

Consumer Protection in the Financial Services Sector

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Overview

Structure of Indonesia's financial services sectors comprise commercial banks, rural banks, securities companies, investment advisor, custodian bank, pension fund, insurance company, reinsurance company, financing institution, pawn company and Guarantee Company, either performing business activities in conventional and sharia.

Meanwhile, consumers in financial perspectives are parties who place their funds and/or utilize services available at the Financial Services Institution such as customers in Banking, capital market investors, insurance policyholders and participants in the Pension Fund, under the laws and regulations of the financial services sector.

As provided in Article 1.1 of Law Number 8 of 1999 on Consumer Protection Law ("**Consumer Protection Law**"), consumer protection is any effort that ensures the legal certainty to provide protection to customers. In particular, consumer protection on financial services sector is regulated under Financial Services Authority (*Otoritas Jasa Keuangan – OJK*) Regulation Number 1/POJK.07/2013 TAHUN 2013 on Consumer Protection ("**OJK Reg 1/2013**").

Protection of Purchasing Financial Products

In practice, consumers purchase financial services or products based on trust and credibility of the financial services companies. For priority consumers, financial services companies will normally special treatment of the services. Notwithstanding, it is essential for consumers to understand their rights in any financial transactions.

Financial services companies are obliged to provide proof of ownership of the products to the consumer at the proper time in accordance with the agreement with the Consumer. Furthermore, they also have to provide reports to consumer on the position of balance and mutation of deposits, funds, assets, or obligations of the consumer in an accurate, timely manner and by way or means in accordance with the agreement with the consumer.

More importantly, financial services companies should follow instructions from the consumer in accordance with the agreement with the consumer and the prevailing laws and regulations. Article 29 of OJK Reg 1/2013 provides that financial services companies should responsible for any negligence or errors done by its board, employees, and other third parties working for such companies to consumers.

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Further, financial services companies should prevent its board, supervisors and employees to enrich or benefit themselves or other parties and to misuse their authority, opportunities, or facility they might have because of their position or designation. For instance, branch head promise to taking care the opening of a deposit for priority consumer, but he invests the money to other products. This misleading statement and default to not following consumer's instruction will also be the responsibility of the companies.

Financial services companies which do not comply with all provisions in the OJK Reg 1/2013 will be liable to sanctions, such as administrative fines, limitation of business activities, freezing business activities, and/or revocation of permit. All these sanctions can be imposed without early written warning from the OJK.

Settlement of Consumer Disputes

As mandated under Article 32 of OJK Reg 1/2013, financial services companies should allocate customer care division to handle violation on consumers' rights. The provided services should be free of charge. Subsequently, the companies are required to report any dispute with its consumer on quarterly basis to the OJK.

Consumers may submit their complaint indicating a dispute to the OJK and member of Board of Commissioners in charge of education and consumer protection will facilitate the discussion between both parties maximum for 60 (sixty) days. Any agreements or disagreements on the discussion shall be stated in a minutes of meeting.

Besides the above forums, consumers are also entitled to submit a civil lawsuit to Indonesian court on violation of consumer's rights. Indonesian civil proceeding comprises of 3 (three) stages of first instance court i.e. District Court, Appellate Court and Supreme Court and 1 (one) judicial review at the Supreme Court.

Article 23 of the Consumer Protection Law specifically determines that consumer can submit the lawsuit to a district court which covers its domicile, instead of the court in financial services companies' domicile. For consumers living overseas, the lawsuit can be submitted to the District Court of Central Jakarta as Indonesia does not recognize foreign court judgment to be applied in Indonesia jurisdiction.

If the consumer protection issue is related to settlement of outstanding debts from financial services companies to consumers, the consumers may not be able to bring the dispute through the Indonesian commercial court. As financial services companies provide wide public services, Bank of Indonesia, Financial Services Authority (OJK) or the Ministry of Finance are the only authorities responsible for submitting bankruptcy or suspension of payments application towards them.

Consumer protection laws and regulations establish set of obligations of financial services companies towards their consumers and some alternative forums to defend consumers' rights and interests