

To the Honorable  
Platform Providers and Merchants (*Pedagang*) of Trading Through Electronic System  
(Electronic Commerce) in the Forms of User Generated Content;

**CIRCULAR OF  
MINISTER OF COMMUNICATION AND INFORMATICS OF THE REPUBLIC OF  
INDONESIA  
NUMBER 5 OF 2016  
ON  
LIMITATION AND RESPONSIBILITY OF PLATFORM PROVIDER AND MERCHANT  
(*PEDAGANG*) OF TRADING THROUGH ELECTRONIC SYSTEM (ELECTRONIC  
COMMERCE) IN THE FORMS OF USER GENERATED CONTENT<sup>1</sup>**

Ministry of Communication and Informatics of the Republic of Indonesia (*Kemenkominfo*) takes regards and understands that trading as performed through electronic system currently becomes trading mean which is gaining popularity in the public. Therefore, the following matters are hereby addressed:

**I. General**

Trading as performed through electronic system currently becomes trading mean which is gaining popularity in the public. This condition is encouraged with the massive usage of computers and smartphones (*gawai*) in the public which is connected to the internet, as well as more sophisticated and distribution of electronic-system network system which is accessible by the public, such as via trading platform through electronic system.

---

\* This translation is created with the best effort as can be offered and by any means, does not constitute and should not be treated as official translation or sworn translation for legal proceeding purposes. The copyright owner: 1) Should not be held liable for any error which occurs in the source document; 2) Reserves the right to change and modify this translation, with subsequent notifications given to every clients in timely manner; and 3) May seek redress for any unlawful or unauthorized transfer or disclosure of this translation against any party.

Trading platform through electronic system in the forms of user generated content (UGC), hereinafter referred to as Platform, is Trading Platform, whereas, the public may sign up as member or have an account on the Platform, as well as inputting data and/or information to the Platform. Platform provides information on seller, goods, and/or services which are sold online (*daring*), thus it creates easiness for the public in performing trading transaction through electronic system, which eventually may boost public economy.

In addition to such easiness, Platform is also prone against misuse by account owner and/or uploader who deliberately input data and/or information which are illegal, either aiming to seek profit or other purposes (prohibited acts). Misuse by account owner and/or uploader as mentioned above may harm Platform Provider, thus, Platform Provider may be perceived to be involved in such illegal act. This perception will become a burden for Platform Provider, if precise positioning is not performed, hence it may affect the continuity of its service business.

Platform Provider is legal subject of Law [Number 11 of 2008](#) on Electronic Information and Transaction (UU ITE), namely as Electronic System Provider. Based on Article 15 of UU ITE, Platform Provider as Electronic System Provider is held liable against organization of its electronic system, namely by organizing Electronic System in reliable and secure manners, as well as held liable against the operation of Electronic System in proper manner. Provisions on such liability do not prevail in case the occurrence of force majeure [*keadaan memaksa*], offense, and/or negligence from the electronic-system user may be proven.

## II. Intentions and Purposes

- A. Intention of this policy is in order to provide guideline for Platform Provider or Electronic System Provider and Merchant (*Pedagang*) in regards to its limitation and liability to Electronic Transaction which takes form as trading through electronic system (electronic commerce) in the forms of user generated content.

B. Purposes of this policy are:

1. The performance of organization of electronic system which is secure, reliable, and responsible, therefore it grows ecosystem of trading through electronic system.
2. Legal protection for Platform provider and merchant (*perdagangan*), and Platform User by ascertaining limitation and liability of each parties in the course of performing trading activity through electronic system.

### III. Scope

The scope of this Circular encompasses limitation and liability of Platform provider and platform's merchant (*pedagang*) to trading activity through electronic system (electronic commerce) in the forms of user generated content.

