REGULATION OF MINISTER OF COMMUNICATIONS AND INFORMATICS

REPUBLIC OF INDONESIA

NUMBER … OF …

ON

PROVISION OF OVER-THE-TOP APPLICATION AND/OR CONTENT SERVICE VIA THE INTERNET

THE GRACE OF GOD ALMIGHTY

MINISTER OF COMMUNICATIONS AND INFORMATICS

REPUBLIC OF INDONESIA,

Considering : a. that the development of telecommunications, media and internet technology that is becoming more convergent which results in various types of over-the-top application and/or content services provided by telecommunication operators, including operators outside of the territory of Republic of Indonesia;

 b. that in terms of providing services as intended in letter a needs regulation to create a business climate that would push economic growth, develop domestic creative industry in the global business climate, gives legal certainty, construct a healthy competition, and provide protection to consumers, as well as protect the sovereignty of Republic of Indonesia;

 c. that based on consideration as intended in letter a and letter b, shall stipulate Regulation of Minister of Communications and Informatics on Provision of Over-the-Top Application and/or Content Services Via the Internet;

In view of : 1. Law No. 36 of 1999 on Telecommunications (State Gazette of the Republic of Indonesia No. 1999, Additional State Gazette of Republic of Indonesia No. 3881);

 2. Law No. 11 of 2008 on Electronic Information and Transactions (State Gazette of the Republic of Indonesia Year 2008 No. 58, Additional State Gazette of Republic of Indonesia No. 4843) as amended with Law No. 19 of 2016 on Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (State Gazette of Republic of Indonesia Year 2016 No. 251, Additional State Gazette of Republic of Indonesia No. 5952);

 3. Law No. 39 of 2008 on Ministries (State Gazette of the Republic of Indonesia Year 2008 No. 166, Additional State Gazette of the Republic of Indonesia No. 4916);

 4. Government Regulation No. 52 of 2000 on Telecommunications Operation (State Gazette of the Republic of Indonesia Year 2000 No. 107, Additional State Gazette of the Republic of Indonesia No. 3980);

 5. Government Regulation No. 82 of 2012 Electronic System and Transactions Operation (State Gazette of the Republic of Indonesia Year 2012 No. 189, Additional State Gazette of the Republic of Indonesia No. 5348);

 6. President Regulation No. 7 of 2015 on Organization of Ministries;

 7. President Regulation No. 54 of 2015 on Ministry of Communications and Informatics;

 8. Regulation of Ministry of Communications and Informatics No. 1 of 2016 on Organization and Procedural of Ministry of Communications and Informatics;

DECIDES:

To stipulate : REGULATION OF MINISTER OF COMMUNICATIONS AND INFORMATICS ON PROVISION OF OVER-THE-TOP APPLICATION AND/OR CONTENT SERVICE VIA THE INTERNET

CHAPTER I

GENERAL PROVISION

Article 1

In this Ministerial Regulation what is referred to as:

1. Application Service via the Internet is the utilization of software which allows communication service in form of short messages, voice call, video call, electronic mail, and online conversation (chatting/instant messaging), as well as financial transactions service, commercial transactions, digital platform, data storage and mining, search engine, game, social networking and media, including their derivatives by utilizing internet access service through telecommunication network operator.
2. Content Service via the Internet is the provision of digital information in form of text, sound, image, animation, music, video, movie, game, or combination of some and/or all, including streaming or download by utilizing internet access service through telecommunication network operator.
3. Over-the-top Service, hereinafter stated as OTT Service, is Application Service via the Internet and/or Content Service via the Internet.
4. Provision of OTT Service is the utilization of OTT Service by Individual, Business Entity, and/or Public Institution.
5. OTT Service Provider is the party which provides, manage, and/or operate OTT Service by themselves or collectively to user of Over-the-Top for self-purpose and/or purpose of others.
6. Foreign OTT Service Provider is non-Indonesian individual or society or business entity that was not established and located in Indonesia or Public Institution other than Indonesian Public Institution who provides, manage, and/or operate OTT Service by themselves or collectively to user of OTT Service for self-purpose and/or purpose of others.
7. Information Call Center is information call center service provided by OTT Service Provider as a facility to provide questions and complaints from user and at the very least is able to be contacted through complaint electronic mail and user service website.
8. Intellectual Property Right is copyright, trademark, patent right, and industrial design.
9. Bandwidth Management is the guaranteed process conducted by Telecommunication Operator to manage internet traffic which includes service traffic quota, priority access for certain service on certain time, and/or other traffic engineering.
10. OTT Service Blockade, hereinafter stated as Blockade, is an action done to make OTT Service inaccessible.
11. Normalization is a process of action done to remove certain OTT Service from Blockade.
12. Public Institution is executive, legislative, and judicative institution, other entity whose core function and duty relates to state organization, which part or all budget comes from State Budget and/or Regional Budget or Non-Governmental Organization, which part or all budget comes from State Budget/Regional Budget, people donation and/or foreign aid.
13. Ministry/Institution/Regional Work Unit/other Institution, hereinafter stated as K/L/D/I is instance/institution that uses State Budget and/or Regional Budget.
14. Minister is minister who organizes government matters in communications and informatics.
15. Director General is Director General whose duty and function is in telecommunication operation.
16. Individual is an Indonesian individual or group of individuals.

