



Banking Regulation

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Indonesia

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Introduction

Indonesian banks' main functions are to manage and distribute public funds, which in turn supports national development, economic growth and national stability, towards the increase of people's welfare. Bearing such functions and purposes, the banking sector is one of the most strictly regulated sectors in Indonesia. As of August 2019, statistics show there are 111 banks operating as Commercial Banks in Indonesia, with six (6) controlling more than 50% of the total banking assets in the market. The government has been actively encouraging Commercial Banks to consolidate their assets and to increase efficiency. By decreasing the number of banks in Indonesia and enlarging the assets of those that remain, the government expects to strengthen the Indonesian banking industry.

Other aspects that have been rapidly developed over the past four years are information technology and the trend for alternative financing, particularly financial technology (“**Fintech**”). Offering simpler alternatives to credit facilities, Fintech has created new challenges for Indonesian banks, especially in credit provision. Another development to be noted is on the permitted cash financing by finance companies, where since late 2018, the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) by virtue of OJK Regulation No. 35/POJK.05/2018 on Finance Companies (“**OJKR 35**”) allows finance companies to extend cash loan facilities directly to borrowers up to a certain limited amount. This chapter aims to provide its audience with an overview of key Indonesian Banking regulations and recent regulatory themes and developments of certain money-lending regulations.

Regulatory architecture: Overview of banking regulators and key regulations

Banking business in Indonesia is primarily governed by Law No. 7 of 1992 as amended by Law No. 10 of 1998 and its implementing regulations (collectively referred to as the “**Banking Laws**”). Originally, the Indonesian central bank, known as Bank Indonesia (“**BI**”), had the function and authority to regulate and supervise the banking industry in Indonesia. This authority was assigned to OJK as of 31 December 2013, except for the monetary function in maintaining Rupiah stability and implementing monetary policy, which are still attached to BI. More specifically, OJK has the following authorities:

1. regulating and supervising banking institutions covering:
 - (a) licensing for establishment of a bank, opening of a bank's office, articles of association, work plan, ownership, management and human resources, merger, consolidation and acquisition of a bank and revocation of a bank business licence;
and

- (b) business activity of a bank; among others, source of funds, provision of funds, hybrid product and activities in the service;
2. regulating and supervising a bank's solvency rating, covering:
 - (a) liquidity, profitability, solvency, asset quality, ratio of minimum capital sufficiency, maximum limit of credit provision, ratio of loan towards deposit and bank reservation;
 - (b) bank report related to bank solvency rating and performance;
 - (c) debtor information system;
 - (d) credit testing; and
 - (e) bank accounting standard;
3. regulating and supervising a bank's prudent aspects, covering:
 - (a) risk management;
 - (b) bank governance procedure;
 - (c) principle of know-your-customer and anti-money laundering; and
 - (d) prevention of terrorism and banking criminal act; and
4. bank examination.

Types of bank

Indonesia recognises three (3) types of banks:

(a) The Central Bank (BI)

BI has the monetary function to set and implement monetary policies and manage payment systems in Indonesia. It does not engage in conventional banking activities.

(b) Commercial Bank

Commercial Banks engage in conventional banking activities (such as providing payment traffic services and services such as providing loans and savings) and/or *Sharia*-compliant banking activities. The latter is not discussed in this chapter.

Based on their activities, Commercial Banks are divided into four categories called "BUKU". Commercial Banks with BUKU 1, which is the lowest in terms of Tier 1 Equity (below IDR 1 trillion), are only allowed to engage in general banking activities in Rupiah and act as money changers. In contrast, those with BUKU 2, 3 and 4 are authorised to engage in Rupiah and foreign currency banking activities with a broader scope, including agency activities and cooperation, payment systems and electronic banking, capital participation in non-financial institutions for credit rescue, and capital participation in other financial institutions. The differences are: for those with BUKU 2, their capital participation is limited only to Indonesian financial institutions; for BUKU 3, they are allowed to participate in financial institutions in Asia; whilst for BUKU 4, participation is open to financial institutions worldwide.

As a general rule, Commercial Banks are prohibited from conducting the following activities:

- capital participation in non-financial institutions (with certain temporary exceptions, for example in the case of recovering a credit failure of a non-financial institution);
- insurance business; and
- those beyond determined by the law.

