

Electronic Evidence Fiche: INDONESIA

1) DEFINITIONS

Indonesia
What are the definitions in your laws/regulations, if any, of:
Electronic evidence
<p>There is no definition of the exact terms "electronic evidence". However, according to article 1.1 of Law 11/2008 concerning electronic information and transactions, electronic information means "one cluster or clusters of electronic data, including but not limited to writings, sounds, images, maps, drafts, photographs, electronic data interchange (EDI), electronic mails, telegrams, telex, telecopy or the like, letters, signs, figures, Access Codes, symbols or perforations that have been processed for meaning or understandable to persons qualified to understand them." Article 1.4 of the same law defines "electronic record" as "any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical form, or the like, visible, displayable and/or audible via computers or electronic systems, including but not limited to writings, sounds, images, maps, drafts, photographs or the like, letters, signs, figures, Access Codes, symbols or perforations having certain meaning or definition or understandable to persons qualified to understand them."</p>
Computer system
<p>Article 1.5 and article 1.14 of Law 11/2008 concerning electronic information and transactions provide the following definitions:</p> <p>"Electronic System" means "a set of electronic devices and procedures that functions to prepare, collect, process, analyse, store, display, announce, send, and/or disseminate electronic information".</p> <p>"Computer" means "an electronic, magnetic, optical data processing device, or a system that performs logic, arithmetic, and storage functions".</p>
Computer data
See above the definition of "electronic information".

Categories of computer data (e.g. basic subscriber information, traffic data and content data)

The law does not provide specific definitions for different categories of computer data.

Electronic surveillance or real-time collection of computer/communication data

The interception of communications is possible to investigate some criminal acts in Indonesia if it is conducted by an authorized person/agency and upon request of the Attorney General and/or the Head of the Indonesian Police Force. The legal provisions related to interceptions are scattered in several laws and regulations, such as the Law No. 8 of 1981 on the Code of Criminal Procedure, the Law No. 11 of 2008 on Electronic Information and Transactions, the Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes, the Law No. 8 of 2010 on the Countermeasure and Eradication of Money Laundering, the Law No. 5 of 2018 on the Eradication of Terrorism, the Regulation no. 8 of 2014 of the Ministry of Communication and Informatics on Technical Requirements for Lawful Tapping Tools and Equipment for Internet Protocol Based Information on Implementation of Cellular Mobile Network and Wireless Local Fixed Network with Limited Mobility, etc.

Service provider (e.g. ISP, hosting)

Based on Article 1 (6a) of the Law No. 19 of 2016 that amends Law No. 11 of 2008 on Electronic Information and Transactions, an Electronic System Provider is any person, state administrator, business entity and society that provides, manages and/or operates electronic systems, either individually or jointly, to users of electronic systems for their own needs and/or the needs of other parties.

The Minister of Communication and Informatics Regulation No. 5 of 2020 on Private Electronic System Operators (ESOs) provides more details on Private ESOs, defined as persons, business entities or communities that operate an electronic system. Private ESOs include:

- ESOs that are supervised by ministers or institutions in accordance with laws and regulations.
- ESOs that have an online portal, site or application through internet to:
 - provide, manage, and/or operate offer and/or trade of goods and/or services
 - provide, manage and/or operate financial transaction services
 - deliver paid digital material or content through a data network, either by way of downloading from a portal/site or by email delivery, or through another application to the user's device

- provide, manage, and/or operate communication services in the form of short messages, voice calls, video calls, electronic mail, and online chat in the form of digital platform, networking and social media services
- manage a search engine, provide electronic information in the form of text, sound, picture, animation, music, video, movie and games or a combination of any and/or all of them
- process personal data for operational activity serving society in relation to electronic transactions

The Regulation also defines cloud computing operators as private ESOs that provide, conduct, manage and/or operate cloud computing services.

Moreover, according to article 1 of the Regulation of the Minister of Communication and Informatics No.1 of 2021 (Second Amendment to the Regulation of the Minister of Communication and Informatics No. 13 of 2019 concerning Telecommunication Service Providers), “Telecommunications Network Providers” mean state-owned enterprises, regional government-owned enterprises, private enterprises, or cooperatives that obtain a Telecommunications Network Operations License.

2) DATA RETENTION REGIME

Indonesia

Do you have any domestic laws that stipulate a mandatory retention period of electronic data? If so, for what types of data and for how long?

