

## **Asuransi Jiwa Bumi (in bankruptcy) pursues the OJK in court**

**Bisnis:** PT Asuransi Jiwa Bumi Asih Jaya (in bankruptcy) (**BAJ**) has initiated legal proceedings against the Financial Services Authority (OJK) on charges of it having committed unlawful acts. The lawsuit is registered as No.643/Pdt.G/2017/PN.Jkt.Pst. The attorney of BAJ (plaintiff) Poltak Hutadjulu said OJK (defendant) acted arbitrarily in its treatment of the plaintiff. The plaintiff does not condone the OJK's move to revoke the business license and the subsequent filing for bankruptcy. In his view, the OJK's move was not in accordance with the prevailing legislation. "OJK committed an unlawful act resulting in a loss for BAJ of Rp5.4 trillion," he told **Bisnis** on Sunday (7/11/2017).

In a lawsuit filed by BAJ, the problems started when the plaintiff was sanctioned with Business Activity Limitation (PKU) on April 30, 2009. Five years later, OJK revoked the plaintiff's business license on October 28, 2013. The revocation of the license was set out in a letter numbered KEP-112 / D.05 / 2013. According to Poltak, revocation of this business license contradicts Article 42 paragraph (1) in conjunction with Article 42 paragraph (4) of Government Regulation No.73 / 1992, regarding the Insurance Industry. The period between restrictions on business activities and revocation of the business license should be twelve months. However, the OJK imposed business restrictions for up to five years. At that time, the plaintiff was prohibited from issuing new policies, so no new income could be earned.

The plaintiff could only receive premiums from existing policyholders. In fact, he stated that BAJ was not late in making a claim payment until 2009 (before suspension). BAJ still performed its obligations to customers. "Five years is a long period of time for business restrictions; of course, the plaintiff was severely disadvantaged," he said. On that matter, continued Poltak, OJK did not make any rescue efforts to help or provide solutions to the plaintiff. In his view, the OJK has been unfair and discriminative against the plaintiff. Thus, the OJK is also said to have violated the purpose of the establishment of the authority of Article 4 of Law No.21 / 2011 regarding the Financial Services Authority.

Furthermore, instead of providing solutions, OJK filed a petition for bankruptcy against BAJ at the Commercial Court of Central Jakarta. Bankruptcy application registered on March 18, 2015 with registration number 04/Pdt.Sus/Bankrupt/2015/PN.Jkt.Pst. Poltak expressed the opinion that the OJK's action in treating the plaintiff in this way was unlawful because there is no underlying legal basis for its actions. The legal basis to file for bankruptcy only came into existence when an OJK Regulation (POJK) to that effect was enacted on December 11, 2015. The rules are set forth in Section 61 of POJK No.28/POJK.O5/2015, regarding Dissolution, Liquidation and Insolvency of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies and Sharia Retakaful Companies. "The bankruptcy filing by OJK was disastrous and contradictory to the principle of the law because there was no prevailing policy in relation thereto," he said.

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Although the request for bankruptcy was rejected by the Central Jakarta Court on April 16, 2015, OJK won the appeal on August 18, 2015. With the verdict, BAJ officially became bankrupt and insolvent. Moreover, the review effort filed by the plaintiff was also rejected, and a final verdict was issued. At this time, the bankruptcy process of one of the oldest insurance companies in Indonesia is still ongoing. However, BAJ insolvency process is not running smoothly. Three curators, Raymond Pardede, Gindi Hutahaean and Lukman Sembada, were arrested by the police on charges of embezzlement and money laundering in the insurance bankruptcy case. They allegedly transferred the assets of the debtor to their personal accounts in an amount totaling Rp1.1 trillion. BAJ's outstanding obligations total Rp800 billion to 30,000 creditors that are concurrent (unsecured).

Source: <http://kabar24.bisnis.com/read/20180107/16/723926/dalam-pailit-asuransi-jiwa-bumi-asih-seret-ojk-ke-meja-hijau>

## **Rules on advertising for insurance companies**

*(Amy Septiarini, S.H. with research by Aditya John)*

The Financial Services Authority ("OJK") issued Regulation No. 69/POJK.05/2016 on Business Implementation for Insurance Companies, Shariah Insurance Companies, Reinsurance Companies and Shariah Reinsurance Companies ("POJK 69/2016") which provides more comprehensive provisions for the insurance industry. As a result of growing concerns of insurance executives over the number of complaints filed by policyholders with regard to their disappointment with insurance products, this brief will focus on rules on producing marketing materials under POJK 69/2016.

Insurance companies may advertise their products through various media. The general rule is that in making advertisements and articles, insurance companies are obliged to ensure that the information they provide regarding their products is based on facts and is not misleading. POJK 69/2016 gives OJK the authority to withdraw any promotion or advertisement that is inaccurate, obscure, and/ or misleading to policyholders, insured parties, participants or Ceding Companies (as defined in POJK 69/2016). Article 15 (4) of POJK 69/2016 stated that promotion or advertisements in the form of brochures or leaflets must meet the following conditions:

- a. Are easy to understand;
- b. stipulate the benefits which will be gained by the people who are taking offers of the product;
- c. state the payment of claims process;
- d. give the exceptions which will affect the approval process and payment of claims;
- e. do not conceal, neglect or delete important provisions; and
- f. make statements regarding the applicable terms and conditions.