(c) Rural Bank (*Bank Perkreditan Rakyat* or "BPR")

BPR focuses on the provision of loans to small and medium enterprises. Unlike a Commercial Bank, BPR does not provide payment traffic services.

Maximum shareholding in a Commercial Bank

A Commercial Bank can be established by Indonesians or jointly between Indonesians and foreigners (either individuals or legal entities), with a maximum limit for participation by foreign individuals and foreign legal entities of 99% of the total issued and paid-up capital. Nonetheless, individually, a party's maximum ownership in a Commercial Bank under OJK Regulation No. 56/POJK.03/2016 (“**OJKR 56**”) is limited to:

- 40% of the bank's capital (or more, subject to certain qualifications and requirements including OJK's approval): for a bank or another non-bank financial legal entity;
- 30% of the bank's capital: for a non-financial legal entity; and
- 20% of the bank's capital: for an individual.

The above does not apply to Commercial Banks with existing shareholders exceeding the threshold prior to the issuance of OJKR 56, so long as the relevant Commercial Bank maintains its soundness level at Level 1 or 2. However, it is to be noted here that the exception will be voided, and the relevant Commercial Bank must adjust its shareholding composition to the prescribed threshold if any of the following events occur (“**Triggering Events**”):

- (a) the Commercial Bank's soundness level has deteriorated to Level 3, Level 4 or Level 5 for three consecutive assessment periods; or
- (b) the relevant shareholder exceeding the threshold voluntarily sells its shares to any other party.

Single presence policy

OJK, through OJK Regulation No. 39/POJK.03/2017 concerning Single Ownership in Indonesian Banking (“**OJKR 39/2017**”), restricts a party from becoming a controlling shareholder in only one Commercial Bank, and requires the implementation of the so-called single presence policy.

Exemptions apply in the case where it is: (i) a controlling shareholder in two Commercial Banks, where one is a conventional bank and the other is a *Sharia* bank; and/or (ii) a controlling shareholder in two Commercial Banks, where one of them is a joint venture Commercial Bank.

In the event a party purchases shares of a Commercial Bank resulting in it becoming the controlling shareholder in more than one Commercial Bank, it is required to:

- (a) at the latest one year after the closing of the share purchase, (i) merge or consolidate the controlled Commercial Banks, or (ii) establish a Holding Company in the form of a *Perseroan Terbatas* (“**PT**”); or
- (b) at the latest six months after the closing of the share purchase, establish a holding function (a function established within the controlling shareholder to consolidate its controlled Commercial Banks).

Recent regulatory themes and key regulatory developments

The massive development of Fintech business in Indonesia since 2016 has led the government to regulate Fintech and to introduce a number of Fintech regulations, including on peer-to-peer lending. In the banking sector, BI has recently issued a regulation on digital banking services as well as on the simplification and harmonisation of the banking reporting system, aimed at increasing and maintaining the level of competitiveness of banking institutions in the financial sector. Meanwhile, in the financing sector, as an effort to increase the level of competitiveness of financing companies, OJK has recently issued OJKR 35 allowing finance companies to extend cash lending with certain limitations.

Financial technology (Fintech)

In the past three years, the Indonesian market has seen the rise of technology-based start-up companies that stimulate the rapid development of technology-based transactions (including technology-based “unicorn”¹ companies, such as Go-Jek, Tokopedia, OVO, and Traveloka²). To accommodate and support the significant growth of Fintech business in the Indonesian market, OJK and BI have issued a number of regulations to support the healthy growth of business. The most relevant are briefly discussed below:

