

UPDATE: REVISIONS TO INDONESIA'S DATA LOCALIZATION REGULATION 28 JUNE 2019

Executive Summary

- Late last week Indonesia's ICT Ministry released a draft regulation to amend Government Regulation 82/2012— a highly controversial regulation that mandates the onshore storage of data.
- A new classification system would allow most private sector data to be stored offshore, enabling cross-border data transfer and use of cloud technology.
- The revised regulation provides clarity for companies in the financial sector, which would now be regulated by Indonesia's financial oversight body.
- The latest draft includes provisions that can be used by the government to exert control over online content.
- The amended regulation would resolve one issue that has featured prominently in the USTR's review of Indonesia's eligibility for Generalized System of Preferences (GSP) privileges.
- The enactment of this revision in its current form will be a welcome sign that President Joko Widodo is returning to a more reform-minded policy direction. Previous attempts to ease data localization requirements were stymied by political interests and lobbying from local data center providers.

The government on 20 June 2019 released the latest draft revision to Government Regulation No. 82/2012 (GR 82). The latest draft provides welcome clarity for private sector players and should support cross border data transfer and cloud technology.

GR82/2012 requires electronic system operators that provide a "public service" to store data onshore and establish disaster recovery centres in Indonesia. The definition and scope of 'public service' was never clarified, allowing for multiple interpretations.

The key change is a revised classification system that distinguishes between public and private data providers. The latter are not required to store data onshore, unless they are appointed to provide a public service by the government. Private data providers include social media, OTT, and e-commerce platforms.

A second key amendment regards private companies in the financial sector. The management, processing and storage of this data will now be regulated by the Financial Services Authority (OJK). Current OJK regulations do not enforce data localization.

The latest draft retains provisions that demonstrate increased focus on control of online content. This includes provisions on the Right to Be Forgotten (OTT service providers will need to have mechanisms in place to delete irrelevant or dated data at the request of the data owner or through court order) and Prohibited Content (government is granted authority to request OTT service providers remove prohibited content, including data that is “illegal” or that could undermine public order). Government may increasingly use such provisions as legal mandate to control content on social media and instant messaging platforms. It remains to be seen how these provisions will align with other draft laws including the Draft Law on Personal Data Protection.

The Jokowi administration has made numerous efforts to revise GR82, initially proposing a three-tiered classification system (strategic, high and low). However, these drafts were met with strong resistance from the local telecommunications industry with business interests.

Local players also played up the view that government was revising GR82 due to foreign pressure – GR82’s arbitrary data localization requirements are a core issue raised in the US government’s review of Indonesia’s eligibility for US GSP tariffs. The issue was put on the backburner as it became too politically sensitive in the run-up to the April elections.

The release of this latest draft, which now sits with the State Secretariat for legal harmonization, is a shift towards more pro-business policymaking. The draft comes as President Jokowi ramps up calls for increased tech innovation to position Indonesia as the home of tech unicorns, including at this week’s G20 in Japan.
