

Indonesian ministry insists on local data centers for online companies

Antara news agency reported that the Ministry for Communications and Informatics (Kemkominfo) is insisting that electronic service providers must locate their data centers in Indonesia. This pertains to government regulation (PP) 82/2012 regarding Electronic Systems and Transactions Organization. During the open discussion held by the Indonesian E-commerce Association (IdEA) on Tuesday in Jakarta, Kominfo Director General of Applications and Informatics, Ashwin Sasongko, said, “If the data centers are located overseas and there are issues, (Indonesian) law enforcement will face problems in getting to the data. Law enforcers cannot gain physical access because it’s in another country”.

According to Sasongko, the government policy requiring data center placement within Indonesian borders applies to anyone who runs an electronic system and has transaction activities in Indonesia, whether they are new or existing. He said that new companies which require the use of a data center must immediately make use of an Indonesian facility. Existing companies must also use data centers located in Indonesia. If they previously used foreign data centers, they must switch to Indonesian facilities soon.

The head of IdEA, Daniel Tumiwa, argued that there will be considerations from business practitioners who will weigh the costs and benefits of running a data center in Indonesia. “The cost can easily double in Indonesia and the data infrastructure must pass through other countries, which will incur charges”.

At the discussion, IdEA made a suggestion to the government that it should have offered incentives to companies who comply with the data center placement requirement as per PP82/2012. However, Kemkominfo has yet to publish the regulations which will serve as the basis for the technical aspects of running electronic systems, including the possibility of incentives as expected by members of the association.

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BlackBerry and Google were both pressed by the Indonesian government to operate a local data center not too long ago. In this case, both companies, which are among the largest technology companies in the world that have made investments in Indonesia, refused to build a local data center having considered the cost which could reach into the hundred million US dollar range. Another consideration hinges on the unstable business climate in Indonesia which is affected by a complicated bureaucracy, rampant corruption, natural disasters, terrorism issues, and so on. These are just some of the issues that need to be taken care of before moving forward with the policy plan.

source: <https://en.dailysocial.net/post/indonesian-ministry-still-insists-on-local-data-centers-for-online-companies>

Will cyber giants have to build data centers here or cease trading? The situation is not as clear-cut as has been reported

AMCHAM: Much has been made of recent comments from the Ministry of Communication and Information (Kominfo) on a draft regulation concerning data centers, and the belief that it will force global companies that rely on cloud computing such as Google and Yahoo to build them in Indonesia if they want to be involved in e-commerce here.

The Jakarta Globe quoted the ministry's chief of public relations, Gatot S. Dewa Broto, as saying the draft regulation (PP82/2012) "covers any institution that provides information technology-based public services. Aside from search engine giants like Google and Yahoo, the bill also pertains to hotels, banks, and airlines services."

But the good news is that the situation is not as clear as it sounds. E-commerce in Indonesia is currently worth up to \$1.2 billion a year, and is projected to hit \$10 billion by 2016, but people in the fast-growing sector worry where the regulatory train is going.

Legal News

Kominfo and the Ministry of Trade (MOT) have both proposed new regulations on digital transactions (PP82 Kominfo) and domain names (PP29 Kominfo) to go with the draft e-commerce law (RPP PPSE MoT). Gatot told the Globe he expected the bill to come into effect by mid-February, but declined to give further details as the draft is still under discussion.

The key here is the definition of “public services,” which for companies under the regulation companies should follow the existing definition found in Public Service Law 25/2009 and Government Regulation 96/2012, which defines public services as government institutions. Moreover, on January 7, Kominfo announced a public consultation for a draft regulation on data center technical guidelines that lays out technical standards such as design and operational requirements of data centers and disaster recovery centers. Kominfo is in the process of issuing several technical regulations for PP82/2012. Some key concerns include domain name registration, trademark certification agency, spam, electronic system governance, domain name management and electronic certification operation. The regulations for the management of the domain name go.id and the governance of electronic systems for government institutions are already available and were not open to public consultation as they applied only to government stakeholders. AmCham Indonesia's IT committee along with US Asean Business Council representatives will meet again with Kominfo, this time with the newly appointed Director General of Application Informatics, Bambang Heru Tjahjono, in late January. Previously, the AmCham committee and the US Asean Business Council met with the former director general Ashwin Sasongko and in written input argued that “public services” should not apply to a private business carrying out its ordinary activities. The draft ministerial regulation on the registration of electronic service providers that we provided input on in October 2013 will undergo a public hearing before being submitted to the minister, and then a public comment stage that will still take place after the minister’s approval.

source: <http://www.amcham.or.id/fe/4440-latest-on-data-centers-does-not-compute>

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Offshoring data centers raises security concerns

Bisnis.com: Foreign banks are concerned about security if the government enacts the regulation to move data centers to Indonesia. The Chairman of the Association of Foreign Banks (Foreign Bank Association Indonesia --- FBAI) Joseph Abraham, said that the issue of cyber-crime is a major concern for the banking industry since banks use information technology systems in their operations

