



Legal Alert

**The Newly Ratified Law on
Financial Sector Development
and Strengthening**

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The Law on Financial Sector Development and Strengthening (*Undang-Undang Pengembangan dan Penguatan Sektor Keuangan* or “**PPSK Law**”) has effectively amended provisions within 15 (fifteen) laws that apply to the financial sector¹ in relation to 19 (nineteen) financial ecosystems such as capital market, banking, pension funds, insurance, etc.² The PPSK Law was approved by the House of Representatives on Thursday, 15 December 2022 with the following pivotal provisions (among others):

1. **Amendment to Law No. 24 of 2004 on the Indonesian Deposit Insurance Corporation (*Lembaga Penjamin Simpanan* or “LPS”) (“LPS Law”)**

The LPS Law provides the following amendments, among others:

- a. The LPS guarantees insurance companies’ liquidation and the performance of insurance policies. The government has added the scope of work of LPS to: (i) protect public funds under the insurance companies; (ii) further, the function of LPS is added to (a) guarantee savings of the public funds; (b) to guarantee insurance policies; (c) carry out activities to protect financial stability; and (d) conduct resolution of bank and insurance companies, conduct resolution of banks, which shall include the activity to determine policies for banks under resolution.³ Banks under resolution shall include banks that have financial difficulties, are considered unable to carry out their business activities and are unable to be restructured by Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) in accordance with its authority.
- b. In addition, the LPS shall also resolve all problems of insurance companies whose licenses are revoked by OJK.
- c. To carry out its obligation, the LPS shall use funds from its assets. In the event the LPS is in a difficult position, it shall be allowed to: (i) sell its ownership over government bonds to Bank Indonesia (“**BI**”); (ii) carry out issuance of bonds; (iii) borrow funds from other parties; and (iv) borrow funds from the central government.⁴

2. **Amendment to Law No. 23 of 1999 of Bank Indonesia (“BI Law”)**

Based on the BI Law, we note that BI is authorized to apply for the declaration of bankruptcy for certain financial institutions. The authorization shall covers application for a declaration of bankruptcy and/or a suspension of debt payment obligations for (i) payment service providers; (ii) payment system infrastructure providers, (iii) rupiah currency processing service providers, (iv) money market brokerage firms, (v) electronic trading platform providers (market operators), (vi) central counterparties for over-the-counter interest rate and exchange rate derivative transactions, or (vii) other institutions licensed and/or stipulated by BI, as long as the dissolution and/or bankruptcy is not regulated differently by other laws.⁵

¹ Chapter XXIV Article 334 of PPSK Law

² Chapter II Part 3 Article 4 of PPSK Law

³ Chapter III Part 3 Article 7 Number 3 of the PPSK Law (amendment of Article 4 of LPS Law)

⁴ Chapter III Part 3 Article 7 Number 7 the PPSK Law (addition of Article 6A to LPS Law)

⁵ Chapter III Part 5 Article 9 Number 21 and 22 (addition of Chapter VIB and Article 35C and Article 35D to BI Law)

3. Amendment to Law No. 7 of 1992 on Commercial Banks ("Banking Law")

Based on the Banking Law, there are several amendments as stipulated below:

- a. Commercial banks shall be entitled to (i) carry out capital participation activities in financial service institutions and/or other companies that support the banking industry; (ii) carry out temporary equity participation activities outside financial institutions to overcome the consequences of credit or financing failures, with the condition that they must withdraw their participation; (iii) act as the founders or administrators of pension funds; and/or (iv) cooperate with others other than financial service institutions in the provision of financial services to customers.⁶
- b. To encourage digital banking, banks may provide access to customer data and information from other financial operators, including Technological Innovations within the Financial Sector (*Inovasi Teknologi Sektor Keuangan* or "ITSK") operators based on approval and for customer interests through certain systems or applications.⁷ This is to form an interlink between banks and financial technology based on the principles of transparency, interoperability, security, flexibility, consumer protection, independency, and novelty.⁸
- c. Commercial banks shall be entitled to operate as digital banks under the requirement of having 1 (one) physical office as the head office.⁹
- d. The Banking Law allows banks to purchase object of collateral/security in the event of default/default situation. If a debtor customer does not fulfill their obligations, commercial banks shall be entitled to purchase part or all of the collateral, either through or outside of an auction.¹⁰
- e. OJK regulates¹¹ and supervises banks directly and indirectly¹² and in turn, banks must comply with OJK's follow-up supervision¹³ and maintain their level of soundness as well as other aspects related to the level of soundness.¹⁴
- f. The Banking Law adds criminal sanctions related to banking activities, among others: members of the board of commissioners/directors or employees of the bank who purposely falsify, eliminate, omit, or cause the failure to record, change, obscure, hide, delete, or eliminate the existence of a record either in the books and/or reports, documents or business activity reports transaction reports or bank accounts, or deliberately change, obscure, eliminate, hide or destroy bookkeeping records shall be imprisoned for 5 – 15 (five to fifteen) years and fined with IDR10,000,000,000 – IDR200,000,000,000 (ten billion to two hundred billion Rupiah).¹⁵