1. In 2016, OJK issued OJK Regulation No. 77/POJK.01/2016 on information technology-based loan arrangements (peer-to-peer lending services on technology information basis – P2P) (“**OJKR 77**”), laying out requirements applicable for P2P platform administrators or P2P companies, such as, among others: registration and licensing; and minimum capital requirement (IDR 1 billion upon registration and IDR 2.5 billion upon application for a P2P licence) and maximum 85% foreign ownership. OJKR 77 imposes obligations on P2P companies to ensure security and reliability of their electronic system, protection of confidential information and their data security system (with the server located in Indonesia), and to implement an anti-money laundering and anti-terrorism funding programme. OJKR 77 limits P2P debtors only to Indonesian citizens domiciled in Indonesia, with a maximum loan amount of IDR 2 billion (approximately USD 141,000) per debtor. OJKR 77 distinguishes P2P agreements into two categories: (a) agreement between the lender and the P2P Company; and (b) agreement between the lender and the debtor, both to be made in electronic form and signed electronically. The loan agreement between the P2P Company and the lender must contain certain minimum provisions as stipulated in OJKR 77, such as: identity of the parties; loan amount; interest rate; default interest/penalty; collateral/security (if any); rights and obligations of each party; and dispute settlement mechanism. OJKR 77 strictly prohibits a P2P Company from acting as a lender (on-balance sheet lending), a debtor or a guarantor, and requires a P2P Company to be liable for any loss caused by the fault or negligence of its directors or employees. As OJKR 77 imposes a requirement to obtain consent from OJK for any change of shareholder of a P2P Company, any potential investor should take into consideration the timing for obtaining OJK’s consent for acquisition of an existing P2P Company.
2. Following OJKR 77, BI Regulation No. 19/12/PBI/2017 on the Implementation of Financial Technology (“**BIR 19**”) was introduced by BI, regulating the supervision of all Fintech activities in Indonesia with the following characteristics:
 - innovative;
 - may cause disruption to existing financial service products, services, technologies and/or financial business models;
 - offers benefits for customers;
 - usable in a widespread manner; and
 - other criteria(s) as may be determined by BI.

BIR 19 classifies Fintech activities into the following categories:

1. **payment systems** – covering clearing, final settlement, and payment processing (e.g., blockchain or distributed ledger technology for fund transfer, electronic money, electronic wallet and mobile payments);
2. **market support** – facilitating faster and cheaper distribution of information related to financial products and/or services to the public (e.g., provider of data comparison of certain financial services/products);

3. **investment management and risk management** – e.g., online investment products and online insurance;
4. **lending, financing/funding and capital raising** – e.g., P2P, financing or crowd-funding; and
5. **other financial services.**

BIR 19 requires all Fintech operators conducting payment system services to register themselves with BI starting from 30 December 2017, with the exemptions of: (a) existing licensed Payment System Service Providers (such as banks); and/or (b) Fintech operators under the supervision of other authorities (for example, P2P companies, which are under the regime of OJK), provided that they do not perform payment system services.

One of the key concepts introduced by BIR 19 (and its implementing regulations) is the so-called Regulatory Sandbox. The Regulatory Sandbox is BI's supervised platform that can be used by Fintech operators to test their services/products in a live environment for a certain period, particularly to determine whether the services/products, technology and/or business model to be offered/used are in compliance with the regulations. BI uses this to assess Fintech operators' capability to meet the requirements, before issuing the necessary business licence/approval/recommendation.

While BIR 19 focuses on those conducting payment system services, in 2018, OJK issued OJK Regulation No. 13/POJK.02/2018 ("**OJKR 13**") setting out the regulatory framework for digital financial innovation ("**DFI**"). OJKR 13 applies to DFI operators ("**Operators**") conducting DFI businesses with the following criteria:

- being innovative and future-oriented;
- using information and communication technology as the primary means of providing services to consumers in the financial services sector;
- supporting financial inclusion and literacy;
- being beneficial and accessible to the public;
- compatible for integration into existing financial services;
- adopting a collaborative approach; and
- complying with consumer and data protection requirements.

OJKR 13 classifies DFI activities into the following categories, among others:

1. **Transaction Settlement** – covering all transaction settlements, including investment settlement.
2. **Capital Accumulation (Equity Crowdfunding)** – including, among others, equity crowdfunding, virtual exchange, smart contracts, and alternative due diligence.
3. **Investment Management** – including, among others, advanced algorithms, cloud computing, capabilities sharing, open source information technology, automated advice and management, social trading, and retail algorithmic trading.
4. **Fund Accumulation (Crowdfunding) and Funding Channeling** – including, among others, peer-to-peer lending, alternative adjudication, virtual technologies, mobile 3.0, and third-party application programming interface.
5. **Insurance** – including, among others, sharing economy, autonomous vehicles, digital distribution, and securitisation and hedge funds.
6. **Market Support** – including, among others, artificial intelligence/machine learning, machine-readable news, social sentiments, big data, market information platforms, and automated data collection and analysis.