### IV. Legal Grounds

This Circular is based on the following laws and regulations:

- a. Law [Number 8 of 1999](#) on Consumer Protection (State Gazette of the Republic of Indonesia of 1999 Number 22, Supplement to the State Gazette of the Republic of Indonesia Number 3821);
- b. Law [Number 11 of 2008](#) on Electronic Information and Transaction (State Gazette of the Republic of Indonesia of 2008 Number 58, Supplement to the State Gazette of the Republic of Indonesia Number 4843);
- c. Law [Number 7 of 2014](#) on Trading (State Gazette of the Republic of Indonesia of 2014 Number 45, Supplement to the State Gazette of the Republic of Indonesia Number 5512);
- d. Law [Number 28 of 2014](#) on Copyright (State Gazette of the Republic of Indonesia of 2014 Number 266, Supplement to the State Gazette of the Republic of Indonesia Number 5599);
- e. Law [Number 13 of 2016](#) on Patent (State Gazette of the Republic of Indonesia of 2016 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 5922);

- f. Law [Number 19 of 2016](#) on Amendment to Law Number 11 of 2008 on Electronic Information and Transaction (State Gazette of the Republic of Indonesia of 2016 Number 251, Supplement to the State Gazette of the Republic of Indonesia Number 5952);
- g. Law [Number 20 of 2016](#) on Mark and Geographical Indication;
- h. Regulation of the Government [Number 82 of 2012](#) on Organization of Electronic System and Transaction (State Gazette of the Republic of Indonesia of 2012 Number 189, Supplement to the State Gazette of the Republic of Indonesia Number 5348);
- i. Regulation of the President of the Republic of Indonesia [Number 7 of 2015](#) on Organization of State Ministry (State Gazette of the Republic of Indonesia of 2015 Number 8);
- j. Regulation of the President of the Republic of Indonesia [Number 54 of 2015](#) on Ministry of Communication and Informatics (State Gazette of the Republic of Indonesia of 2015 Number 96);
- k. Regulation of the Minister of Communication and Informatics [Number 1 of 2016](#) on Organization and Working Procedures of Ministry of Communication and Informatics (Official Gazette of the Republic of Indonesia of 2016 Number 103).

**V. Limitation and Liability of Platform Provider or Electronic System Provider and Merchant (*Pedagang*) to Trading Through Electronic System (Electronic System) in the Forms of User Generated Content**

- A. Limitation on Definitions
  1. Platform is medium in the forms of application, internet site, and/or other internet-based content services which are used for transaction and/or facilitation of trading through electronic system.
  2. Platform Provider is party, either individual, enterprise, or incorporated entity which provides Platform.

3. Merchant (*Pedagang*) is individual, group, enterprise, or incorporated entity which uses offering facility as provided by Platform Provider, either account-based (registered) or simply becomes uploader (unregistered).
4. Platform User is person who accesses, opens, and/or performs trading transaction through Platform as provided by Platform Provider.
5. Platform in the forms of User Generated Content, hereinafter referred to as UGC Platform, is Platform which contents are made and/or uploaded independently by Merchant (*Pedagang*) and not by Platform Provider.
6. Provider of Platform in the forms of User Generated Content, hereinafter referred to as UGC Platform Provider, is party, either individual, enterprise, or incorporated entity which provides UGC platform.
7. Usage Terms and Conditions is agreement pact between Platform Provider and Merchant (*Pedagang*) relating to provisions on the usage of service of such Platform.
8. Prohibited Content is any type of material and/or content which violate provisions under laws and regulations.
9. Reporting Mean is feature as provided by Platform Provider to solicit complaint on a Prohibited Content.
10. Reporter is party who reports Prohibited Content to Platform Provider.