⁶ Chapter IV Part 2 Article 14 Number 3 of PPSK Law (amendment of Article 7 of Banking Law)

⁷ Chapter IV Part 2 Article 14 Number 4 of PPSK Law (addition of Article 7A paragraph (2) to Banking Law)

⁸ Elucidation of Chapter IV Part 2 Article 14 Number 4 of PPSK Law (addition of Article 7A paragraph (2) to Banking Law)

⁹ Chapter IV Part 2 Article 14 Number 4 of PPSK Law (addition of Article 7B to Banking Law)

¹⁰ Chapter IV Part 2 Article 14 Number 7 of PPSK Law (amendment of Article 12A paragraph (1) of Banking Law)

¹¹ Chapter IV Part 2 Article 14 Number 24 of PPSK Law (amendment of Article 29 paragraph (1) of Banking Law)

¹² Chapter IV Part 2 Article 14 Number 24 of PPSK Law (amendment of Article 29 paragraph (2) of Banking Law)

¹³ Chapter IV Part 2 Article 14 Number 24 of PPSK Law (amendment of Article 29 paragraph (3) of Banking Law)

¹⁴ Chapter IV Part 2 Article 14 Number 24 of PPSK Law (amendment of Article 29 paragraph (4) of Banking Law)

¹⁵ Chapter IV Part 2 Article 14 Number 48 of PPSK Law (amendment of Article 49 paragraph (1) of Banking Law)

4. Amendment to Law No. 21 of 2008 on Sharia Bank (“**Sharia Banking Law**”)

- a. Banks and affiliated parties must maintain the confidentiality of information regarding depositing customers and their savings as well as investor customers and their investments. This also applies if the depositing customer/investor customer is also a recipient-of-facility customer.¹⁶ However, bank’s secrecy / confidentiality would not apply to judicial interests in civil cases, judicial interests in criminal cases, and a curator’s request based on a commercial court decision, among other circumstances.¹⁷ In these circumstances, the relevant agencies must coordinate with OJK for the release of the confidential information / bank’s secrecy.¹⁸
- b. OJK may grant banks permission to disclose confidential information for the interest of justice in criminal cases and to fulfill mutual assistance in criminal matters.¹⁹ Thus, OJK may permit the police, prosecutors, judges, or other investigators authorized by law to obtain information from the bank regarding deposits or investments of suspects, defendants, convicts, or other parties related to the bank upon the written request from certain authoritative figures and with a specific format.²⁰ Furthermore, in civil cases, the bank’s board of directors may inform the court about the customer’s financial condition and other information relevant to the case based on a request of the court.²¹
- c. The Sharia Banking Law provides criminal sanctions for banking activities in Sharia Banks and Commercial Banks which have sharia business units. The provisions stipulates (among others) that Board of Director members and employees of sharia banks or conventional commercial banks that has sharia business units that deliberately misuse customer funds will be imprisoned for 2 – 8 (two to eight) years and fined IDR2,000,000,000 – IDR4,000,000,000 (two to four billion Rupiah).²²