7. **Other Supporting Activities** – including, among others, social/eco crowdfunding, Islamic digital financing, e-waqf, e-zakat, robo-advice, and credit scoring.
8. **Other Financial Services Activities** – including, among others, invoice trading, tokens, vouchers, and blockchain application-based products.

Recordation

According to OJKR 13, all eligible Operators, except for those having been registered with OJK and/or having obtained a licence from OJK prior to the issuance of OJKR 13, must register themselves with OJK for recordation. It is unclear whether a registered Operator that introduces or commences a new DFI business model outside the scope of its existing registration certificate/licence must undergo the recordation process and apply for new registration.

Regulatory Sandbox

OJKR 13 also introduces the so-called “Regulatory Sandbox” which is a testing mechanism by OJK to assess the reliability of the Operator’s business process, business model, financial instrument and corporate governance. Under OJKR 13, OJK has the right to determine which Operators are eligible to undergo the Regulatory Sandbox process for a maximum period of 1 (one) year, extendable for another 6 (six) months.

The criteria for an Operator’s participation in the Regulatory Sandbox, among others, include the following: (i) recorded as an Operator with OJK; (ii) registered with the relevant association of the Operator; and (iii) introducing a new business model.

Although OJKR 13 mandates the issuance of an OJK Circular Letter as an implementing regulation for the Regulatory Sandbox, such OJK Circular Letter has not been issued to date. In the absence of the OJK Circular Letter as the implementing regulation, it is unclear whether it means Operators are not required to go through the Regulatory Sandbox and can proceed directly with the registration process, as OJKR 13 is silent on this matter.

Based on the result of the Regulatory Sandbox, OJK will determine the status of the Operator, which may fall into one of the following:

- “recommended”: the Operator can proceed with the registration stage;
- “subject to improvement”: the Operator must, within six months, take remedial actions to improve its model; or
- “not recommended”: the Operator will be automatically delisted from recordation.

Registration

Upon receiving the “recommended” status, an Operator must apply for registration with OJK within six months, otherwise its “recommended” status will be revoked. According to OJKR 13, other Operators having the same DFI business format as the Operators that have obtained “recommended” status from the OJK, should be entitled to directly submit an application for registration to OJK. Having obtained the “registered” status, an Operator is entitled to set out or use its registration number in offering or marketing its products or services.

Apart from being subject to the recordation requirement and Regulatory Sandbox, Operators are obliged to, among others:

- implement the principle of independent monitoring;
- submit periodical reports to OJK, including a self-assessment report;
- place its data centre and disaster recovery centre in Indonesia;
- provide an IT-based customer service;
- comply with personal data privacy requirements, anti-money laundering and counter-terrorism funding, consumer protection laws and regulations; and
- provide information to its customers on the status of their applications.

Digital banking

To further support information technology in Commercial Banks' business activities, OJK issued OJK Regulation No. 12/POJK.03/2018 on Implementation of Digital Services by Commercial Banks ("**OJKR 12**"), enabling Commercial Banks to provide electronic and/or digital banking services to its customers subject to OJK approval. Once the OJK approval is obtained, the Commercial Banks must implement the digital banking services within six (6) months, otherwise the approval will be void.

OJKR 12 provides that only Commercial Banks meeting the following requirements may provide digital banking services:

- having a Level 1 or 2 risk profile based on its latest soundness level assessment result;
- having adequate information technology infrastructure and management; and
- allowed to conduct electronic banking services based on its tier capital category ("**BUKU**").

Integrated system for commercial banks reporting

To improve the banking reporting system, BI has introduced an integrated online reporting system for Commercial Banks which is regulated under BI Regulation No. 21/9/PBI/2019 on Integrated Services Commercial Banks Reports ("**BIR 21**"). The system simplifies and integrates various reporting requirements to the effect that, as of August 2020, banks are no longer required to submit multiple forms of reports to different governmental authorities and only need to submit the standardised forms of reports through BI's integrated online reporting system.

Cash Loan Extension from Finance Companies

Before the issuance of OJKR 35, finance companies are only allowed to provide non-cash financing for procurement of goods/services. Through OJKR 35, finance companies are now permitted to extend secured cash loans directly to customers of the maximum amount of IDR 500 million (approximately USD 35,361) per borrower, subject to certain requirements.