B. Prohibited Content in the platform, including but not limited to:

1. Goods and/or services containing negative contents (pornography, gambling, violence, and contents of goods and services which violate laws and regulations):
  - a. Goods and/or services containing pornography negative content:
    - 1) pornography, namely image, sketch, illustration, photo, text, voice, sound, moving image, animation, cartoon, conversation, body's motion, or other forms of message which contain obscenity or sexual exploitation which violate decency norms in the public;

- 2) pornographic services, namely all types of pornographic services which are implicit or explicit in nature.
- b. Goods and/or services containing contents of gambling, lottery, and/or betting.
- c. Goods and/or services containing contents with hate material:
  - 1) product, image, and/or services which harass, degrade, or contain hate content against individual or group of individuals based on religion, gender, sexual orientation, race, ethnicity, age, or deformity;
  - 2) product, image, and/or services which recommend or justify violence or create dangerous threat against individual or group;
  - 3) product, image, and/or services which provide services to kill other people and/or torture and/or bullying;
  - 4) product, image, and/or services which incite or promote hate against group or individual.
- d. Goods and/or services containing graphical image contents which is rated:
  - 1) product, image, and/or services of image or graphic which is bloody, such as bloodbath and terrifying or weird accident;
  - 2) product, image, and/or services of image or graphic which contains human's body organs, blood;
  - 3) product, image, and/or services of torture, either against animal or human.
- e. Goods and/or services containing contents which infringe intellectual property right.
- f. Goods and/or services containing hacking contents (*peretasan* and/or cracking) and/or providing unauthorized or illegitimate access to electronic system.

- g. Goods and/or services containing contents on provision and/or access to narcotic drugs [*narkoba*], addictive substance, and psychotropics.
  - h. Goods and/or services containing contents with the materials of dishonesty, deception or misleading other people, *inter alia*, mystical or superstitious advertisements, fraud, money-laundering service, document-forgery service (including document regarding to diploma and/or certificate), and pyramid scheme (including affiliate marketing or money game).
  - i. Goods and/or services containing human trafficking contents (*perdagangan manusia*) and/or human organs.
  - j. Goods and/or services containing contents on cigarette.
2. Goods and/or services which do not possess licensing to be traded in accordance with provisions under laws and regulations:
- a. Goods and/or services containing contents on weapon, military, and explosive. Those which are included in this matter are selling, facilitating or supporting sale of weapon and accessories of weapon which are not in accordance with laws and regulations, such as sale of ammunition, part of weapon, handgun, rifle, air gun, and stun gun.
  - b. Goods and/or services containing contents on certain drugs, food, and/or beverage. Those which are included in this category, *inter alia*:
    - 1) prohibited substance and/or drugs as addressed under laws and regulations;
    - 2) drugs which require doctor's prescription, anesthetic and others which are similar;
    - 3) drug or material containing prohibited substance;
    - 4) drugs (including traditional medicines) which do not possess circulation license and/or drugs, of which, its advertisement material is yet/not approved by authorized institution; and/or
    - 5) alcoholic beverage.

- c. Goods and/or services containing contents on plant and/or animal which are protected by the state based on laws and regulations.
- d. Goods and/or services containing contents on tool and/or device which are prohibited and/or not certified by ministry/agency, for example, telecommunication-ware tool and/or device which are prohibited and/or not certified by *Kemenkominfo*.
- e. Goods and/or services containing contents on chemical substance which is toxic and hazardous.
- f. Goods and/or services containing house that is subsidized by the government.
- g. Goods and/or services relating to unregistered-marriage (*pernikahan siri*) services.
- h. Goods and/or services relating to health which are not in accordance with provisions under laws and regulations.

C. Obligations and Liabilities of UGC Platform Provider

1. Obligations of UGC Platform Provider encompass:

- a. Present usage terms and conditions of UGC Platform which contain the following matters at minimum:
  - 1) obligation and right of Merchant (*Pedagang*) or User in using of UGC Platform services;
  - 2) obligation and right of Platform Provider in performing UGC Platform's business activity;
  - 3) Provisions on liability against uploaded contents.
- b. Provide Reporting Mean which may be used to file complaint on Prohibited Content on UGC Platform which is managed by it, in order to obtain the following information at minimum, encompassing:
  - 1) link (*tautan*) which specifically leads to Prohibited Content;
  - 2) ground/basis of report on Prohibited Content;



