

THE FIRST OJK REGULATION

Nov 20, 2013

- The Financial Services Authority (*Otoritas Jasa Keuangan* – “**OJK**”) has finally issued its first regulation. It is an implementing regulation for Article 31 of Law Number 21 of 2011 regarding the *Otoritas Jasa Keuangan*, on protection of the public and consumers. Regulation Number 1/POJK.07/2013 (“**OJK Regulation No. 1**”) was issued on 6 August 2013, and will come into force one year after that date.

OJK Regulation No. 1 applies to Financial Services Business Actors, which include, among others, commercial banks, securities companies, insurance companies, reinsurance companies, and financial institutions, and consumers of the Financial Services Business Actors (defined as parties who place their funds with and/or utilize services provided by the Financial Services Institutions). This regulation mainly defines, among other things, the obligations of Financial Services Business Actors in relation to consumer protection, attending to complaints and their settlement mechanism, as well as the supervisory role of the OJK in consumer protection.

The Obligations of Financial Services Business Actors

Under OJK Regulation No. 1, Financial Services Business Actors are required to provide, among other things, the following:

Accurate, clear, and not misleading information about the products and/or services they will provide, which must be conveyed to potential customers when explaining customers' rights and duties, before they enter into any, whether conveyed through electronic or print media;

- Information on whether applications submitted by potential customers for subscriptions to products and/or services are accepted, pending or rejected;
- Simple and comprehensible phrases, terms and sentences in Indonesian language (or other languages accompanied by Indonesian translations) in documents which:

- specify the rights and duties of consumers;
- can be used by consumers to make decisions;
- contain terms that can legally bind consumers;

- A summary of the products and/or services providing details of the benefits, risks, fees, terms and conditions;
- Information related to the fees that may be charged in relation to the products and/or services;
- The terms and conditions of the products and/or services before the consumers enter into any agreement related to the products and/or services, and consumer updates on any changes to the terms and conditions at least 30 business days before the changes go into effect;
- Education to improve the financial literacy of consumers and/or the public;
- Their names and/or logos, as well as a statement that they are certified and under the supervision of the OJK in every offer and/or promotion of their products and/or services;
- Proof of ownership of the products or of subscription of the services to the customers;
- Attending to complaints and their settlement mechanism.

In addition, Financial Services Business Actors are prohibited from, among other things, offering their products and/or services to the public or consumers through 'personal communications facilities' without their prior consent. Even though OJK Regulation No. 1 does not clearly define the term 'personal communications facilities', this can be assumed to mean mobile/cellphones or direct telephone numbers. Financial Services Business Actors may not disclose consumers' information and/or data to third parties without prior consent unless required under prevailing laws.

Attending to Complaints and the Settlement Mechanism

One of the obligations of Financial Services Business Actors is to provide a procedure for attending to complaints and a settlement mechanism. Under OJK Regulation No. 1, Financial Services Business Actors must take further steps and settle all complaints received from their customers within 20 business days.

In certain cases, this may be extended for a further 20 business days, and the Financial Services Business Actor concerned must send a written notice to the consumer notifying him/her of the time extension.

If a complaint cannot be settled amicably between the Financial Services Business Actor and the consumer, the consumer may request an alternative dispute settlement method or legal proceedings in the courts.

Financial Services Business Actors are also required to report to the OJK every 3 months all

complaints received from their customers as well as the mechanism used to settle the complaints.

The Supervisory Role of the OJK in Consumer Protection

The OJK has the authority to, directly or indirectly, supervise the implementation of the consumer protection mechanism by all Financial Services Business Actors, by requesting information and/or data related to the implementation of the consumer protection mechanism at any time from the Financial Services Business Actor concerned.

The OJK may also impose administrative sanctions on any Financial Services Business Actor that fails to comply with OJK Regulation No. 1, and publish a notice of sanctions, imposed.

The following successive administrative sanctions may be imposed by the OJK:

- written warnings;
- fines;
- restriction on business activities;
- suspension of business activities; and
- the Revocation of the business license.

OJK Regulation No. 1 is being promoted as “full” protection for consumers since almost half of the regulation concerns the obligations of Financial Services Business Actors, and therefore it might be seen as the OJK taking the side of consumers. However, as the regulation does not come into effect for one year as of its promulgation, the extent of the protection consumers will enjoy has yet to be seen.