ACTIO

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Syndication credit:
What you need to Know

Certainty of Legality of Pawning Business by the FSA

Tips for Settling Bad Debts

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Knowing Yourself is The Beginning of All Wisdom

-Aristotle-

The focus of the fourth issue of Actio in its second year is financing, which has enjoyed massive attention in line with increasing economic growth in Indonesia.

With regard to the theme, Actio discusses various information, regulations and activities related to the implementation of syndicated loans and peer to peer lending.

We believe our articles about the settlement of bad debts and money laundering crime in the extension of peer to peer lending would be important for the readers to avoid civil disputes and criminal risks in civil transactions.

We hope that this edition can give insight for our readers intending to conduct financing transactions in Indonesia.

Finally, enjoy our work!

Regards,

Anggraeni & Partners

REVISED AMENDMENT TO REGULATION FOR THE OPERATION OF NON-TRUNK MOTOR VEHICHLE PUBLIC TRANSPORTATION

The government has revised Regulation of the Minister of Transportation Number 32 of 2016 concerning Operation of Non-Trunk Motor Vehicle Public Transport ("Permenhub 32/2016"). The revision includes several changes as follows:

1 Type of rental transport
The government distinguishes online taxis from other public transports. In this case, the government classifies online taxis as special rent transport means. In the future, online taxis will be given special license plate (TNKB).

2 Car engine cylinder capacity
Initially, the government only allowed vehicles with at least 1300 cc engine capacity to be used as online taxis. After the revision, the government allows vehicles with 1000 cc engine capacity to be used as online taxis.

3 Pool
Under the license requirements, operators of public transport were originally required to have pools. However, after the revision, online taxis are not required to have pools, but are still required to have garages to accommodate their vehicles.

4 Workshop
Under this regulation, online taxis are required to have workshops for vehicle maintenance. However, online taxis are allowed to work with other parties with regard to the vehicle maintenance facilities (workshops).

5 Periodic or regular testing
Motor vehicle periodic test mark (kir) was originally made by way of tapping. At present, the mark was made using an embossed plate. A motor vehicle with the vehicle registration certificate issued within maximally six months in advance is not required to undergo test but rather required to show the test type registration certificate (SRUT).

6 Access to dashboard
The subject of access to dashboard is a new provision added to the revised regulation. Online taxi operator application companies are now obliged to give digital dashboard access to the Directorate General of Land Transportation and the agency granting the license for public transport. It is intended for the purposes of monitoring the operation of online taxis.

7 Obligation to have vehicle registration certificate in the name of the company
The original regulation rules that the vehicle registration certificate must be in the name of the company. The revised regulation now provides that the vehicle registration certificate must be in the name of a legal entity. Name transfer can be done after the validity period of the certificate has expired after five years. In addition, drivers and the operator, such as cooperatives, must enter into a written agreement with each other that the vehicles used by the drivers are designated as online taxis.

8 Fare limit for special rent vehicle.
The government will now determine the maximum and minimum fare. This determination is intended to avoid fare increase during peak hours.

9 Tax
The substance for taxation interest in the operation of online taxi public transport operator is imposed on the application company in accordance with the recommendation of the Directorate General of Tax.

10 Penalties
Penalties may be imposed on the public transport company or the application company. Penalties on violations committed by the application company will be imposed by the Ministry of Communications and Information Technology by temporarily blocking the application until proper rectifications are made.

11 Quota of special rent transportation vehicles
The determination of amount of shall be done by the governor in accordance with the domicile of the company and by the Head of BPTJ for Greater Jakarta region.

Rules number 1 through 4 are effective immediately as of April 1, 2017, while rules number 5 and 6 will be effective after a two-month transition period from April 1, 2017 or from June 1, 2017 while a three month transition period will be given for rules number 7 through 11. **(TWK)**

INVESTIGATING THE RISKS OF INVESTING IN "PEER TO PEER LENDING"

In the era when everything is digital as it is today, our life has been easier in almost every way, including to obtain a loan and make investment as reflected in technology-based lending. One of the most popular form of lending today is peer to peer lending.

At a glance, extension of loan through peer to peer lending system is quite easy and fast. Generally, the service provider company will only require the prospective debtor to fill in a form provided on the website on an online basis and to attach some documents.

The data will then be evaluated by the service provider company to find out whether or not the debtor meets the requirements to be given a loan. If the prospective debtor is considered suitable, the service provider company will find an appropriate prospective creditor.

From the debtors side, they can obtain a loan with relatively easy terms in a short time. As for the creditors, they can get returns in a relatively short time with a fairly high interest.

This simplicity has pushed peer to peer lending business to grow very rapidly around the world, including in Indonesia. However, behind the ease of transacting, we must also understand the potential issues of the peer to peer lending system, especially for creditors.

Unlike investments in conventional banks –such as deposits which are guaranteed by the Deposit Insurance Corporation (LPS) or stock investments that are also guaranteed if the funds are taken away by the securities company– investments in peer to peer lending are neither guaranteed by LPS nor protected by special guarantees if the company takes away the investment funds.

