

PwC Indonesia Legal Alert

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New Regulatory Framework for Trading Activities through Electronic Systems ^{P1}

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Introduction

On 26 September 2023, the Ministry of Trade of the Republic of Indonesia issued Minister of Trade Regulation No. 31 of 2023 on Business Licencing, Advertising, Guidance and Supervision of Businesses in Trade Through Electronic System (MoTR 31/2023) that revokes the Minister of Trade Regulation No. 50 of 2020 (MoTR 50/2020), which bore a similar title to MoTR 31/2023. From our understanding of MoTR 31/2023 issuance, such a regulation was issued to respond to national concerns regarding online trading activities through social media platforms, which have arguably affected consumer behaviour and sales in offline stores.

Although MoTR 31/2023 is not a regulation that was newly issued by MoTR, it is still relevant and important, especially for a PPMSE business model. We set out below the key legal points that need to be considered.

In general, MoTR 31/2023 introduces the following key provisions:

- a. Scope of Organiser of Trading Activities via Electronic Systems/*Penyelenggara Perdagangan Melalui Sistem Elektronik (PPMSE)* Business Model;
- b. PPMSE Mandatory Compliances;
- c. Limitation and/or Prohibition for the Marketplace and Social Commerce Business Model;
- d. Minimum Price of Cross Border Trading Activities via PPMSE; and
- e. Unfair Business and Price Manipulation Mitigation.

I. Scope of PPMSE business model

MoTR 31/2023 retains the scope of domestic and overseas business actors that were previously covered by the MoTR 50/2020, which includes the following parties:

- a. Merchants;
- b. PPMSE; and
- c. Intermediary service organisers.

Prior to the issuance of MoTR 31/2023, the Government did not specify the scope of the PPMSE business model. The scope of PPMSE's business models that are currently available to domestic and overseas business actors are summarised in the following table:

Business Model	Scope of Transaction
Online retailers	merchant who conducts trade through electronic systems via a commercial website or application that is created, managed, and/or owned privately.
Marketplaces (lokapasar)	provider of facilities in which part or all of the transaction process is in an electronic system in the form of a commercial website or an application as a forum for merchants to be able to place offers for goods and/or services.
Online classified advertisements (iklan baris)	any facility to run an electronic system in the form of a commercial website or an application that brings together sellers and buyers whose entire transaction process occurs outside the website or application.
Price comparison platforms	any facility to run an electronic system in the form of a commercial website or an application that displays price comparison for goods and/or services sold on other websites or applications.
Daily deals	any facility to run an electronic system in the form of a commercial website or an application in the form of selling discount coupons and/or other convenient facilities that may be used as a means of payment by consumers to purchase goods and/or services from other business actors.
Social commerce	a social media organiser that provides certain features, menu, and/or facilities that enable merchants to place offers for goods and/or services.

II. PPMSE mandatory compliances

MoTR 31/2023 stipulates mandatory compliances that apply to PPMSE to engage and/or conduct Trading via Electronic Systems/Perdagangan Melalui Sistem Elektronik (PMSE) pursuant to the laws and regulations in the following sectors:

- a. Mandatory business permits/licences;
- b. Compliance with technical standards and/or requirements for certain products and/or services;
- c. Prohibitions and/or limitations applicable for certain products/services;
- d. Distribution of product guidelines; and
- e. Provisions on tax obligation.

In relation to the foreign merchant, MoTR 31/2023 also mandates that foreign merchants who conduct PMSE activities through PPMSE which provides facilities for foreign merchants shall submit the following requirements:

- a. Merchant identity in the form of name and address of the country of origin;
- b. Business licence issued by an authorised institution in the origin country which is legalised by the representative official of the Indonesia government or authority in countries participating in the convention on Abolition of Legalisation Requirements;
- c. Proof of compliance with required technical standards and/or requirements for products/services, i.e., Standard National Indonesia (SNI), halal certificate, and any technical standards applicable in the country of origin;
- d. Bank account number used for the transaction.

Besides that, the foreign merchant shall use the Indonesian language in the description of products and/or services and display the information on the country of origin of the products/services. Furthermore, MoTR 31/2023 prohibits the substance or material of the electronic advertisements that violate the provisions of laws and regulations, and the PPMSE shall be responsible for the substance or material of such advertisement contents.

