

THE RISE OF SUPER APPS IN INDONESIA

30 August 2019 | Jakarta

Legal Briefings - By **David Dawborn, Vik Tang, Michelle Virgiany and Teguh Arwiko**

With its high internet penetration and being arguably the fastest growing market for smartphones in Southeast Asia, Indonesia has become a key market for e-commerce and other digital platforms in the region. While such platforms started by offering mainly consumer goods, they have begun to experiment with introducing a broader range of goods and services, whether by themselves or in collaboration with other businesses.

What we are seeing today is the rise of the “super app” – one application with multiple functions that allows users to perform a range of tasks, from ordering an *ojek* (motorbike taxi) or chatting with other users, to making payment for the purchase of mutual fund units. A similar trend began in China some years ago, but in Indonesia, even at this relatively early stage, several super apps are already competing aggressively for users in the market.

As the super apps expand their business and product offerings in new and innovative ways, certain regulatory issues need to be considered, some of which are set out below.

E-COMMERCE OR ONLINE MARKETPLACE (DIGITAL PLATFORM)?

In broad terms, limited liability companies in Indonesia with foreign shareholders (“**PMA Companies**”) fall under the purview of Indonesia’s Investment Law and the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “**BKPM**”). PMA Companies are only permitted to carry on business in accordance with their Standard Indonesian Business Classification (better known by the Indonesian acronym “**KBLI**”). The KBLI list should be read in conjunction with Indonesia’s negative investment list, which identifies specific business sectors that are either closed to foreign investment or partially open but with certain ownership restrictions or other conditions (“**NegativeList**”).

Online marketplaces (which fall under the broader regulatory category of digital platforms) and e-commerce (i.e. online retail trading) fall under two different KBLI codes, with differing requirements on, for example, their minimum required total investment and maximum foreign shareholding. The key factor distinguishing these two business activities, from a regulatory perspective, is whether the company owns the products being sold on its platform. One company may hold either or both of these business licenses.

WAREHOUSING AND DELIVERY/LOGISTICS

As their business grows, some of the digital platforms inevitably consider whether to expand into the warehousing or delivery/logistics business. Doing so would, among other things, better equip them to expand their presence to more parts of the country and to control the quality of the services provided to their customers. Similarly, warehousing and delivery activities fall under separate KBLI codes, each requiring a different business license with different conditions for the company to satisfy. For instance, in terms of shareholding, the foreign ownership limits permitted (in general) for warehousing and delivery services are 67 and 49 per cent, respectively. Online marketplaces unable to comply with those foreign ownership restrictions may therefore decide to enter into partnerships with third parties to provide these complimentary services.

IS ANY OJK OR BI LICENSE REQUIRED?

When planning their business expansion, market players will also need to consider whether the proposed products and services fall under the purview of other Indonesian regulators such as the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) or the central bank, Bank Indonesia (“**BI**”). Generally speaking, OJK supervises the financial services sectors such as banking, insurance, and peer-to-peer lending, while BI supervises certain payment services activities, such as e-money and QR code payments.

The proposed new activities will have to be considered carefully when assessing whether an additional license is required (or permissible for it) from OJK or BI. For example, a digital platform may offer insurance products without needing an insurance brokerage license provided that it partners with another entity holding the necessary license and that the arrangement between the two companies is correctly structured. As another example, online platforms may also partner with e-money license holders instead of applying for an e-money license themselves, and structure the payment mechanisms on the platforms accordingly.

In addition to a potential requirement for separate OJK or BI licenses, online platforms should also look out for other sector-specific regulations applicable to any of the products and services being offered. Some products are regulated by specific government agencies or authorities – for instance, drugs and tobacco products are regulated by the National Agency for Drug and Food Control (BPOM). Certain services are also specifically regulated, such as ride-hailing services and medical services (which are becoming more relevant as online platforms start to move into telemedicine).

DATA PROTECTION

One of the objectives of becoming a super app is to obtain access to the wealth of user data that can be collected, analysed and monetised. As in many other jurisdictions, data protection is a topic that regulators in Indonesia are becoming more focused on, especially with the imminent issuance of Indonesia's Data Protection Law and amendment of Government Regulation No. 82 of 2012 on Implementation of Electronic Systems and Transactions. The new regulatory framework should afford greater protection for customers' personal data and hopefully clarify existing grey regulatory areas, borrowing mainly from the EU's General Data Protection Regulation (GDPR).

The Ministry of Information and Communications is one of several government agencies now looking at data protection issues. OJK has also begun issuing more guidance on the types of data that peer-to-peer lending platforms can collect. As these platforms collect more data from customers (including from customer devices using scraping technology, among other things), and then use the data for broad-ranging purposes, data protection has become another key area for super apps to consider.

All said, whilst the regulatory framework in Indonesia for super apps is still somewhat piecemeal and not fully formed yet, the broad strokes of the potentially relevant issues are now fairly well understood. It remains a fast-evolving area, as the innovative services provided by these apps continue to push the boundaries of existing regulations and the implementation of policies by multiple regulators in Indonesia.

For more information on the legal issues that may affect your online business, please contact us.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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