Bank governance and internal controls

As institutions that play a significant role in the country's economic welfare, Commercial Banks are highly monitored and heavily regulated by OJK, including on their corporate governance. Through OJK Regulation No. 55/POJK.03/2016 on the Implementation of Commercial Bank's Governance ("**OJKR 55**"), OJK requires all Commercial Banks to implement good corporate governance principles ("**GCG**"), among others on minimum requirements for directors, commissioners and other specific internal governance, as briefly discussed below.

Board of Directors ("**BoD**")

OJKR 55 requires a Commercial Bank to have a minimum of three directors, one of whom is to be appointed as the President Director, who must be independent from the controlling shareholder(s). Each Director must pass OJK's fit and proper test requirement and be domiciled in Indonesia. In addition, OJKR 55 requires more than 50% of all members of the BoD (majority members of the BoD) to have a minimum of five years' experience as a bank's executive officer.

OJKR 55 requires the BoD to establish, at least, the following working units:

- internal audit unit;
- risk management unit and risk management committee; and
- compliance unit.

A director of a Commercial Bank is prohibited to, among others:

- hold multiple positions as a director, a commissioner or executive officer in other banks, companies and/or institutions;

- hold more than 25% (twenty five per cent) of issued shares of other companies, either individually or collectively with another director;
- have an extended family member (until the 2nd degree) working at the same Commercial Bank as a director and/or a commissioner;
- grant a general power of attorney to any other party to assign his duties and function as a director; and
- gain personal benefit from the Commercial Bank.

Board of Commissioners (“BoC”)

A Commercial Bank must have at least three commissioners (one of them is to be appointed as the President Commissioner), with a 50% (fifty per cent) minimum of the members being independent commissioners. All commissioners must pass OJK’s fit and proper test, and at least one BoC member must be domiciled in Indonesia. The number of BoC members must not exceed the number of BoD members.

Except for the restriction on holding shares in another Commercial Bank or company, the restrictions on the BoD apply to Commissioners of a Commercial Bank, *mutatis mutandis*.

To support the effective implementation of its supervisory duties, the BoC is required to establish, at least, the following committees:

- (a) An Audit Committee to perform the monitoring and evaluation of internal and external audit functions and to provide recommendations to the BoC.
- (b) A Risk Monitoring Committee to perform an evaluation of the risk management policy and its implementation, the risk management committee’s and the risk management unit’s duties, and to provide recommendations to the BoC.
- (c) A Remuneration and Nomination Committee to: (i) perform an evaluation and recommendation of the remuneration policy and ensure the compliance of the remuneration policy with regulation; and (ii) provide recommendations to the BoC on the selection system and procedure of change of the BoD and BoC Audit Committee and Risk Monitoring Committee.

Other GCGs include:

- conducting portfolio diversification by spreading out its funding distribution;
- observing compliance with the maximum threshold of credit provision, particularly for the provision of credit to its related parties and large exposures funding;
- preparing and submitting strategic corporate and business plans to OJK;
- implementing information transparency principles on (a) financial and non-financial condition, and (b) products and utilisation of customers’ data;
- ensuring sufficiency of management information; and
- performing periodic self-assessment on the implementation of GCG.

Bank capital requirements

The minimum issued and paid-up capital of a Commercial Bank is IDR 3 trillion (approximately USD 212 million).

To ensure the sufficiency of funds and the soundness level of a Commercial Bank, the regulations set the following requirements:

Risk-based Capital Adequacy Requirements (“CAR”)

OJK Regulation No. 11/POJK.03/2016 (as amended by OJK Regulation No. 34/POJK.03/2016 – “**OJKR 11**”) requires Commercial Banks to maintain a minimum capital in accordance with their risk profile, as elaborated below:

1. 8% of the weighted assets by risk for Commercial Banks with risk profile ranking 1 (on the basis of Commercial Banks' soundness level);
2. $9\% \leq 10\%$ of the weighted assets by risk for Commercial Banks with risk profile ranking 2;
3. $10\% \leq 11\%$ of the weighted assets by risk for Commercial Banks with risk profile ranking 3; or
4. 11% to 14% of the weighted assets by risk for Commercial Banks with risk profile ranking 4 or 5.

