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# *Regulations Series:* SECOND AMENDMENT TO THE LAW CONCERNING ELECTRONIC INFORMATION AND TRANSACTIONS

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## Second Amendment to The Law concerning Electronic Information and Transactions

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The Government of the Republic of Indonesia has issued the latest amendment to the law regarding electronic information and transactions under the title of Law Number 1 Year 2024 on Electronic Information and Transactions. ("The Amendment of ITE Laws 2024").

The Amendment of ITE Laws 2024 became the second amendment after the issuance of the first amendment, namely Law Number 19 Year 2016 which amended Law Number 11 Year 2008 with the same title.

Under this second amendment, several points of changes and additions were made which can be seen as follows:

1. Electronic Evidence (Article 5 paragraph (1) and (2))

This provision emphasizes that electronic information and/or electronic documents are valid and binding legal evidences as to provide legal certainty for Electronic System Operators and Electronic Transactions, as well as an extension of the types of evidence in evidence examination process in accordance with the applicable Procedural Laws in Indonesia.

2. Electronic Certification Provider (Article 13, 13A, 16A, and Article 16B)

This provision emphasizes the Electronic Certification Operator ("PSrE") in terms of entity status, which shall be an Indonesian legal entity and domiciled in Indonesia. Whereas in relation to the other PSrE service providers (between countries /cross-border), it is required to firstly establish a cooperation agreement as the basis for *mutual recognition*.

Furthermore, the PSrE service provider activities are determined into eight types; (1) Electronic signatures; (2) electronic seals; (3) electronic time stamps; (4) registered electronic delivery services; (5) website authentication; (6) preservation of electronic signatures and/or electronic seals; (7) digital identity; and/or (8) other services utilizing electronic certificates.

In addition to the specified services above, PSrE also has an obligation to provide protection to every child who uses or accesses electronic systems by providing; (1) age restriction information; (2) child user verification; (3) reporting mechanisms of the use of electronic systems that have the potential or violate children's rights. In the event of violation, administrative sanctions may be imposed in the form of: (1) written reprimand; (2) administrative fines; (3) temporary suspension; and/or (4) termination of access.

PSrE activities will be further regulated in government regulations.

### 3. Electronic Transactions (Article 17)

This provision regulates electronic transaction activities, namely the parties (in this case state operators, persons, business entities, and / or the public communities) involved shall be under good faith. Furthermore, if electronic transactions manifest a high risk in the form of financial transactions that are not carried out face-to-face physically, then it shall utilize electronic signatures secured with electronic certificates.

Electronic Transactions in private and public sector will be further regulated in government regulations.

### 4. International Electronic Contracts (Article 18A)

These provisions regulate the utilization of international electronic contracts under the jurisdiction of Indonesia using standard clauses to comply with the Indonesian Laws, provided that: (1) a party is from or within the jurisdiction of Indonesia and agreed to the contract; (2) carried out in the territory of Indonesia; and/or (3) Electronic System Operator ("PSE") has a place of business or conducting activities in the territory of Indonesia. In relation to standard clauses,

it shall apply simple, clear, and easy-to-understand Indonesian Language, and uphold the principles of good faith and transparency.

5. Prohibited Acts (Article 27, Article 27A, Article 27B, Article 28, Article 29, Article 45A, Article 45A)

Provisions pertaining to prohibited acts, which include the context of violations of decency, gambling, harm towards honor or reputation, threats of violence and defamation, fake news, hate speech, electronic attacks on victims, are affirmed which previously were only consisted of Article 27 and Article 28 of Law Number 11 of 2008, and then subsequently adjusted into several independent articles with provisions that are clarified as to prevent illegal activities within the electronic domain and further described in the elucidation of each article of the Amendment of ITE Laws 2024 to prevent multiple interpretation.

In the event of violation of prohibited acts, an imposition of sanctions in the form of imprisonment and fines are stipulated in Article 45 and Article 45A.

6. The Role of Government (Article 40 and Article 40A)

This provision is added to regulate the government's role in encouraging the creation of a fair, accountable, safe, and innovative digital ecosystem. As well as the obligation to prevent the dissemination and use of electronic information and / or electronic documents for misuse, which can be done through termination of access, moderating content independently toward decency, gambling or other content as regulated.

Furthermore, the government can instruct a PSE to carry out its responsibilities in encouraging the realization of a fair, accountable, safe, and innovative digital ecosystem. In case of violation, the PSE may be subject to administrative sanctions.

The role of government will be further regulated in government regulations.

## 7. Law Enforcement (Article 43)

This provision regulates law enforcement of criminal acts in the field of information technology and electronic transactions to be carried out by the other officials in addition to the Police Officer Investigators. This authority may also be given to certain Civil Servant Officials.

The duties and powers given to the Police Investigators Officials and Certain Civil Service Officials, are further extended by the addition of duties and authorities related to temporary restrictions or termination of access and inquiry of information from the PSE related to information technology crimes. Moreover, the Amendment of ITE Laws 2024 provides the synchronization of search, seizure, arrest, and detention procedures to be carried out in accordance with the Code of Criminal Procedures.

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