5. Amendment to Law No. 8 of 1995 on Capital Market (“**Capital Market Law**”)

- a. Parties that obtain the license, approval, statement of effectiveness of registration statements, and registration certificated from OJK must carry out their activities based on statutory provisions and by implementing good corporate governance, professional standards, and/or code of ethics.²³
- b. To expand access to micro, small and medium enterprises to obtain funding from the capital market, OJK regulates the collection of public funds through a public offering of securities using the services of an electronic system operator (crowd funding securities). OJK would regulate the maximum requirements for the amount of funds raised and the requirements for investors who can use the mechanism of a public offering of securities by using the services of an electronic system operator. Crowd funding service providers facilitating these public offerings must obtain a license from OJK.²⁴

¹⁶ Chapter IV Part 3 Article 15 Number 17 of PPSK Law (amendment of Article 41 of UU Syariah Banking Law)

¹⁷ Chapter IV Part 3 Article 15 Number 18 of PPSK Law (addition of Article 41A to UU Syariah Banking Law)

¹⁸ Chapter IV Part 3 Article 15 Number 27 of PPSK Law (addition of Article 48A to UU Syariah Banking Law)

¹⁹ Chapter IV Part 3 Article 15 Number 18 PPSK Law (addition of Article 41B to UU Syariah Banking Law)

²⁰ Chapter IV Part 3 Article 15 Number 20 of PPSK Law (amendment of Article 43 of UU Syariah Banking Law)

²¹ Chapter IV Part 3 Article 15 Number 22 of PPSK Law (amendment of Article 45 of Syariah Banking Law)

²² Chapter IV Part 3 Article 15 Number 35 of PPSK Law (amendment of Article 66 paragraph (3) of Syariah Banking Law)

²³ Chapter V Part 2 Article 22 Number 3 of PPSK Law (addition of Article 5A paragraph (1) to Capital Market Law)

²⁴ Chapter V Part 2 Article 22 Number 23 of PPSK Law (addition of Article 69A to Capital Market Law)

- c. Capital Market Law provides additional criminal sanctions in relation to capital market activities. In terms of possible criminal acts, OJK may determine not to proceed to the pre-investigation stage or commence the pre-investigation by considering: (i) the transaction value or impact of the violation; (ii) whether there is a settlement for the loss incurred; (iii) effects on bidding activities and/or overall securities trading; and/or (iv) the impact of losses on the capital market system or interests of investors and/or the public. If OJK decides to not continue to the pre-investigation stage, OJK is authorized to enforce administrative sanctions and/or written orders.²⁵ Furthermore, any party who intentionally prevents, obstructs, directly or indirectly the examination, investigation, prosecution, and examination at court hearings against suspects and defendants or witnesses in criminal cases regulated under the Capital Market Law shall be imprisoned for 1 – 5 (one to five) years and fined with IDR1,500,000,000 – IDR50,000,000,000 (one billion five hundred million to fifty billion Rupiah).²⁶

Capital Market Law provides new provisions on Carbon Trading

Carbon trading is a sell and purchase activity of carbon to reduce 'glass house effect' through market. Carbon certificate is the evidence of ownership of the carbon unit. Domestic and/or foreign carbon trading is carried out by (i) carbon market mechanisms through carbon exchanges; and/or (ii) direct trading. Carbon trading through the carbon market mechanism is carried out by (i) the development of carbon trading infrastructure; (ii) the regulation of utilizing state revenue from trade carbon; and/or (iii) the carbon transaction administration.²⁷ Further provisions on carbon trading will be regulated under OJK regulations.²⁸

6. Amendment to Law No.40 of 2014 on Insurance (“Insurance Law”)

Insurance brokers, reinsurance brokers, and insurance agents must be registered with OJK and must have sufficient knowledge and ability, and have a good reputation.²⁹

Insurance Law provides new provisions on Guarantee Policy Program (*Program Penjaminan Polis* or “PPP”)

- a. PPP is organized by the LPS.³⁰ Furthermore, LPS determines the limit of the coverage value by considering the sustainability of the PPP. Further regulations on the limit of the sum insured shall be established by the LPS.³¹
- b. In addition, LPS is responsible for the management and administration of assets and liabilities to administer the PPP. The LPS shall separate the recording of assets and liabilities for implementing the PPP from the recording of assets and liabilities for implementing deposit insurance. The management and administration of assets originating from policy guarantee contributions can be carried out in the form of low-risk investments.³²