"With the government's plan to establish foreign banks' data centers in Indonesia and in the midst of an increase in cyber-crime, will moving data centers be safe?," asked Joseph, Tuesday (19/05/2015). Meanwhile, some bankers are increasingly aware of risks to the system, considering that information technology has become the backbone of business operations of banks. Jusuf Wibisana , Financial Services Partner, PricewaterhouseCoopers Indonesia, said that the survey results represent 76 percent of national banking assets and show that banker confidence also contributed to the increasing use of electronic tools and of increasingly complex bank business transactions.

source: <http://finansial.bisnis.com/read/20150521/90/435852/migrasi-pusat-data-bank-asing-cemaskan-keamanan>

Foreign banks to move data centers to Indonesia

Jakarta (IndoTelko): Foreign banks operating in Indonesia should move their data centers to this country, as is occurring in Japan and South Korea. "If foreign banks really consider Indonesia to be an important market, they will have to make an investment in it," said Managing Director, Ajit Nair, of EMC Indonesia. He added that if a foreign bank wishes to build a data center in Indonesia, EMC is ready with reliable technology and solutions.

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New rules regarding the obligation of foreign banks to build onshore data centers (ODC) in Indonesia are expected to be completed this year. According to the Financial Services Authority (OJK), discussion on these rules took more than a year because the issue is very complex. The Chief Executive of OJK Banking Supervision, Nelson Tampubolon, said that the current discussion on the rules of foreign banks' obligation to build a data center in Indonesia is still underway with the Ministry of Communications and Information Technology (Kemenkominfo). The CEO of ANZ Indonesia who is also the Chairman of the Foreign Banks Association of Indonesia (FBAI) Joseph Abraham, said that Indonesia remains a priority investment for foreign banks. However, they are concerned that the rules are often subject to change, for example, the regulation on onshore data centers. "There must be a competent data center service provider if we are going to put a data center here," said Abraham.

source: <http://www.indotelko.com/kanal?c=id&it=Data-Center-Bank-Asing-Wajar-di-Indonesia>

Minister of Communications and IT: Overseas data centers a worry for local customers

Jakarta, Aktual.com The Minister of Communications and Information, Rudiantara, said the Financial Services Authority (OJK) and his office would regulate data centers for Indonesian citizens who were bank customers, especially in foreign banks. This is consistent with the obligations related to developing data centers in Indonesia. "For customers in domestic banks it is not such a worry. However, for foreign banks operating in Indonesia, it has become a problem, considering that the servers and data centers are outside the country", said Rudiantara in Jakarta, Monday (29/6).

In his view, a breakthrough is needed in order to access customer data in foreign banks. He believes the OJK should have access to the systems of foreign banks.

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"The level of service is key: if a foreign bank promises to provide the OJK with data within two hours, then it should be delivered within two hours; otherwise the bank should be subject to sanctions. Thus, technology empowers us. This is the optimum way given the regulatory obligation for having a data center in Indonesia and ever-changing technology. What is important is that the OJK has the authority to access the system, whether the banks use cloud computing or whatever system", he said. He stated that it was still reviewing the matter with the OJK. He hoped it could be implemented in the very near future. Vice-Chairman of the OJK Board of Commissioners, Waluyanto, said communication to all parties and readiness on the part of the banking industry were both necessary.

source: <http://www.aktual.com/menteri-kominfo-data-center-di-luar-negeri-persulit-nasabah-wni/>

Logistics and infrastructure have become major challenges

MARITIME NEWS: Indonesian Investment Coordinating Board (BKPM) stated the most basic challenge for investment in Indonesia was about logistic and infrastructure. Therefore, long-term strategies are needed to face those challenges. Indonesia has the highest logistic cost of 24 percent from gross domestic product (GDP) compared to Malaysia which is only 15 percent. BKPM Deputy for Investment Climate Development, Farah Ratnadewi, said beside both challenges, there were other challenges. "The challenges are business permit, regulation or policy, and workforce issue," Farah said on a dialogue themed 'Deregulation Impact toward Investment' at BKPM Office in Jakarta on September 25. Farah explained from 134 deregulation packages, there were two regulations BKPM has to solve. As the strategies to simplify investment permit, BKPM can eliminate, combine, simplify and delegate, as well as ease permit process administration.

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“The focus is on permit. Faster permit process completion will accelerate national economy by business sector, employment opportunity creation, tax reception, and export hike,” she explained. Related to manpower issues, in similar occasion, Enny Sri Hartati, The Institute for Development of Economics and Finance (INDEF) Executive Director, said not all investors worried about minimum wage hike demand from labors. “Investors only ask for certainty. When minimum wage hike demand occurs, investors believe labors will not do vandalism. Therefore, security is guaranteed during wage hike,” she said.

source: <http://maritimenews.id/logistic-and-infrastructure-become-investment-basic-challenges/>



Draft Regulation on the Development of Data Centers

By Oka Anantajaya, S.H., LL.M. (research by Miranda Mamahit S.H.)

