

LEGAL INSIGHTS

OMNIBUS LAW FOR FINANCIAL SECTOR

PART 3 - Law on Financial Services Authority



June 2023

I Background

In early 2023, the Government has issued Law Number 4 of 2023 regarding Financial Sector Development and Strengthening ("Law 4/2023"). The Indonesia Financial Services Authority (Otoritas Jasa Keuangan – OJK), which is one of the institutions in the financial sector pursuant to the Law Number 21 of 2011 regarding the Financial Services Authority, has undergone several changes of its provisions since the enactment of Law 4/2023.

II The Amendments in Law Number 21 of 2011 on the Financial Service Authority ("Law 21/2011")

A. General Provision

- Financial Services Authority is an independent state institution, having the functions, duties and powers of regulation, supervision, inspection and investigation.
- Financial Services Institutions – Lembaga Jasa Keuangan ("LJK") are institutions that carry out activities in the banking sector, market capital, insurance, pension funds, venture capital, microfinance institutions, financing institutions, and other financial service institutions.

B. Organs, Duties, Authorities and Wealth of Financial Services Authority

(1) Organs

Financial Services Authority is led by a Board of Commissioners totalling 11 (eleven) people led by 1 (one) as the Chairman of the Board of Commissioners who has the authority to represent the Financial Services Authority inside and outside the court.

Should you need more information about the topic, or you need support regarding legal matter, kindly contact our legal partners:

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(2) Duties

Duties of the Financial Services Authority are regulating and supervising financial service activities in the following sectors: (i) banking, (ii) capital markets, financial derivatives and carbon exchanges, (iii) insurance, guarantees and pension funds, (iv) LJK, (v) assets digital finance and crypto assets (Financial Sector Technology Innovation), (vi) the financial sector in an integrated manner and conducting a systemic impact assessment of the Financial Conglomerate, and (vi) regulating and supervising financial service businesses by implementing Consumer Protection education.

(3) Authorities

- Financial Services Authority is required to: (i) Provide written orders for LJK for corporate actions, (ii) Stipulates exceptions for certain parties from the obligation to comply with the principle of transparency in the Capital Market sector in the framework of preventing and handling the Financial System Crisis, (iii) Stipulate policies regarding the use of information technology in holding GMS or other meetings based on the provisions of laws and regulations;, (iv) Provide data and information needed by the Government for handling economic problems involving banks/LJKs under the auspices of the Financial Services Authority.

- Financial Services Authority is the only party entitled to apply for a declaration of bankruptcy and/or a request for postponement of debt payment obligations to debtors who are LJK, Banking and Financial Sector under the supervision of the Financial Services Authority as long as their dissolution and/or bankruptcy is not regulated in other prevailing laws.

(4) Wealth

The Financial Services Authority work plan is prepared by the Board of Commissioners with part of the State General Treasurer's Budget Section in the State Revenue and Expenditure Budget to finance operational, administrative, asset procurement and other supporting activities. In the event that the Financial Services Authority imposes levies on the financial services sector, these levies are used to meet the funding needs of activities and improve service quality.



C. Supervision of Financial Services Authority

- Law 4/23 conducts the examination for Financial Services Authority by forming a new Supervision Body which was previously conducted by Bank Indonesia. Supervision Body is selected and elected by the House of Representatives (Dewan Perwakilan Rakyat). Members of Supervision Body consist of elements from the government, academics and society, with total 5 (five) members and led by 1 (one) chairman. The term of office for the Financial Services Authority Supervision Body is 5 (five) years.
- The function of the Financial Services Authority Supervision Body is to assist the House of Representatives in carrying out its oversight function in: (i) preparing evaluation reports, (ii) conducting monitoring to increase institutional accountability, independence, transparency and credibility; and (iii) preparing performance reports.

D. International Relation

- With regard to international cooperation in the field of regulation, supervision and investigation, confidentiality provisions are exempted.
- During the investigation stage, a party suspected of committing a crime in the financial services sector can submit an application to the Financial Services Authority for settlement of violations of laws and regulations in the financial services sector by calculating the value of the loss for the violation. In the event that the application is approved by the Financial Services Authority, the applicant must carry out the agreement, pay compensation and accept administrative sanctions given by the Financial Services Authority.

E. Investigation

- Financial Services Authority investigators consist of: (i) investigators from the Indonesian National Police, (ii) certain civil servant officials; and (iii) certain employees.
- In Law 4/23, in the event that the Financial Services Authority conducts an investigation into a crime in the financial services sector, its powers and responsibilities are expanded, which that the Financial Services Authority can: (i) conduct a search in a certain place where any evidence is suspected and conduct confiscation, (ii) requesting information from the LJK regarding the financial condition of the party suspected of committing a crime in the financial services sector, (iii) conducting an investigation into a money laundering crime with a predicate crime in the form of a crime in the financial services sector, and (iv) submitting the results investigation of the Prosecutor.

F. Criminal Provisions

Law 4/23 increases criminal sanctions and fines for every person who intentionally ignores and/or implements written order or statutory duty to use manager of the authority of the Financial Services Authority. The punishments given include: (i) imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a minimum fine of IDR 10,000,000,000 (ten billion rupiahs) and a maximum of IDR 300,000,000,000 (three hundred billion rupiahs) for individuals or fined a minimum of IDR 500,000,000,000 (five hundred billion rupiah) and a maximum of IDR 1,000,0000,000,000 (one trillion rupiahs) for corporations or business entities, whether in the form of legal entities or not.