Another risk that must be calculated is the status of the investor if the service provider company is declared bankrupt and the funds from the investor have not been disbursed to the debtor. In this case, it is necessary to consider if the investor's status is a creditor or not since there is no legal relation between the investor and the company providing the peer to peer lending service.

In addition, as the creditor has a direct relation with the debtor, the risk is fully borne by the investor if the debtor fails to repay the loan. Moreover, there is no collateral or security deposited on the debtor's assets in this lending resulting in the absence of guarantee of repayment of the investment funds from the creditor to the debtor. On the other hand, the service provider company is not involved in the lending and borrowing relation as it only acts as the intermediary. The company will only facilitate the settlement process of debt repayment.

With regard to some potential risks in investing in peer to peer lending companies, it is highly recommended to survey and select trusted peer-to-peer lending companies registered with the FSA before making investments. **(ADP)**

THINGS TO BE CONSIDERED BY THE "BORROWER" IN SYNDICATED LOAN

In Indonesia, there are many large businesses borrowing funds from abroad because overseas banks can provide huge amounts of loans for development projects in Indonesia, such as infrastructure projects.

In Indonesia, in order to obtain large amount of loan, companies normally take advantage of syndicated loans.

Stanley Hurn in his book Syndicated Loan: A Handbook for Banker and Borrower defines syndicated loan as "a loan made by two or more lending institution, on similar terms and conditions, by common documentation and administered by common agent".

Companies seeking to obtain loans using syndicated credit scheme (the "borrowers") obtain some benefits, such as large amount of loan. On the other hand, syndicated loans involve the role of private parties that can support national development. The financing will be beneficial for the success of national development.

In addition, syndicated loans reduce a company's risk of project development. In this case, syndicated loans can also help in debt restructuring projects.

There are a number of terms that need to be understood in syndicated loans, namely: (i) lender; (ii) borrower; (iii) arranger or the party arranging the loan and offer to banks or other financial institutions; (iv) lead manager or the party leading the syndicated credit process; (v) a security agent or the agent assigned to arrange the security of the borrowers; and (vi) facility agent or loan credit facility agent.

A syndicated loan contains the syndicated loan agreement which is also called the facility agreement. Please note that a syndication agreement does not create or recognize the existence of a debt, but rather constitutes a commitment to provide some funds by syndication and a commitment by the loan recipient to repay the funds on a certain date (Tennekoon, 1991).

The Borrower enters into the loan agreement with a syndicated bank. In this regard, the syndicated banks are grouped in the Asia Pacific Association Loan Market Association (APLMA) namely a Pan-Asian association founded in 1998 by ABN AMRO, Bank of America Merrill Lynch, Bank of China, Bank of Tokyo-Mitsubishi UFJ, BNP Paribas, Barclays, Citigroup, DBS, HSBC, JP Morgan Chase, National Australia Bank, Société Générale, Standard Chartered Bank, Sumitomo Mitsui Banking Corporation, and WestLB. For information, APLMA is an association that issues standardized documents of primary and secondary loan as well as reliable banking practices.

The amount of the loan is determined by the amount of project cost required by the borrower. It is important as the consequences will be enormous – not to mention the possibility that the loan can instantly be a non performing loan.[1]

In addition, with regard to a syndicated loan, we know a term called loan prepayment which is done when the borrower has surplus funds and can repay the loan outside the period specified in the agreement.

The lender typically puts interest on a loan prepayment because the step taken by the borrower is considered unprofitable for the bank as the bank will find difficulty in managing the fund paid earlier than the schedule.[2]

Furthermore, a borrower obtaining loans from overseas banks or foreign financing institutions are required to report any overseas debts based on credit agreements or bonds (which include letter of credit or L / C, bankers acceptance, bonds, commercial papers, promissory notes, and medium term notes) to Bank Indonesia.[3]

Institutional overseas debts shall be fully reported without minimum limitation. Meanwhile, individual overseas debts to be reported include (i) debts having a minimum nominal amount of USD200,000 or its equivalent amount in another currency at the rate applicable when the debt document is signed or issued; and / or (ii) if summed up, the debt reaches USD200,000 or its equivalent amount in another currency at the rate applicable when the debt document is signed or issued.

The party reporting overseas debts that has fulfilled the above requirement but fails to submit report to Bank Indonesia shall be subject to administrative sanctions in the form of a fine of Rp 10,000,000. **(TWK)**

1. Herlina Suyati Bachtiar, SH, MBA, Aspek Legal Kredit Sindikasi (Jakarta, PT Raja Grafindo Persada), 2000, p. 16
2. Ibid, p.22
3. Article 3 of Regulation of Bank Indonesia No. 12/24/PBI/2000
4. Point III.A. No. 2 – 4 Circular letter of Bank Indonesia No. 15/16/Dint/2013

What kinds of business entities are allowed to provide financial-based lending and borrowing services (fin-tech)?