The elements for "weighted assets by risk" are credit risks, operational risk and market risk.

In addition, Commercial Banks are also required to maintain:

1. Capital Conservation Buffer, gradually up to 2.5% of the weighted assets by risk by 1 January 2019;
2. Countercyclical Buffer, between 0%–2.5% of the weighted assets by risk; and/or
3. Capital Surcharge for a Domestic Systemically Important Bank (D-SIB) between 1% to 2.5% of the weighted assets by risk.

OJKR 11 provides that all the above requirements, including CAR, must be fulfilled by the Common Equity Tier 1 (i.e., issued capital and disclosed reserve).

Macroprudential Intermediation Ratio ("MIR")

In 2018, BI issued Regulation No. 20/4/PBI/2018 ("**BIR 20**") where it introduces the MIR concept, which is the ratio of: (a) the loan channelled by a Commercial Bank in Rupiah and foreign currency; and (b) certain qualified corporate commercial papers owned by the Commercial Bank in Rupiah and foreign currency **against**: (x) the Commercial Bank's obligation towards its customers in the form of giro, savings, time deposits in Rupiah and foreign currency (excluding intra-bank funds); and (y) certain qualified commercial papers issued by the Commercial Bank in Rupiah and foreign currency to raise the source of funding.

MIR is introduced to enhance the previous concept of *Loan to Funding Ratio* ("**LFR**"), by adding component (b) into the ratio calculation to determine the amount of the Commercial Bank's mandatory deposit with Bank Indonesia ("**MIR Deposit**"). Under BIR 20, in addition to CAR, to ensure asset liquidity of Commercial Banks for the sake of monetary stability, BI requires every Commercial Bank to maintain its MIR within 80–92% (or more if it maintains its CAR at a minimum level of 14%). If a Commercial Bank's MIR exceeds the threshold or less than the bottom limit, it is required to maintain a MIR Deposit. Failure to fulfil the obligation to maintain a MIR Deposit (if applicable) will be subject to certain administrative sanctions in the form of warning letters and fines.

Rules governing banks' relationships with their customers and other third parties

Commercial Banks are required to carry a trust duty to their customers. Based on this principle, the banking regulations impose a due care obligation on every Commercial Bank in performing its business and managing customers' funds; some of them are as described as: (i) Customer Due Diligence ("**CDD**"); and (ii) Enhanced Due Diligence ("**EDD**").

OJK, through its OJK Regulation No. 12/POJK.01/2017 concerning Implementation of the Anti-Money Laundering Program and Terrorism Funding Prevention in the Financial Services Sector, as amended by OJK Regulation No. 23/POJK.01/2019 ("**OJKR 12/2017**"), requires every Financial Service Provider (including Commercial Banks) to identify, assess and understand the risk of money laundering and/or terrorist funding, including proliferation of weapons of mass destruction financing related to, among others, the customers. Based on OJKR 12/2017, Commercial Banks must conduct CDD and EDD. The assessment of risk of money laundering and/or terrorist funding shall be conducted with reference to the national risk assessment and sectoral risk assessment.

(a) CDD

CDD are activities in the form of identification, verification and supervision conducted by Commercial Banks to ensure the transactions are in accordance with the profile, characteristic and/or pattern of customers' transactions. Commercial Banks are obliged to conduct CDD when:

- they conduct business relations with customer candidates;
- there is a financial transaction with Rupiah currency and/or foreign currency in the minimum amount of or equal to IDR 100 million;
- there is a fund transfer;
- there is an indication of a suspicious financial transaction related to money laundering and/or terrorism funding; or
- the Commercial Banks doubt the accuracy of information provided by customer candidates, customers, attorneys and/or beneficial owners.

(b) EDD

EDD is a more thorough CDD action conducted by Commercial Banks focusing on High Risk Customers, including Politically Exposed Persons. High Risk Customers are customers who, based on their background, identity and history, are considered to have a high risk of conducting activities related to money laundering and/or terrorism funding, while Politically Exposed Persons are persons authorised by their countries or international organisations to conduct prominent functions (among others, heads of state, senior politicians, military officers, important officials in political parties and senior managers of international organisations). Examples of EDD are, among others: (i) seeking additional information on prospective customers such as their occupation, list of assets, etc., reason for transaction and source of fund and assets; (ii) obtaining approval from the higher-level position before proceeding with the transaction; and (iii) conducting stricter evaluation by adding the evaluation period and observing the customer's transaction pattern.