The draft Regulation of the Minister of Communication and Informatics on Electronic System Software states in Article 10 that any Software program used by the Public Services must undergo an audit, and the audit shall be carried out by a Software Auditor appointed by the Minister. Consequently, the establishment of onshore data center for electronic transactions is mandatory in order to facilitate the audit procedure and in the interests of national sovereignty over the data of Indonesia’s citizens.

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According to Government Regulation of the Republic of Indonesia Number 82 of 2012, regarding Implementation of Electronic Systems and Transactions, Article 17 explicitly states that:

- (1) The Electronic System Operation for public service shall have a continuity plan in the event of disruption or a disaster.
- (2) The Electronic System Operator for public service is obligated to establish a data center and disaster recovery center in the Indonesian territory for the purpose of law enforcement, protection, and enforcement of national sovereignty over the data of its citizens.
- (3) Further provisions on the obligation to place the data center and disaster recovery center in Indonesian territory as set out in paragraph (2) shall be governed by the related Sector Supervisory and Regulatory Agency in accordance with the provisions of regulations upon coordination with the Minister.

In line with the aforementioned article, establishment of a data center in Indonesia is mandatory for companies engaging in electronic transactions, both those offering public services and those who carry out state responsibilities, as stipulated in the definition of Electronic Transaction Parties (PSE) in the draft Regulation of the Minister of Communications and Informatics on Electronic System Software.

Authority over the establishment of data centers by foreign banks in Indonesia is held by the Financial Services Authority (OJK), and a regulation regarding onshore data center (ODC) is currently being drafted. It is mandatory for foreign banks and other public service companies to develop such data centers. The Financial Service Authority (OJK) has formed a technical team to examine the implementation of data center establishment. Accordingly, the government has stated that not all departments in a company need to be included in data center establishment, e.g. individual banking client data and data on transactions need not be included. Specific data such as human resource data can be excluded from the data center requirement.

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Having data centers of foreign banks established in Indonesia will facilitate audits being carried out by the authorities if required. In practice, local authorities find it difficult to access data stored in overseas data centers of foreign banks if the bank is experiencing problems or needs to be audited. Moreover, national security and law enforcement also have an interest in acquiring access to data centers and thus have cooperated with the OJK in pushing for the ODC.



New Reg on ports seeks to make port investment more attractive

By Ahmad Djoyosugito, S.H.,LL.M. (research by Jean Viola, S.H.)

“In order to speed up the development of port infrastructure through increased investment in the port sector to foster national development, it is necessary to amend the granting of concessions to businesses through port tenders as set out in Article 74 paragraph (2) of Government Regulation No. 61 Year 2009, regarding Ports via a tender mechanism or appointment/designation. With the amendment to the provisions of Article 74, the provisions of Article 75 need to be changed (from the Elucidation of the New Reg).”

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In a bid to spur on infrastructure projects and investment into ports and shipping and shipping-related services, the government has promulgated Government Regulation no. 64 of 2015 (the “**New Reg**”) on Ports. This regulation amends government Regulation No. 61 of 2009 on Ports (“**2009 Reg**”). The New Reg basically makes changes to the way concession rights are granted to businesses that manage ports and to the duration of the concession period.

Concessions may now be given via a tender mechanism or can simply be granted. The only caveat is that the grantee must not draw on state funds or APBN/APBD funding, and the services must be carried out on the concession territory. The use of direct appointment is a shift from the 2009 Reg in which all such service providers had to go through a tender to be selected. Concessions must be surrendered to the port administrator (whether it be the Port Authority or the Port Management Unit) upon expiry of the concession agreement. In the 2009 Reg, this period was limited to 30 years. In the New Reg, there is no limit. The business entity is left to negotiate the term with holder of the BUP according to the commercial requirements of the port project.

Concession agreements should contain the following provisions (at the very least):

- a. the scope of the concession;
 - b. the concession period;
 - c. the initial tariff and the tariff adjustment formula;
 - d. the rights and obligations of the parties, including the risks borne by the parties, whereby risk should be allocated based on the principle of risk allocation in an efficient and balanced manner;
 - e. service performance standards and procedures to handle complaints;
 - f. sanctions in the event the parties do not honor the concession agreement;
 - g. dispute resolution;
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- h. termination of the concession agreement;
- i. statement that the legal system applicable to the concession agreement is the law of Indonesia;
- j. force majeure procedure; and
- k. other changes and terms.

Analysis

In our view, these are minor changes but may help sway companies that are in the process of making a commercial case for investing in a port. The New Reg allows for more flexibility in negotiations, and some port projects that are capital intensive may well become more appealing, as a longer term can be stipulated in the concession agreement. The term can be extended to allow for a “reasonable” profit, although what constitutes “reasonable” is not defined and is thus open to interpretation. Direct appointment may also streamline the selection process. The tender process can be cumbersome and if the tender requirements are not met, perhaps no party can be selected. Direct appointment simplifies selection and may strengthen the commercial case for investing in a port project. Time-wise it will certainly accelerate port projects if the direct appointment mechanism is used.

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