²⁵ Chapter V Part 2 Article 22 Number 37 of PPSK Law (addition of Article 110A to Capital Market Law)

²⁶ Chapter V Part 2 Article 22 Number 44 of PPSK Law (addition of Article 106C to Capital Market Law)

²⁷ Chapter V Part 3 Article 23 of PPSK Law

²⁸ Chapter V Part 3 Article 26 of PPSK Law

²⁹ Chapter VI Article 45 Number 8 of PPSK Law (amendment of Article 27 paragraph (1) and (2) of Insurance Law)

³⁰ Chapter VIII Part 4 Article 78 of PPSK Law

³¹ Chapter VIII Part 4 Article 80 of PPSK Law

³² Chapter VIII Part 4 Article 82 of PPSK Law

7. Chapter X of PPSK Law provides new provisions on Venture Capital (*Usaha Modal Ventura*)

- a. Venture capital operators may be owned by the state of the Republic of Indonesia; regional government; Indonesian citizens; Indonesian legal entities; foreign legal entities; and/or foreign citizens.³³
- b. The financial source of venture capital operators may be sourced from venture funds; loans; securitization of assets; issuance of medium-term notes; bonds; subordinated loans or funding; issuance of shares; donations; and/or grants. Further regulations regarding the source of funds of venture capital operators shall be established by OJK.³⁴
- c. Venture capital operators carry out venture capital business which includes equity participation; investment through the purchase of convertible bonds (quasi-equity participation); financing through the purchase of bonds issued by the venture capital partner at the start-up and/or development stage; and/or productive business financing. The venture capital operators may manage venture funds and the business activity of a venture capital may be accompanied with assistance to business partners and/or debtors. Furthermore, venture capitals may do other business activities such as fee-based service activities and/or other business activities with OJK approval. Further regulations on fee-based service activities and other business activities approved by OJK shall be established by OJK.³⁵ Participation value and other business activities to one business partner and/or debtor are limited to a maximum of 25% (twenty-five percent) of the equity of the venture capital operator.³⁶
- d. Venture capital operators must have share participation and/or participation through the purchase of convertible bonds at a minimum of 15% (fifteen percent) of the total business activities of a venture capital. This obligation must be fulfilled within 3 (three) years after the issuance of the business license.³⁷
- e. Venture capital operators must have an investment value, participation, and/or the value of receivables originating from business activities to the total assets of venture capital operators (Investment and Financing to Assets Ratio – “IFAR”) of at least 40 (forty) percent. Further regulations on the fulfillment of the IFAR shall be established by OJK.³⁸

8. New Ppovisions on ITSK

- a. ITSK encompasses 6 (six) sections including, payment systems, settlement of securities transactions, investment management, risk management,

