

New Financial Sector Omnibus Law: Financing Service Businesses

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The Indonesian government recently introduced a new omnibus law to regulate the financial sector. Law No. 4 of 2023 on Financial Sector Development and Reinforcement (Pengembangan dan Penguatan Sektor Keuangan – “P2SK Law”) was enacted on 12 January 2023. It amends 17 laws in the financial sector, including the Banking Law, Capital Market Law, Futures Trading Law, Sovereign Debt Instruments Law, Insurance Law, and Currency Law, as well as the laws on Bank Indonesia and the Financial Services Authority. The P2SK Law also regulates some ‘new’ financial products such as bullion, trust arrangements, digital assets, and a digital Rupiah.

This Advisory focuses on the P2SK Law’s Chapter X on Financing Service Businesses (*Usaha Jasa Pembiayaan*) – a term that covers a range of entities involved in the provision of financing services, including peer-to-peer lending services.

The P2SK Law defines a Financing Service Business as the activity of providing funds or equivalent receivables (*tagihan*) based on an agreement or arrangement between a financing service provider and the recipient of the financing, where the recipient is required to repay the funds or receivables after a certain period with interest, compensation, profit-sharing, and/or other additional repayments, with or without collateral.

The regulation of Financing Service Businesses is not new in Indonesia. Before the issuance of the P2SK Law, Financing Service Businesses were mainly regulated under the Financial Services Authority (“OJK”) Regulation No. 47/POJK.05/2020 on Business and Institutional Licensing of Finance Companies and Sharia Finance Companies, OJK Regulation No. 10/POJK.05/2022 on Information Technology-Based Co-Funding Services, and OJK

Regulation No. 31/POJK.05/2016 on Pawnshop Businesses. The P2SK Law states that the provisions of these existing regulations remain applicable as long as they do not contravene the provisions of the P2SK Law.

According to the transition provisions of the P2SK Law, existing Financing Service Business entities that obtained a business license prior to the enactment of the P2SK Law will be deemed to have obtained their license in line with the P2SK Law. However, these existing entities must adjust their business to comply with the P2SK Law within three years of its enactment.

Scope of Financing Service Businesses

Under the P2SK Law, the scope of Financing Service Businesses is as follows:

1. financing activities for goods and/or services to the public, conducted by **finance companies**;
2. financing activities through equity participation and/or financing for a certain period of time for the purpose of business development of business partners or debtors, conducted by **venture capital companies**;
3. financing activities in the form of providing funds for infrastructure projects, conducted by **infrastructure financing companies**;
4. providing, managing and operating the provision of financial services to bring together funders and funding recipients in conducting funding, both conventionally and based on sharia principles, directly through electronic systems using the internet, conducted by **information technology-based funding service providers** (usually known in practice as peer-to-peer lending entities);
5. business activities of granting loans with by movable objects as security, conducted by **pawnbroking companies**; and
6. other financing activity schemes regulated by the OJK.

A more detailed scope of Financing Service Businesses is to be governed under OJK regulations.

The following activities are outside the scope of Financing Service Businesses:

1. business entities that conduct financing activities under a separate law;
2. secondary mortgage financing companies formed due to special assignment from the government;
3. infrastructure financing companies and/or development activities established due to special assignment from the government;

4. state-owned enterprises that conduct financing to assist the development of micro, small and medium enterprises, and cooperatives; and
5. any party that provides other parties with loans or financing not intended as an ongoing, profit-oriented business activity.

Forms of Legal Entity for Financing Service Business

A Financing Service Business can be in the form of either a limited liability company or a cooperative. Specifically for venture capital, it can also be in the form of a joint investment contract (*kontrak investasi bersama*).

Financing Service Business entities can be owned by (a) the State of the Republic of Indonesia, (b) Indonesian regional governments, (c) Indonesian citizens, (d) Indonesian legal entities, (e) foreign legal entities, and/or (f) foreign citizens. Ownership by foreign citizens can only be made through capital market transactions. Foreign legal entities can only own a Financing Service Business if they are in a partnership with an Indonesian citizen, Indonesian legal entity, an Indonesian regional government, and/or the central government. Details of foreign ownership will be regulated further in a government regulation.