Failure to comply with the above obligations, the PPMSE might be imposed with an administrative sanction in the form of a written reprimand to the revocation of business licencing.

III. Limitation and/or prohibition for certain PPMSE's business model

MoTR 31/2023 introduces several limitations and/or prohibitions that apply to certain PPMSE's business models as detailed in the following table:

Business Model	Prohibited Activities	Remarks
Social Commerce	a. Facilitating payments	Shall not proceed with any payment of transactions through its platform.
	b. Acting as manufacturers	Shall not act as manufacturers, as defined in accordance with the laws and regulations governing goods distribution.
Marketplace	Acting as manufacturers	

Based on our understanding, the key takeaways from the prohibitions listed above are as follows:

- a. Any social media that provides a social commerce platform is now only permitted to facilitate the promotion of products and/or services. Therefore, the social commerce platform shall not act as a marketplace that facilitates and processes the payment of transactions.
- b. Any PPMSE that wishes to engage in and provide PMSE transactions is required to obtain the relevant Business Identification Number (**NIB**) and its licencing, including acquiring the Standard Classification of Indonesian Business Fields/*Klasifikasi Baku Lapangan Usaha Indonesia* (**KBLI**) applicable for the marketplace business model.

IV. Minimum Price of Cross Border Trading Activities via PPMSE

MoTR 31/2023 determines a new concept of price limitation in cross-border transactions conducted via PPMSE platforms. Prior to its issuance of MoTR 31/2023, any transactions involving foreign merchants were not subject to certain limitations of minimum prices. Hence, from our understanding,

overseas products easily flooded Indonesia's online transactions. Subsequently, PPMSE platforms were not imposed with any limitations relating to overseas products being marketed on their platforms.

Under the new regime, the cross-border transactions shall comply with the laws and regulations in the export-import sectors. In particular, any cross-border transactions through the PPMSE shall be subject to a minimum offering price in the amount of USD 100 for each product. Therefore, the foreign merchants who sell and/or market the products are required to comply with the minimum price and the PPMSE shall ensure that it is being obeyed by the foreign merchants on their platforms.

MoTR 31/2023 stipulates in case any product prices are valued in other currencies, then the prices shall be converted into currencies that have been determined by the Minister of Finance of the Republic of Indonesia. The said Minister also has a prerogative right to determine and allow the cross-border transactions of the product below the minimum price.

V. Unfair business and price manipulation mitigation

MoTR 31/2023 introduces the mitigation of unfair business practices and/or price manipulation in PMSE transactions. PPMSE shall actively commit to and participate in the following activities:

- a. Provide equal business opportunities to all merchants; and
- b. Maintain the prices of products and/or services and ensure they are free from direct or indirect price manipulation.

Furthermore, MoTR 31/2023 requires PPMSE to supervise, prevent, mitigate all forms of unfair business competition practice and/or price manipulation practice, both directly and indirectly. PPMSE shall issue a standard operating procedure to ensure the following conditions:

- a. No connection or interconnection between the electronic system used as a PMSE facility and an electronic system used outside the PMSE facility; and
- b. No abuse of control over user data for use by a PPMSE and/or affiliated companies in their electronic systems.

In the event of any alleged unfair business and/or price manipulation practices occurring, PPMSE shall report and coordinate with the Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha/KPPU*) within three business days since the allegation is discovered and/or reported is accepted by the PPMSE.

VI. Things to do

You may want to check whether your company has a suitable NIB and business licence to conduct its current business activities that fall under MoTR 31/2023. For instance, if the company facilitates payment of transactions through its platform without KBLI of the marketplace, it shall enter the application process to obtain a relevant KBLI through the Indonesian Online Licencing System (OSS).

Subsequently, the company may also require guidance to navigate the mandatory compliances and prohibitions that apply to the PPMSE, the preparation of standard operating procedure of unfair business practice, and the cross-border activity provisions, including the minimum price of USD 100 per item for sales of foreign origin goods through PMSE.

This Legal Alert is only intended to give an overview of the new regulatory framework for trading activities through electronic systems according to MoTR 31/2023. It may not cover all related aspects. Please do not hesitate to contact us if you need more detailed advice or have specific questions.

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