³³ Chapter X Part 1 Article 106 of PPSK Law

³⁴ Chapter X Part 1 Article 109 of PPSK Law

³⁵ Chapter X Part 2 Article 110 of PPSK Law

³⁶ Chapter X Part 3 Article 118 of PPSK Law

³⁷ Chapter X Part 3 Article 115 of PPSK Law

³⁸ Chapter X Part 3 Article 116 paragraph (1) of PPSK Law

- collection and/or distribution of funds, market support, other digital financial services, crypto activities, and other financial services activities.³⁹
- b. ITSK operators would take the legal form of limited liability companies or cooperatives⁴⁰ and are obliged to surrender data and information to BI and OJK.⁴¹ Such supervision and monitoring by BI and OJK include registration, financial education, and consumer protection, among others.⁴² Further regulations on supervision and monitoring shall be established by BI and OJK.⁴³
 - c. Additionally, all ITSK operators must register as members of an ITSK operator's association that are approved and regulated by BI and OJK.⁴⁴
9. Amendment to Law No. 9 of 2016 on the Prevention and Control of Financial System Crisis (*Pencegahan dan Penanganan Krisis Sistem Keuangan* or "PPSK Law")
- a. OJK regulates and determines the supervision status of banks and such status consists of (i) banks under normal supervision; (ii) banks under restructuring; and (iii) banks under resolution. This status is kept confidential by OJK and cannot be disclosed to the public. If there is a change of status, OJK will provide written notification to the bank and the LPS. During supervision, OJK is authorized to issue orders to the banks to do certain actions, which must be fulfilled by the banks. Further regulations on the criteria to determine the status and supervisory action shall be established by OJK.⁴⁵
 - b. If a commercial bank under normal supervision has a financial problem, the commercial bank shall implement a recovery action plan that is approved by OJK. If the recovery action plan is not approved by OJK, the commercial bank shall implement the restructuring steps set out by OJK. Further regulations regarding the recovery action plan and restructuring steps shall be established by OJK.⁴⁶
 - c. If a bank under normal supervision has an issue that endangers the business continuity, OJK is authorized to limit the authority of a General Meeting of Shareholders ("**GMS**"), the board of commissioners/directors, and the shareholders and/or take action including the request for: (i) the shareholders to increase the capital; (ii) the shareholders to change the members of the board of commissioners/directors; (iii) banks to write off bad loans or distribution of funds that obstruct and are accountable for the loss of the bank's capital; (iv) bank to be merged or consolidated with another bank; (v) bank to be sold to a buyer that is willing to take over the liabilities in its entirety; (vi) bank to surrender all or part of their management of the bank's business to another party; and/or (vii) bank to sell all or part of their assets and/or liabilities to another party.⁴⁷

³⁹ Chapter XV Article 202 paragraph (1) of PPSK Law and its relevant elucidation

⁴⁰ Chapter XV Article 204 paragraph (2) of PPSK Law

⁴¹ Chapter XV Article 205 of PPSK Law

⁴² Chapter XV Article 207 paragraph (3) of PPSK Law

⁴³ Chapter XV Article 207 paragraph (4) of PPSK Law

⁴⁴ Chapter XV Article 210 paragraph (1) of PPSK Law

⁴⁵ Chapter XX Article 266 Number 4 of PPSK Law (addition of Article 18D to PPKSK Law)

⁴⁶ Chapter XX Article 266 Number 5 of PPSK Law (amendment of Article 19 of PPKSK Law)

⁴⁷ Chapter XX Article 266 Number 6 of PPSK Law (addition of Article 19A to PPKSK Law)

- d. Banks under restructuring:
- (i) must impose (i) a recovery action plan approved by OJK; (ii) restructuring steps determined by OJK if the recovery action plan has not been approved by OJK; and (iii) convey the realization to OJK;
 - (ii) OJK ensures the implementation of the recovery action plan of commercial banks or restructuring measures stipulated by OJK; and/or
 - (iii) LPS to (i) conduct due diligence to determine the condition of the bank in general; (ii) assess other banks that are willing to accept the transfer of all or part of the assets and/or liabilities of the bank; and/or (iii) assess investors who are willing to take over the bank.⁴⁸
- e. Furthermore, OJK may order a bank under restructuring to (i) maintain the bank's financial condition so that there is no material decrease in the bank's assets and/or increase in liabilities; and (ii) support the implementation of LPS actions⁴⁹ as well as:
- (i) take over the authority of GMS, the board of commissioners/directors, and the shareholders;
 - (ii) order the shareholders to increase the capital;
 - (iii) order the shareholders to provide a loan to the bank;
 - (iv) order the shareholders to support the implementations of OJK and LPS when overcoming bank issues;
 - (v) order bank to write off credit or distribution of funds that obstruct and are accountable for the loss of the bank's capital;
 - (vi) appoint a statutory manager and order the bank to support the implementation of the statutory manager's duties placed at the bank; and/or
 - (vii) order the bank to not conduct any transaction with certain parties and/or other parties determined by OJK.⁵⁰
- f. OJK is authorized to (i) order a bank to sell all or part of the assets and/or liabilities of the Bank to other parties; (ii) order the bank to surrender the management of all or part of the bank's activities to other parties; and/or (iii) limit certain business activities of the bank.⁵¹
- g. Banks are under resolution if (i) before the period of restructuring ends, the bank experiences deterioration and does not fulfill minimum capital requirements and/or statutory reserves; (ii) until the period of restructuring ends, the bank has not been able to meet the capital level requirements taking into account risks and/or has not been able to solve fundamental liquidity problems; or (iii) banks cannot return LPS fund placements.⁵²
- h. Banks that experience liquidity issues may submit a written application to BI to obtain a Short-Term Liquidity Loan/Short-Term Liquidity Financing based on Sharia Principles (*Pinjaman Likuiditas Jangka Pendek/Pembiayaan Likuiditas Jangka Pendek Syariah* or "**PLJP/PLJPS**") with a copy of the application to OJK.⁵³ To obtain the PLJP/PLJPS, BI will (i) use the solvency