Article 2

This Ministerial Regulation is intended to:

1. protects interest of the public, telecommunication operator, and national interest;
2. encourages growth of public’s economic capabilities, realize telecommunication even distribution, and strengthen nation’s competition as well as State sovereignty;
3. encourages equality in healthy business competition as well as gives legal certainty; and
4. ive protection to people, User and/or OTT Service User, which includes rights of privacy, accuracy, and charging fee transparency, as well as other rights is regulated in regulation.

CHAPTER II

PROVISION OF OTT SERVICE

Part One

Provider

Article 3

1. OTT Service Provider comprises of:
	1. Individual;
	2. business entity which is established or located in Indonesia; and
	3. Public Institution
2. Aside from OTT Service Provider as intended in paragraph (1), OTT Service may be provided by Foreign OTT Service Provider.
3. Foreign OTT Service Provider as intended in paragraph (2) shall be in the form of:
	1. fixed place which is owned, rented, or controlled by Foreign OTT Service Provider or other party in Indonesia permanently, which is utilized by Foreign OTT Service Provider; or
	2. presence of Foreign OTT Service Provider employees or other party in Indonesia permanently, who acts for and on behalf of Foreign OTT Service Provider.
4. OTT Service Provider as intended in paragraph (1) and paragraph (2) that conducts business or activities as well as receiving or gaining income from OTT Service utilization in Indonesia in form of:
	1. Sales and marketing of OTT Service;
	2. Advertisement on OTT Service;
	3. Data mining on OTT Service users; and/or
	4. Electronic Transactions through OTT Service.
5. OTT Service Provider as intended in paragraph (4) shall be responsible on the provided service.

Part Two

Registration

Article 4

1. OTT Service Provider as intended in Article 3 paragraph (4) shall register before providing OTT service in Indonesia.
2. Registration as intended in paragraph (1) is addressed to the Minister by attaching documents related to business form and activities.
3. The documents that shall be attached as intended in paragraph (2) by Individual and Public Institution who acts as OTT Service Provider as intended in Article 3 paragraph (1) letter a and letter c, at least in form of:
	1. copy of Tax Identification Number (NPWP);
	2. types of provided OTT Service; and
	3. information call center.
4. The documents that shall be attached as intended in paragraph (2) by business entity who acts as OTT Service Provider as intended in Article 3 paragraph (1) letter b, at least in form of:
	1. copy of Tax Identification Number (NPWP);
	2. for foreign investment shall enclose Principle License or Permanent Business License from the Investment Coordinating Board (BKPM);
	3. types of provided OTT Service; and
	4. information call center.
5. The documents that shall be attached as intended in paragraph (2) by Foreign OTT Service who acts as OTT Service Provider, at least in form of:
	1. model of Foreign OTT Service as intended in Article 4 paragraph (3), along with supporting documents and copy of appointment letter as agent or representative of Foreign OTT Service Provider;
	2. copy of Tax Identification Number (NPWP) of agent or representative of OTT Service Provider as intended in letter a;
	3. types of provided OTT Service; and
	4. information call center.