According to article 2(1) of the National Archives of the Republic of Indonesia Regulation No. 6 of 2021 concerning Electronic Archive Management, electronic archives include official archives, archives generated from business information systems, archives that are in a networked environment or web-based and electronic messages from communication systems. The retention period of electronic data is determined based on the Archive Retention Schedule (Jadwal Retensi Arsip - JRA). According to article 1.17 of the Regulation of the Government of the Republic of Indonesia No. 28 of 2012 on the implementation of law No. 43 of 2009 on records and archives administration, “Records Retention Schedule, hereinafter abbreviated to JRA, is a list which contains at least the retention period, types of records, and information about the consideration on the determination of the type of records to be destroyed, re-assessed, or made permanent for use as a guideline in the reduction and recovery of records”.

3) ADMISSIBILITY OF ELECTRONIC EVIDENCE IN A CRIMINAL TRIAL

Indonesia

What is the requirement under your domestic law for electronic evidence to be admissible in a criminal trial?

The admissibility of electronic evidence has been regulated in Articles 5 and 6 of the Law of the Republic of Indonesia No. 11 of 2008 concerning Electronic Information and Transactions. In short, the requirements are legality, authenticity, integrity and relevance.

Article 5:

“(1) Electronic Information and/or Electronic Records and/or the printouts thereof shall be lawful means of proof.

(2) Electronic Information and/or Electronic Records and/or the printouts thereof as intended by section (1) shall be the expansion of lawful means of proof in accordance with the Law of Procedure applicable in Indonesia.

(3) Electronic Information and/or Electronic Records shall be declared to be lawful if using Electronic Systems in accordance with provisions as governed by this Law.

(4) Provisions on Electronic Information and/or Electronic Records as intended by section (1) shall not apply to:

a. certificates that under Laws must be made in writing form (shall include but not limited to negotiable instruments, valuable documents, and documents used in the process of law enforcement of civil procedure, criminal procedure, and state administration); and

b. certificates together with their papers that under Laws must be made in notarial deed or deed made by land conveyancers”

Article 6:

“Where other provisions are in place other than those regulated in Article 5 section (4) requiring that information must be in writing or original form, Electronic Information and/or Electronic Records shall be deemed to be lawful to the extent information contained therein is accessible, displayable, assured as to its integrity, and accountable in order to be explanatory.”

4) RECEIVING REQUESTS FOR ELECTRONIC EVIDENCE FROM OTHER STATES

4.1. Direct requests from foreign authorities to service providers

4.1.1. Requests for preservation

Indonesia
What legal framework(s) is/are applicable, if any?
The law does not allow foreign authorities to make any direct request to service providers in Indonesia. Data can only be obtained through police-to-police cooperation or mutual legal assistance (MLA).
Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?
See above
If they are prohibited or if there are limitations, are there any alternative options to preserve the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?
Data can only be obtained through police-to-police cooperation (including 24/7 Network) or MLA.
Is a judicial order required from the requesting state?
Yes
Are there any time limits for data preservation? Any possibility of extension?
There are no specific provisions. However, the retention period of electronic data is determined based on the Archive Retention Schedule (see above).
Would service providers in your country notify the data subjects of the request?
No. Pursuant to Article 15 (1) b of Law No. 27 of 2022 concerning the Protection of Personal Data, the rights of the Personal Data Subject as referred to in Article 8,

Article 9, Article 10 paragraph (1), Article 11, and Article 13 paragraph (1) and paragraph (2) are exempted for the interests of the law enforcement process.

4.1.2. Requests for voluntary disclosure

Indonesia

What legal framework(s) is/are applicable, if any?

The law does not allow foreign authorities to make any direct request to service providers in Indonesia. Data can only be obtained through police-to-police cooperation or mutual legal assistance (MLA).

Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?

See above.

If they are prohibited or if there are limitations, are there any alternative options to obtain the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?

Data can only be obtained through police-to-police cooperation (including 24/7 Network) or MLA.

Is a judicial order required from the requesting state? Are there any time limits?

Yes

Would service providers in your country notify the data subjects of the request?

No. Pursuant to Article 15 (1) b of Law No. 27 of 2022 concerning the Protection of Personal Data, the rights of the Personal Data Subject as referred to in Article 8, Article 9, Article 10 paragraph (1), Article 11, and Article 13 paragraph (1) and paragraph (2) are exempted for the interests of the law enforcement process.

How can the process be simplified or quickened in emergency situations?

Previous communication through informal means of cooperation (e.g., police-to-police cooperation and 24/7 Network) is desirable.

4.2. Requests received by your central authority for Mutual Legal Assistance (MLA)

Indonesia

How do you execute MLA requests for electronic evidence stored by domestic service providers (e.g. through a domestic court order or a search warrant)?

The Law of the Republic of Indonesia No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters regulates the assistance for conducting search and seizure of goods, articles or assets:

Article 41:

“(1) Requesting States may submit the request for Assistance to the Minister for conducting search warrant and seizure of goods, articles or assets existing in Indonesia based on warrant and/or court stipulation for the purpose of investigation or examination before the court.