1. Transparency on Banking Products and Usage of Customers' Personal Data

In general, Indonesian personal data protection is regulated under Law No. 11 of 2008 on Electronic Information and Transactions (as amended by Law No. 19 of 2016), Government Regulation No. 71 of 2019 on Provisions of Electronic Systems and Transactions, and Minister of Communications and Informatics Regulation No. 20 of 2016 on Personal Data Protection in Electronic Systems (collectively referred to as the "EIT Laws"). According to EIT Laws, any acquisition or use of Indonesian citizens' personal data must be done with prior approval from the personal data owner, of which the acquired or used data must be relevant and must conform with the objectives of such acquisition or use.

Specifically, for the banking sector, personal data protection is regulated under the Banking Laws, whereby Banks are generally required to keep confidential information, their customers' data and their deposits, save for certain exemption circumstances.

Under BI Regulation No. 7/6/PBI/2005 concerning Transparency on Banking Product Information and Usage of Customers' Personal Data, and OJK Regulation No. 1/POJK.07/2013 on Consumer Protection in Financial Sector, Commercial Banks must implement transparency of: (i) information on banking products; and (ii) usage of customers' personal data through their policies and written procedures.

(i) Transparency of Information on Banking Products

- to provide complete and clear written information on the characteristics of every banking product in Bahasa Indonesia and to deliver the information to the customers verbally or in writing;

- to notify customers on every amendment, supplement and/or reduction to the characteristics of banking products prior to the effectiveness of such amendment, supplement and/or reduction; and
 - to provide an information service that is easy to access by the public.
- (ii) Transparency of Information on Usage of Customers' Personal Data – A Commercial Bank must obtain customers' consent before providing and/or distributing customers' Personal Data to other parties for commercial purposes, including personal data of an individual or a group of people obtained from other parties.

2. Settlement of Customers' Complaints

On 10 September 2018, OJK issued OJK Regulation No. 18/POJK.07/2018 (“**OJKR 18**”) whereby it regulates complaints settlements for the financial services provider (“**FS Provider**”), among others, Commercial Banks, Insurance Companies, Finance Companies, and P2P. OJKR 18 came into effect six months as of its issuance date (i.e. 10 March 2018), and upon the effective date, BI Regulation No. 7/7/PBI/2005 and BI Regulation No. 10/10/PBI/2008 were revoked.

OJKR 18 requires the FS Provider to settle every dissatisfaction statement from customers or their representative caused by financial loss that is suspected to be caused by the Commercial Banks' fault or negligence (“**Complaints**”) within five business days (for verbal Complaints) or 20 business days (for written Complaints). The FS Provider must determine policy and written procedures on the same and establish a specific unit and/or function to handle and settle Complaints.

3. Banking Mediation

Disputes in Indonesia are generally settled through court proceedings or alternative dispute resolutions (i.e., negotiation, mediation and arbitration). Nonetheless, as specifically provided under BI Regulation No. 8/5/PBI/2006 (as amended by BI Regulation No. 10/1/2008) concerning Banking Mediation, disputes resulting from unfulfilled customers' financial claims may be settled through banking mediation.

Banking mediation is conducted by an independent banking mediation institution established by the banking association. Banking mediation may only be conducted for disputes with financial claims of a maximum amount of IDR 500 million.

4. Outsourcing

Commercial Banks are generally not allowed to outsource their works, unless the works meet the following criteria set by OJK Regulation No. 9/POJK.03/2016:

- low risk;
- do not require high banking competency and skills qualification; and
- do not directly relate to operational decision-making.

Some examples of the above supporting works are call centre services, marketing (telemarketing, direct sales or sales representative), secretary or cleaning services.

* * *

Endnotes

1. Valuation exceeding USD 1 billion.
2. <https://money.kompas.com/read/2019/10/15/071100126/6-bank-besar-kuasai-53-persen-aset-perbankan-indonesia-siapa-saja->;
<https://tirto.id/melihat-perjalanan-4-startup-unicorn-asal-indonesia-cAdQ>.



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