much of the content in the draft ministerial regulation on Provision of Application Services and/or Content Through the Internet (OTT) proposed by the Ministry of Communication and Information Technology (Kominfo), including issues that relate to local registration, payments, permanent establishment, data localisation and data storage requirements. Some of the overlaps broadly repeat existing proposals; others are contradictory.

Recommendation: AIC respectfully suggests the removal from this draft those overlapping provisions listed above.

2. Unjustified Forced Jurisdiction

We are extremely concerned at the apparent requirement to impose unjustified Indonesian jurisdiction on international companies. Articles 3, 7, 12, 13, 14, 18, 21, 22 and 41 all attempt to impose Indonesian conditions of some form on foreign entities without any justification. There are agreed international principles for determining jurisdiction, including bilateral tax treaties, and these requirements would seem to be in violation of those. Many of the requirements are also unrealistic: for instance, Article 22 requires merchants all over the world to comply with Indonesian laws to which they are not privy. Many Internet merchants (such as gaming developers) are small and may break the law through ignorance. If they become aware of the law, it is likely that many of them would simply stop serving the Indonesian market to avoid large legal costs. If other countries attempted to impose a similar provision, it would mean Indonesian digital companies would be forced to be learn and be subject to the laws of many countries around the world.

Recommendation: AIC respectfully recommends the removal of requirements to force companies to become wholly Indonesian entities or to impose Indonesian law jurisdiction. If a company has the ability to address Indonesian customers' issues via e-mail or any other form of communication, or perhaps a local customer service of some form, then this should be sufficient to address the concerns of consumer protection. Even this provision will be difficult for small digital companies to comply with and they may have to withdraw their services from Indonesia.

3. Reliability Certificate

Internet advertising is very different to television advertising, which consists of a small number of relatively expensive ads shown many times. Online, billions of digital advertisements are served every day. Many of these are shown only a very small number of times. Often the wording of the same ad is tweaked multiple times in order to see what garners a better response. It would be impractical for all of these advertisements to receive a trustmark and would fundamentally change the economics of



the Internet, putting advertising out of the reach of many small businesses and causing many small websites (which rely on Internet advertising) to close.

4. Consumer Complaints

Given this draft regulation is focused on consumers on a digital platform and also covers smaller companies who do not have any physical offices, it would be important to include digital methods such as email as one option for contacting companies with a complaint.

Recommendation: AIC respectfully suggests to include digital methods as mechanisms for complaints.

5. Restriction on Re-purposing of Users' Data

Art 57(2)(b) should be reviewed as it may restrict data use purpose excessively. The current draft suggests only one objective for data use, which would be too restrictive for business sectors wanting to maximize users' benefit. As the APEC privacy framework suggested, at least a compatible or relevant use should be permitted so long as it does not cause harm to users. For example, if users' addresses were collected for the purposes of delivery, such data could be used for data analytics for which area has a strong demand for certain commodities. Flexibility in data use will provide more business opportunities to the business enterprises in Indonesia.

Recommendation: AIC respectfully recommends Article 57(2)(b) to be changed to allow for flexibility in data use.

6. Regulation on Cross-Border Data Transfer

We are concerned by Art 57(2)(h) as it constrains free cross-border data flow, which is essential to Indonesia's SMEs for their business development. Data security is more a function of security measures than location.

Recommendation: AIC respectfully recommends to delete this provision.

7. Limitation of Liability of Intermediaries

Whilst the current draft provides broad provisions for limiting liability of online intermediaries for third party violations, we believe the suggested framework should also include reasonable 'counter-notice' provisions. Internet users should have the opportunity to challenge the removal, and intermediaries should make reasonable efforts to inform account-holders who have been accused of posting unlawful content of these rights. A wrongfully accused user must be able to recover damages or penalties from a claimant who reasonably should have known that the content at issue was lawful. An intermediary



that receives a counter-notice should be permitted to reinstate the disputed content, and would have no liability for the material unless a court order is issued for its removal. A model counter-notice process exists in international law, including the US Digital Millennium Copyright Act (DMCA) and European E-Commerce Directive, and has been a crucial foundation of the prosperity of digital content intermediaries globally, many of which allow artists and content owners today to monetize their creative works and grow online revenues.

Recommendation: AIC respectfully recommends the addition of a provision stipulating a counter-notice regime in line with international standards.