(2) In addition to the obligation to meet requirements as referred to in Article 28, the request as intended in paragraph (1) must also enclose the search and seizure warrants issued by competent officials in the Requesting States.

(3) If the request has met requirements stipulated herein, the Minister may forward the same to the Kapolri (*Indonesian National Police*) for the purpose of investigation or the Attorney General for the purpose of prosecution before the court of law in the Requesting states.

(4) For implementing the request for Assistance as referred to in paragraph (3), the Kapolri (*Indonesian National Police*) or Attorney General shall apply for search and seizure warrants to the Head of the Local District Court.”

Article 42:

“The Head of the Local District Court may issue search and seizure warrants with respect to the object if it is believed that in or at a certain place there are goods, articles or assets that are:

- a. allegedly obtained from or the proceeds of crime under the law of the Requesting State that have been or allegedly have been committed;
- b. used to commit or prepare such crime;
- c. particularly designed or allocated to commit such crime;
- d. related to such crime;
- e. that is believed to be evidence in such crime; or

f. that was used to hamper the investigation, prosecution and examination before the court of such crime”

Article 47:

“In the event that the Requesting State asks that goods, objects, assets or evidence of seizure of goods, objects or assets be sent to the Requesting State for the purpose of criminal proceeding and the Minister considers that such request can be granted and there is a guarantee that the Requesting State will return the aforementioned goods, objects or assets, the Minister shall send goods, objects or assets to the Requesting State.”

In addition, article 43 (3) of the Law of the Republic of Indonesia No. 11 of 2008 concerning Electronic Information and Transactions states that searches and/or seizures of electronic systems suspiciously involved in criminal acts must be carried out with the permission of the local chief justice of the district court.

Can you provide assistance in real-time collection of non-content and/or content data (e.g. through electronic surveillance) upon the receipt of a MLA request? If yes, are there any limitations or conditions (e.g. limited to certain crime types or penalties thresholds)?

Yes, but there may be constraints related to data availability.
As mentioned above, there is no single law that regulates interceptions, but several depending on the object of the investigation (e.g., corruption, terrorism, narcotics) or the technical requirements.

What are the central and competent authorities in your country to:

- a) Receive a request for MLA in criminal matters?**
- b) Execute/recognize the measure (if other than the receiving authority)?**

1. The Central Authority for mutual legal assistance in Indonesia is the Ministry of Law and Human Rights (article 1.10 of the Law of the Republic of Indonesia No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters). According to article 27 (2), the foreign state may convey the request for assistance directly or through a diplomatic channel.
2. According to article 29 (1) of the Law of the Republic of Indonesia No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters, in the event that the request for Assistance has met requirements as referred to in Article 28, the Minister shall notify Kapolri (*Indonesian National Police*) or the Attorney General’s Office to execute it.

What are the accepted languages for MLA requests?

Article 28 (4) of the Law of the Republic of Indonesia No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters states that “a conveyance of the request for assistance, information or other communications drawn up hereunder may be drawn up in the language of the Requesting State and/or in English and the Indonesian translation thereof shall be made.”

Can the request be submitted electronically to the central authority?

Yes, but original documents also have to be transmitted directly or through the diplomatic channel.

Can the request be submitted directly to the central authority?

Yes. According to article 27 (2) of the Law of the Republic of Indonesia No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters, the foreign state may convey the request for assistance directly or through a diplomatic channel.

What are the specific requirements (e.g. dual criminality, minimum penalty thresholds, etc.) that the requesting states have to meet under your domestic laws for MLA requests seeking for the provision of electronic evidence?

There are no specific requirements for mutual legal assistance requests seeking to obtain electronic evidence. Article 28 of the Law of the Republic of Indonesia No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters provides the general requirements that any MLA request must meet.

MLA requests must include the following:

- a. the purpose of the request and a description of the requested assistance;
- b. the name of the agency and official conducting the investigation, prosecution or examination before the court related with the request;
- c. description of the crime, case settlement phase, statutory provisions, content of articles and penalties imposed;
- d. description of the act or condition being alleged as criminal, except in the case of a request for assistance for conducting service of process;
- e. relevant judgment and information that such judgment has permanent legal force in the event of a request for assistance to execute a judgment;
- f. details of specific procedures or requirements desired to be complied with, including information concerning whether or not legal means of proof required are to be made under oath or pledge;
- g. requirement, if any, concerning confidentiality and the reason thereof; and
- h. the desired time limit for carrying out the said request.