Financing Service Business License

A Financing Service Business must obtain a business license from the OJK, unless regulated otherwise under a separate law. The latter covers, among others, banks, export financing institutions, micro finance institutions and/or saving and lending cooperatives.

The OJK may revoke the business license if a Financing Service Business entity:

1. is dissolved due to (a) a court decision, (b) a resolution of a general meeting of shareholders or a meeting of members, (c) a government decision, (d) bankruptcy proceedings and suspension of debt payment obligations;
2. is subject to administrative sanctions in the form of revocation of its business license;
3. is dissolved due to a merger, consolidation, or spin-off;
4. has not conducted business activities during a period determined by the OJK since the issuance of its business license; or
5. has applied of its own volition for revocation of its business license.

Obligations of a Financing Service Business

A Financing Service Business in the form of a limited liability company must comply with the

following obligations, among others:

- **Fit and Proper Test**

The members of the Board of Directors and Board of Commissioners, the controlling shareholders must meet the requirements set by the OJK, including pass a Fit and Proper Test.

- **Capital**

The paid-up capital of the company is prohibited from being used for (a) loans; and (b) terrorism financing, money laundering, and other financial crimes.

- **Membership of Association**

The company must join an association (that has been approved by the OJK) related to its respective scope.

- **Good Corporate Governance and Risk Management**

The company must implement the principles of good corporate governance and risk management. In implementing effective risk management, the company must have relevant guidelines, which at the least include: active supervision of the directors, commissioners, sharia supervisory board (if relevant), administrators, supervisors, and managers; adequate policies, procedures, and determination of risk limits; adequate processes of identification, measurement, monitoring, and risk control as well as risk management information systems; and a comprehensive internal control system.

- **Prohibitions**

The company is prohibited to collect funds directly from the public in the form of current accounts, savings, time deposits, and/or other similar forms; provide any forms of guarantees for the fulfillment of obligations of other parties and issue promissory notes, except as collateral for its own debts to creditors.

Certain prohibitions are also imposed on the members of the Board of Directors and the Board of Commissioners, and controlling shareholders as well as their affiliates. These prohibitions include preparing false financial statements, including incorrect information in the business operation report or financial statement, charging unofficial fees, submitting a misleading report or data to the OJK, etc

- **Written Agreement**

Agreements between the company and its customers must be in writing and must comply with provisions under prevailing laws and regulations.

OJK's Authority over Financing Service Businesses

Under the P2SK Law, the OJK also has the authority to take action on any Financing Service Business (either a limited liability company or a cooperative) experiencing difficulties that can jeopardize its continuity, as listed below:

For Cooperatives

- Administrators and/or members of the cooperative are requested to increase the cooperative's capital.
- Members are requested to replace board members, supervisors, and/or managers.
- The cooperative is requested to write off bad debt and calculate the capital loss.
- The cooperative is requested to carry out a merger, amalgamation, or consolidation with other Financing Service Business entities;
- The cooperative is requested to take other actions in accordance with the provisions of prevailing laws and regulations.

For Limited Liability Company

- Shareholders are requested to increase the company's capital.
- Shareholders are requested to replace members of the Board of Commissioners and/or members of the Board of Directors.
- The company is requested to write off bad debt and calculate the capital loss.
- The company is requested to carry out a merger, amalgamation, or consolidation with other Financing Service Business entities.
- The company is requested to its sell shares to buyers who are willing to take over all obligations.
- The company is requested to take other actions in accordance with the provisions of prevailing laws and regulations.

Conclusion

The government's enactment of the P2SK Law is an effort to boost and enhance financial sector regulation, including Financing Service Businesses. Prior to the enactment of the P2SK Law, the financial sector was regulated through numerous OJK regulations without a specific underlying law. With the P2SK Law as the umbrella regulation of the financial sector, it is expected that Financing Service Businesses will become more resilient under a much stronger regulatory regime, while consumer protection is also improved.

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