Part Three

Obligations of OTT Service Provider

Paragraph 1

General

Article 5

1. OTT Service Provider shall:
	1. complies to rule of regulation in:
		1. prohibition of monopoly practice and unhealthy business competition;
		2. trade;
		3. consumers protection;
		4. intellectual property right;
		5. broadcasting;
		6. film;
		7. advertisement;
		8. anti-pornography;
		9. anti-terrorism;
		10. tax;
		11. transportation and logistics;
		12. tourism and hospitality;
		13. finance;
		14. health; and/or
		15. other rule of regulations.
	2. conducts data protection and data privacy;
	3. conducts content filtering and censor mechanism;
	4. utilizes national payment gateway, particularly for paid OTT Service;
	5. guarantees access for lawful information interception and evidence collection for investigation or inquiry needs for criminal case by law enforcement;
	6. lists information and/or guidance of service in Bahasa Indonesia; and
	7. gives statement letter/information/data in Provision of OTT Service upon request from the Minister.
2. Obligations as intended in paragraph (1) letter b through letter f shall follow rules of regulation.

Article 6

In the matter of service indirectly provided by OTT Service Provider, OTT Service Provider shall inform and socialize matters related to content obligations as intended in Article 5 paragraph (1) to partner or direct OTT Service Provider.

Article 7

In conducting business or activities in Indonesia, OTT Service Provider shall conducts following activities:

1. closing contract, sales or service handover, and billing, related to Foreign OTT Service Provider that does charging fee;
2. owns bank account as means of holding for the sales or service delivery proceeds at bank in Indonesia; and
3. provides internal legal service, part-sales service, and information call center.

Paragraph 2

Information Call Center

Article 8

1. OTT Service Provider shall provide information call center.
2. Information call center as intended in paragraph (1) shall has a facility to assist questions and complaint from user.
3. Each question and/or complaint from user as intended in paragraph (2) shall be responded within 2 X 24 hours after question and/or complaint is received.

Paragraph 3

Data Storage

Article 9

1. OTT Service Provider shall keep transaction records data and traffic of OTT Service for the last 3 (three) months.
2. In the matter of law enforcement request for trial process in accordance to rule of regulation, OTT Service Provider shall keep records data that is directly relevant to the request until trial process is ended and/or court decision has permanent legal power.

Part Four

Cooperation on Provision of OTT Service

Article 10

1. OTT Service Provider as intended in Article 3 paragraph (1) and paragraph (2) may cooperate with Telecommunication Operator in organizing provision of OTT Service in Indonesia.
2. Foreign OTT Service Provider may cooperate with Telecommunication Operator after Foreign OTT Service Provider fulfill the requirements as intended in Article 3 paragraph (3).
3. Cooperation as intended in paragraph (1) and paragraph (2) shall be set forth in a written agreement and reported to the Minister within 30 (thirty) calendar days since said agreement is signed.
4. Cooperation agreement as intended in paragraph (3) at least states:
	1. scope of cooperation;
	2. rights and obligations of the parties;
	3. responsibility limit of parties to User and/or Customer;
	4. provided type and services;
	5. business scheme;
	6. tariff structure;
	7. service level agreement; and
	8. other regulations in accordance to the rule of regulation.

CHAPTER III

COMPENSATION

Article 11

1. User is entitled for compensation from OTT Service Provider on failure and/or negligence by OTT Service Provider which causes losses on User.
2. Compensation as intended in paragraph (1) is limited to direct losses suffered by User on failure and/or negligence by OTT Service Provider.

CHAPTER IV

CONTROL

Article 12

1. Control of the Minister Regulation is conducted by Minister.
2. Minister organizes mediation for dispute related to charging fee, regulation compliant, and/or OTT Service based on the request of parties.

Article 13

1. OTT Service Provider shall deliver report to the Minister periodically every year.
2. Report as intended in paragraph (1) at least includes:
	1. number of Users in Indonesia; and/or
	2. traffic statistics of service accessed by User in Indonesia.
3. Further provision on reporting format as intended in paragraph (1) is regulated by the Minister.