- 3) supporting evidence for the report, such as screenshot, statement, mark certificate, power of attorney.
- c. Perform act against complaint or report on contents, *inter alia*:
- 1) perform examination on veracity of report and request reporter to complete requirements and/or attach other additional information relating to the complaint and/or report, if necessary;
  - 2) perform erasure and/or blocking act against prohibited content;
  - 3) deliver notification to Merchant (*Pedagang*) that its uploaded content is Prohibited Content;
  - 4) provide mean for Merchant (*Pedagang*) to perform refutation that its uploaded content is not Prohibited Content;
  - 5) reject complaint and/or reporting, if reported content is not Prohibited Content.
- d. Take regards on time period for erasure and/or blocking against report on Prohibited Content:
- 1) For urgent Prohibited Content is no longer than 1 (one) calendar day since the report was received by UGC Platform Provider. Urgent Prohibited Content includes, but not limited to:
    - i. Product of goods or services which is hazardous toward health;
    - ii. Product of goods/services which threatens state security;
    - iii. trading of human and/or human's body organs;
    - iv. terrorism; and/or
    - v. other contents as addressed under laws and regulations.
  - 2) Prohibited Content as mentioned in Roman Letter V Letter B, other than urgent Prohibited Content, is no later than 7 (seven) calendar days since the report was received by UGC Platform Provider;

- 3) Prohibited Content as mentioned in Roman Letter V Letter B point 1 letter e, is namely contents relating to goods and/or services containing contents which infringe intellectual property right, is no later than 14 (fourteen) calendar days since the complaint and/or report was received by UGC Platform Provider, as attached with necessary supporting evidence.
  - e. Perform active evaluation and/or monitoring of organizing activity of Merchant (*Pedagang*) on UGC platform.
  - f. Comply with other obligations as established based on provisions under laws and regulations.
2. Liabilities of UGC Platform Provider encompass:
    - a. Held liable for organization of electronic system and management of contents on the Platform in reliable, secure, and responsible manners.
    - b. Provision in letter (a) above does not prevail in case occurrence of error and/or negligence of merchant (*pedagang*) or Platform user may be proven.
- D. Obligations and Liabilities of Merchant (*Pedagang*):
1. Obligations of Merchant (*Pedagang*) encompass:
    - a. provide complete and veracious information relating to terms of contract and product of goods and/or services which is offered;
    - b. ascertain that all uploaded materials, including but not limited to sold goods and/or services, not in contradictory with laws and regulations;
    - c. ascertain that uploaded contents are not categorized as prohibited content as referred to in Roman Letter V Letter B;
    - d. perform obligation in accordance with terms and conditions of Platform Provider;

- e. Comply with other obligations as established based on provisions under laws and regulations.
2. Liabilities of Merchant (*Pedagang*):
- a. held liable for all uploaded contents or substances, in accordance with obligation as referred to [sic] in letter D point 1.
  - b. held liable for report or complaint on its uploaded content;
  - c. held liable in accordance with terms and conditions of Platform Provider.

## VI. Closing

- A. Platform Provider or electronic system provider and Merchant (*Pedagang*) of trading through electronic system (electronic commerce) in the forms of user generated content must enforce limitations and liabilities as addressed in this Circular.
- B. Minister of Communication and Informatics carries out the functions of governance, supervision, and control of Platform Provider or electronic system provider and Merchant (*Pedagang*) of trading through electronic system (electronic commerce) in the forms of user generated content in the course of performing administrative procedures as addressed in this Circular.

This Circular is established in reference to laws and regulations and general good Governance principles. This Circular is established to become an attention and to be performed properly.

Established in Jakarta

on 30 December 2016

MINISTER OF COMMUNICATION AND INFORMATICS OF  
THE REPUBLIC OF INDONESIA

signed.

RUDIANTARA

Copies:

1. Minister of Trade;
2. Minister of Law and Human Rights;
3. Secretary General, Ministry of Communication and Informatics;
4. Director General of Informatics Application, Ministry of Communication and Informatics