If possible, MLA requests must also contain:

- a. identity, citizenship, and domicile of the person deemed able to provide statement or depositions related with the investigation, prosecution and examination before the court;
- b. a description concerning the requested statement or deposition;
- c. a description concerning the required documents or other legal means of proof articles to be submitted, including a description concerning the person deemed able to provide such evidence; and
- d. information concerning expenses and accommodations required from the person requested to be present in the said foreign State.

In addition, article 6 of the law sets the general grounds for refusal of execution of mutual legal assistance requests as follows:

- a. the request for assistance relates to the investigation, prosecution or examination before the court or punishment of a person for the crime that is alleged:
 1. to have committed a crime of political nature, except a crime or attempted crime against the life or person of a Head of State/a Head of Central Government, terrorism; or
 2. to have committed a crime under military law;
- b. the request for Assistance relates to the investigation, prosecution and examination before the court of a person for a crime the perpetrator of which has been acquitted, awarded with clemency, or has completed serving the criminal sanction;
- c. the request for assistance relates to the investigation, prosecution and examination before the court of a person for a crime which, if it is committed in Indonesia, cannot be prosecuted;
- d. the request for assistance is conveyed for prosecuting or bringing a person into justice based on a person's race, gender, religion, nationality, or political belief;
- e. an approval for providing the assistance upon its request will be harmful to the sovereignty, security, interests, and national law;
- f. the foreign state may not assure that the items requested for will not be used for a matter other than the criminal matter in respect to which the request was made; or
- g. the foreign state may not assure to return, upon its request, any item obtained pursuant to the request.

Other potential reasons for refusal are, according to article 7:

- a. the request for assistance relates to the investigation, prosecution, and examination before the court or punishment of a person for a crime that if the said crime is committed within the territory of the Republic of Indonesia, is not a crime;
- b. the request for assistance relates to the investigation, prosecution, and examination before the court or punishment of a person for a crime that if the said crime committed outside the territory of the Republic of Indonesia, is not a crime;

- c. the request for assistance relates to the investigation, prosecution and examination before the court or punishment of a person for a crime that is subject to capital punishment; or
- d. an approval for providing assistance upon the said request will be harmful for the investigation, prosecution and examination before the court in Indonesia, endanger the safety of person, or burden the assets of the state.

5) REQUESTING ELECTRONIC EVIDENCE ACROSS BORDERS

5.1. Direct requests to foreign service providers

5.1.1. Requests for preservation

Indonesia
What legal framework(s) is/are applicable, if any?
There is no legal framework for preservation.
Which authority(ies) in your country is/are allowed to request data preservation to foreign service providers?
As a rule, for transmitting a request for general judicial assistance, the Minister of Law and Human Rights may convey the request to foreign States directly or through diplomatic channels, based on an inquiry from Kapolri (<i>National Indonesian Police</i>) or the Attorney General. With respect to corruption crimes, the request for assistance to the Minister may be submitted by the Chairman of the Commission for the Eradication of Corruption, in addition to the Kapolri (<i>National Indonesian Police</i>) and the Attorney General. The general provisions are in article 9 of the Law of the Republic of Indonesia No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters.
If the requested foreign service providers are prohibited or limited to preserve the data, are there any alternative options to preserve the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?
Informal cooperation (police-to-police) or MLA.
Can a court order or a search warrant be issued for data preservation by foreign service providers? If not, what are the reasons?
Yes

5.1.2. Requests for voluntary disclosure

Indonesia
What legal framework(s) is/are applicable, if any?
There is no legal framework for voluntary disclosure.
Which authority(ies) in your country is/are allowed to request data disclosure to foreign service providers?
As a rule, for transmitting a request for general judicial assistance, the Minister of Law and Human Rights may convey the request to foreign States directly or through diplomatic channels, based on an inquiry from Kapolri (<i>National Indonesian Police</i>) or the Attorney General. With respect to corruption crimes, the request for assistance to the Minister may be submitted by the Chairman of the Commission for the Eradication of Corruption, in addition to the Kapolri (<i>National Indonesian Police</i>) and the Attorney General. The general provisions are in article 9 of the Law of the Republic of Indonesia No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters.
If the requested foreign service providers are prohibited or limited to voluntarily disclose the data, are there any alternative options to obtain the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?
Informal cooperation (police-to-police) or MLA.
Can a court order or a search warrant be issued for data disclosure by foreign service providers? If not, what are the reasons?
Yes.

5.2. Requests sent by your central authority for **Mutual Legal Assistance (MLA)**

Indonesia
What is your central authority to send requests for MLA in criminal matters?
The Ministry of Law and Human Rights

Are informal contacts with the central authority of the requested states allowed and used?

Previous communication (before sending a mutual assistance request) through informal means of cooperation is possible.