CHAPTER V

NATIONAL FORUM ON OTT SERVICE POLICY

Article 14

1. Minister may establish National Forum on OTT Service Policy to assist the Minister in policy making related to provision of OTT Service in Indonesia.
2. The Forum as intended in paragraph (1) comprises of:
	1. government representative;
	2. public representative.
3. Public representative as intended in paragraph (2) letter b may be represented by Practitioner, Scholars, and/or Association.
4. Membership of National Forum on OTT Service Policy as intended in paragraph (2) comprises of:
	1. Board of Advisors;
	2. Head of Forum; and
	3. Member.
5. Board of Advisors of National Forum on OTT Service Policy as intended in paragraph (4) letter a comprises of K/L/D/I representative with scope of responsibilities and functions but not limited to in:
	1. monitoring on monopoly practice and unhealthy business competition;
	2. trade;
	3. consumers protection;
	4. intellectual property right;
	5. broadcasting;
	6. film;
	7. advertisement;
	8. anti-pornography;
	9. anti-terrorism;
	10. tax;
	11. transportation and logistics;
	12. tourism and hospitality;
	13. finance;
	14. health; and/or
	15. communications and informatics.
6. Head of National Forum on OTT Service Policy as intended in paragraph (4) letter b is Director General who doubles as member.
7. Member of National Forum on OTT Service Policy is represented from:
	1. Government, in this matter is Ministry of Communications and Informatics amounted to 1 (one) person;
	2. Practitioner amounted to 2 (two) persons;
	3. Scholars amounted to 2 (two) persons;
	4. Association of Telecommunication Operators in Indonesia (ATSI) amounted to 1 (one) person;
	5. Association of Internet Service Operators in Indonesia (APJII) amounted to 1 (one) person;
	6. Indonesian Consumers Foundation (YLKI) amounted to 1 (one) person.
8. Board of Advisors and Member of National Forum on OTT Service Policy as intended in paragraph (4) are appointed for 3 (three) years tenure and may be reappointed for 1 (one) more period.
9. Tenure as intended in paragraph (7) ends on the appointment of new Board of Advisors and Member of National Forum on OTT Service Policy.
10. Director General suggests on appointment and/or dismissal of Member of National Forum on OTT Service Policy as intended in paragraph (4) to the Minister.
11. Minister decides on appointment and/or dismissal of Member of National Forum on OTT Service Policy based on suggestion from Director General as intended in paragraph (9).

Article 15

1. National Forum on OTT Service Policy has following duties:
	1. assists researches related to the direction of policies on OTT Service in Indonesia;
	2. assists in formulation of general regulation on OTT Service;
	3. assists in monitoring of implementation for obligations of the OTT Service Provider;
	4. follows up complaints related to implementation of OTT Service’s policy;
	5. organizes mediation for conflict resolution between OTT Service Provider with Telecommunication Operator and OTT Service User as intended in Article 12 paragraph (2);
	6. represents Indonesia in forums or international institution/organization related to OTT Service’s policy;
	7. organizes socialization and education related to OTT Service’s policy;
	8. gives recommendation to the Minister related to sanctions on violation of OTT Service’s policy; and
	9. delivers report to the Minister at least 1 (one) time within 1 (one) year or at any time requested by the Minister.
2. National Forum on OTT Service Policy in conducting its duties as intended in paragraph (1) is assisted by Secretariat.
3. Secretariat as intended in paragraph (2) is stipulated by Minister’s Decree.

Article 16

1. National Forum on OTT Service Policy organizes checks on alleged violation on Provision of OTT Service based on:
	1. monitoring on OTT Service implementation by National Forum on OTT Service Policy; or
	2. complaints by Telecommunication Operator and/or Government.
2. National Forum on OTT Service Policy shall follow up the complaint as intended in paragraph (1) letter b within 14 (fourteen) working days.
3. In the matter of proven violation on Provision of OTT Service, National Forum on OTT Service Policy gives recommendation to the Minister on sanctions in Bandwidth Management.

Article 17

1. Each recommendations-making by National Forum on OTT Service Policy is conducted through plenary meeting.
2. In the matter of inability to reach consensus on recommendations-making, decision is taken upon most votes through voting.
3. Each Member of the National Forum on OTT Service Policy as intended in Article 14 paragraph (7) has 1 (one) voting right.
4. Agreed recommendation as intended in paragraph (1) is decided by Head of National Forum on OTT Service Policy to be delivered to the Minister.