Promotion and advertisements via radio and television (other than brochures) must fulfill the requirement provided in (a), (b) and (f) above. After an advertisement is made, the OJK will decide whether the information provided in it is suitable for policyholders, insured participants and ceding companies. If it is not suitable and has not met the requirements, the OJK is allowed to ask the company to withdraw the intended advertisement or article in maximum period of 7 (seven) working days from the time of the OJK request. This is a significant development, as the OJK did not have the right to do so in previous regulations. Insurance companies shall take into account *POJK 69/2016* and *Law No.8 of 1999, regarding Consumer Protection* prior to making an advertisement or undertaking promotional activities.

## **BI issues regulation on implementation of Fintech**

*(Oka Anantajaya, S.H., LL.M. and Miranda Mamahit, S.H.)*

### **Introduction**

Bank Indonesia recently issued *Bank Indonesia Regulation No. 19/12/PBI/2017 on the Implementation of Financial Technology* (“**Fintech Regulation**”) to further regulate the fintech industry. The Fintech Regulation does not repeal, replace or revoke any existing BI regulations that are related to fintech, such as *BI Regulation No. 18/40/PBI/2016 on the Implementation of Payment Transaction Processing* (“**BI Regulation No. 18/40**”) and *BI Regulation No. 11/12/PBI/2009 on Electronic Money* (as amended) but merely acts as a complementary regulation.

### **Purpose and scope**

The Fintech Regulation categorizes implementation of financial technology into the following categories:

- a. payment system;
- b. market support;
- c. investment management and risk management;
- d. loans, financing, and provision of capital; and
- e. other financial services.

Under the Fintech Regulation, financial technology shall have the following criteria:

- a. be innovative;
- b. may affect existing products, services, technology and/or financial business model;
- c. can provide benefits for the community/society;
- d. can be widely used; and
- e. fits other criteria established by Bank Indonesia.

A financial technology provider that meets the criteria referred to above should be registered at Bank Indonesia, and a written application must be submitted to Bank Indonesia along with the required documentations. Registration is exempted for payment system service providers who have obtained a license/permit from Bank Indonesia and/or financial technology providers which are under the auspices of other relevant authorities. Bank Indonesia shall make an announcement that the financial technology provider has been registered with Bank Indonesia through the official website of Bank Indonesia.

### **Obligations for registered financial technology providers**

A financial technology provider that has been registered at Bank Indonesia must:

- a. apply the principle of consumer protection;
- b. maintain the confidentiality of data and/or consumer information, including data and/or transaction information;
- c. apply risk management and prudential principles;
- d. use Rupiah in every transaction conducted in the territory of Indonesia in accordance with the prevailing laws that regulate currency;
- e. apply anti-money laundering and prevention of terrorism financing principles;
- and
- f. comply with the provisions of other prevailing laws and regulations.

It should also be noted that a financial technology provider is prohibited from conducting payment system activities using virtual currency.

### **Regulatory sandbox**

The regulatory sandbox is a secure testing room for fintech and its products, services, technology and/or business model. The purpose is to provide an opportunity for the financial technology provider to ensure that its products, services, technology and/or business model meets the fintech criteria. A financial technology provider that is participating in the regulatory sandbox is a financial technology provider officially registered with Bank Indonesia as elaborated earlier, and which has been allowed by Bank Indonesia to participate in the regulatory sandbox based on the products, services, technology and the business model of the relevant financial technology provider.

Furthermore, Bank Indonesia shall determine the status of the results of the trial of the financial technology provider as<sup>[1]</sup>:

- a. successful;
- b. unsuccessful; or
- c. another status stipulated by Bank Indonesia.

Under the fintech regulation, should the trial be successful, the financial technology provider is prohibited from marketing its product, services, technology and/or business model tested in the regulatory sandbox until an approval is obtained from BI in line with the rules set out under *BI Regulation No. 18/40*. Should the trial be unsuccessful, the financial technology provider is prohibited from marketing its products and/or services as well as using technology and/or business model tested in the regulatory sandbox.

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If the products, services, technology and/or business model falls under financial technology outside the payment system category, BI will convey the status of the testing of the financial technology provider to the other relevant authorities.

Implementation of the regulatory sandbox is further regulated in detail under BI Governor Regulation No. 19/14/PADG/2017 of 2017 on Regulatory Sandbox for Financial Technology.

### **Cooperation between a payment system provider and a financial technology provider**

Cooperation between a payment system provider and a registered financial technology provider shall obtain prior consent from BI in line with *BI Regulation No. 18/40*. A payment system provider is prohibited from cooperating with an unregistered and/or unlicensed financial technology provider.

### **Sanctions**

Financial technology providers that violate the provisions may be subject to sanctions in the form of<sup>[2]</sup>:

- a. written warning;
- b. fine;
- c. suspension in part or in entirety of its business activities;
- d. deletion from the list of registered financial technology provider with Bank Indonesia;
- e. certain actions relating to the conduct of payment system activities;
- f. recommendation to the competent authority to revoke the doing business license granted by such relevant authority; and/or
- g. revocation of the license as a payment system service provider.

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<sup>[1]</sup> Article 12 paragraph (2) of the FinTech Regulation.

<sup>[2]</sup> Article 20 of the FinTech Regulation.