⁴⁸ Chapter XX Article 266 Number 6 of PPSK Law (addition of Article 19B paragraph (6) to PPKSK Law)

⁴⁹ Chapter XX Article 266 Number 6 of PPSK Law (addition of Article 19B paragraph (7) to PPKSK Law)

⁵⁰ Chapter XX Article 266 Number 6 of PPSK Law (addition of Article 19B paragraph (8) to PPKSK Law)

⁵¹ Chapter XX Article 266 Number 6 of PPSK Law (addition of Article 19B paragraph (9) to PPKSK Law)

⁵² Chapter XX Article 266 Number 6 of PPSK Law (addition of Article 19D paragraph (1) to PPKSK Law)

⁵³ Chapter XX Article 266 Number 7 of PPSK Law (amendment of Article 20 paragraph (1) of PPKSK Law)

assessment from OJK as a basis for consideration in granting PLJP/PLJPS; and (ii) assess the fulfillment of the bank's collateral requirements in the form of:

- (i) securities that are easy to liquidate;
 - (ii) credit/financing assets with collectability as PLJP/PLJPS collateral if the Bank does not have securities as collateral; and/or
 - (iii) fixed assets owned by the bank, if the bank does not have securities as collateral nor credit/financing assets.⁵⁴
- i. To support the authority of the financial sector stability committee (KSSK) in handling financial system stability issues, BI is authorized to: (i) buy long-term government bonds and/or government sharia securities in the primary market for handling financial system issues that endanger the national economy; (ii) buy/repurchase government bonds and/or government sharia securities owned by LPS for the cost of handling bank issues; (iii) provide access to funding for corporations/private companies by repurchasing government bonds and/or government sharia securities owned by corporations/private companies through banking; and (iv) regulate the obligation to receive and use foreign exchange for residents, including provisions regarding transfers, repatriation, and conversion of foreign exchange in the context of maintaining macroeconomic and financial system stability.⁵⁵

10. New provisions on Administrative Sanctions for ITSK

Specifically for ITSK that has obtained a registered or licensed status from the relevant authority and carries out activities not in accordance with their license, can be subject to administrative sanctions by the relevant authorities, which include: (i) written warning; (ii) demotion of soundness level; (iii) freezing of certain business activities; (iv) administrative fines; (v) dismissal of the management and then the appointment of a temporary replacement until the next GMS or until a meeting of cooperative members appoints a permanent replacement with the approval of the relevant authorities; (vi) inclusion of board members, employees, and shareholders in the list of disgraceful persons in the financial services sector; and (vii) license revocation.⁵⁶

Closing Remarks

As a new law that has adopted the omnibus-style approach due to the the sheer abundance of change to prevailing laws and regulations, the PPSK Law strives to answer and clarify several uncertainties within the financial sector. Through the PPSK Law, financial entities are enlightened about which authority they report to and what exactly is expected along with other issues such as how innovative mechanisms using technology are regulated within the banking system, and what are the measures to protect the Indonesian financial market, amongst other necessary clarifications. The implementing regulations for the PPSK Law have yet to be issued by the relevant authorities but we are confident that these future regulations will complement and further enlighten the answers already given within the PPSK Law.

⁵⁴ Chapter XX Article 266 Number 7 of PPSK Law (amendment of Article 20 paragraph (3) of PPKSK Law)

⁵⁵ Chapter XX Article 266 Number 8 of PPSK Law (addition of Article 36A paragraph (1) to PPKSK Law)

⁵⁶ Chapter XXI Part 1 Article 267 of PPSK Law

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