CHAPTER VI

SANCTIONS

Article 18

1. OTT Service Provider who violated provisions as intended in Article 3 paragraph (3), Article 4 paragraph (1), Article 7, Article 8, and Article 9 shall be given sanction in the form of Bandwidth Management.
2. Sanction as intended in paragraph (1) is given by the Minister based on recommendation as intended in Article 16 paragraph (3).
3. Minister stipulates Minister’s Decree on Imposition of Bandwidth Management Sanction to be proceeded by Telecommunication Operator.
4. Minister’s Decree as intended in paragraph (3) comprises of at least:
	1. name of OTT Service Provider;
	2. type of violation;
	3. type of OTT Service imposed with Bandwidth Management sanction; and
	4. mechanism of imposition of Bandwidth Management sanction on OTT Service Provider.
5. Telecommunication Operator shall impose sanction on OTT Service Provider in form of Bandwidth Management as intended in paragraph (3) within 14 (fourteen) calendar days since the decision date of decision letter as well as gives notification of Bandwidth Management implementation to the Minister.
6. In the matter of Telecommunication Operator unable to implement Bandwidth Management accordingly to the Minister’s Decree, the Telecommunication Operator shall be impugned with sanction.
7. OTT Service Provider may submit written objections addressed to the Minister on imposition of Bandwidth Management sanction within 7 (seven) calendar days since Minister’s Decree on Imposition of Bandwidth Management Sanction is set, proven by receipt of letter delivery.
8. Written objection as intended in paragraph (7) is addressed accordingly to its type of violation with enclosing supporting documents.
9. Written objections as intended in paragraph (7) is verified by National Forum on OTT Service Policy within 7 (seven) calendar days since the written objection is received proven by receipt of letter delivery.
10. Based on verification result as intended in paragraph (9), National Forum on OTT Service Policy gives recommendation to the Minister to accept or dismiss written objection delivered by OTT Service Provider.
11. In the matter of acceptance of written objection by the Minister, OTT Service Provider shall be released from imposition of Bandwidth Management sanction and normalization is organized on OTT Service.
12. In the matter of dismissal of written objection by the Minister, OTT Service Provider shall be imposed with Bandwidth Management sanction as intended in paragraph (3) and paragraph (4).
13. Dismissal of objection by the Minister as intended in paragraph (12) is final and binding.
14. National Forum on OTT Service Policy conducts evaluation on compliance of OTT Service Provider after Bandwidth Management sanction is imposed for 14 (fourteen) calendar days.
15. In the matter of OTT Service Provider still unable to fulfill the requirement as intended in paragraph (1), National Forum on OTT Service Policy may give recommendation of sanction extension and additional Bandwidth Management size to be stipulated by the Minister.
16. Recommendation of sanction extension and additional Bandwidth Management size as intended in paragraph (15) is proceeded with evaluation process as intended in paragraph (14).
17. In the matter of OTT Service Provider has received Minister’s Decree 3 (three) times on sanction extension and additional Bandwidth Management size, blocking of OTT Service shall be proceeded as stipulated in Minister’s Decree.
18. In the matter of OTT Service Provider has fulfilled the requirements as intended in paragraph (1), National Forum on OTT Service Policy shall give recommendation of revocation of Bandwidth Management sanction to be stipulated by the Minister.
19. Minister stipulates Minister’s Decree on Revocation of Bandwidth Management Sanction and Normalization of Provision of OTT Service to be proceeded by Telecommunication Operator.

Article 19

Violation on provision as intended in Article 5 and Article 6 shall be given sanction to OTT Service Provider accordingly to the rules of regulation.

Article 20

Violation on provision as intended in Article 10 paragraph (2), Article 10 paragraph (3), and Article 18 paragraph (6) shall be given administrative sanction to Telecommunication Operator accordingly to the rules of regulation.

CHAPTER VII

TRANSITIONAL PROVISION

Article 21

OTT Service Provider shall adapt to the provisions in this Ministerial Regulation within 1 (one) year since this Ministerial Regulation comes into effect.

CHAPTER VIII

CLOSING PROVISION

Article 22

This Ministerial Regulation comes into effect since the legislation date.

For public cognizance, ordering the legislation of this Ministerial Regulation by placing it in the State Gazette of the Republic of Indonesia.