Answer:
In Indonesia, the provision of information technology-based lending or borrowing service known as financial technology (fin-tech) is regulated in Article 1 paragraph (6) of Regulation of the Financial Services Authority Number 77 / PoJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Service ("POJK No. 77/2016"). The regulation contains an explanation that fin-tech providers include Indonesian legal entities that provide, administer and operate information technology-based money lending and borrowing services.

Article 2 of POJK No. 77/2016 provides that fin-tech operators are considered as other financial services institutions as stipulated in Law Number 21 of 2011 concerning the Financial Services Authority and the legal entities providing fin-tech services shall be limited liability companies or cooperatives.

Please note that if the fin-tech operator is a foreign citizen and a foreign legal entity, the share ownership, directly or indirectly, is limited to a maximum of 85% (eighty five percent). **(EDN)**

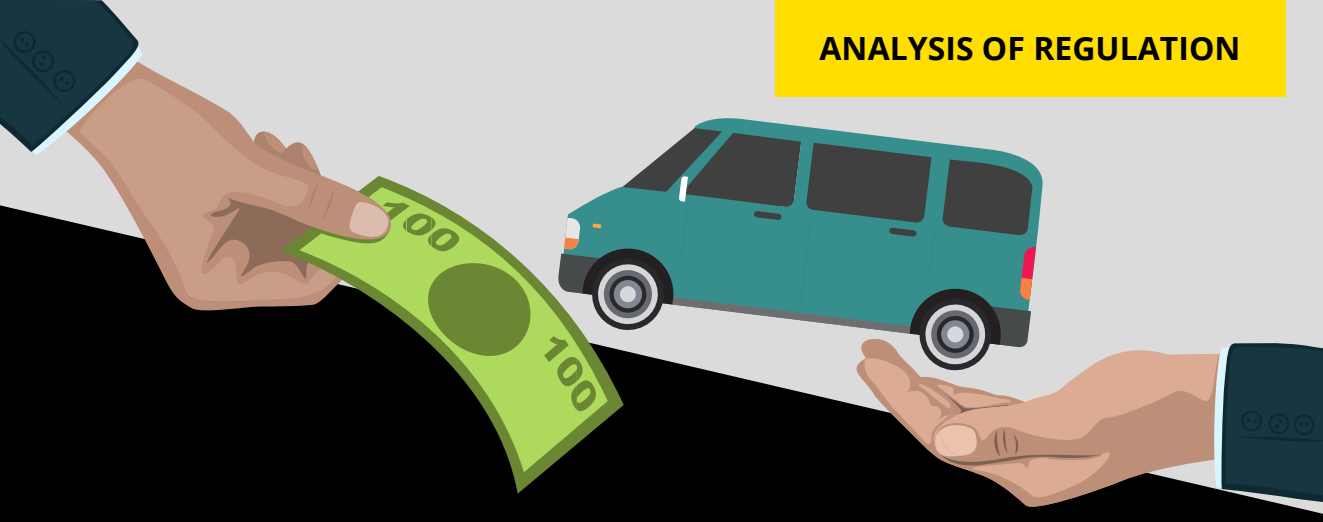
What is the legal status of peer to peer lending or fin-tech operator that has engaged in business activities prior to the coming into force of Regulation of the Financial Services Authority Number 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Services ("POJK No. 77/2016") which was promulgated on December 29, 2016? What about the license?

Answer:
Fin-tech operators are parts of other financial services agencies overseen by the FSA. Therefore, in carrying out its business activities, a fin-tech operator must first apply for registration with the FSA.

Fin-tech operators having conducted business activities before the introduction of POJK No. 77/2016 are obliged to apply for registration with the FSA no later than 6 (six) months after POJK No.77 / 2016 takes effect. The application for registration by the operator shall be submitted by the Director to the Chief Executive of Supervision of Insurance, Pension Funds, Financing Institutions and Other Financial Services Institutions by using Form 1 as set forth in the Appendices of POJK No.77 / 2016 by supplying the required documents as provided for in Article 8 paragraph (3) of POJK no. 77/2016.

After the application for registration has been recorded, the operator registered with the FSA, within a maximum period of 1 (one) year from the date of registration with the FSA, shall apply for a license as an operator through its director to the Chief Executive of the Supervision of Insurance, Pension Fund, Financing Institution, and Other Financial Services Institutions using Form 2 listed in the Appendices attachment which is an integral part of POJK. 77/2016 by supplying the documents required under POJK No.77 / 2016. **(EDN)**

Source : The Director of a company intending to establish a peer to peer lending company.



POJK 31/2016 ENSURES THE VALIDITY OF PAWNING BUSINESS

Pawning is one of the collateralization schemes generally used by the public if they need quick funds. As pawning capitalizes movable objects, people have the option to obtain a loan based on the estimated value of the collateral.

By providing financial services to the public, pawning business has given relatively significant contributions to the Indonesian economy. In order to increase the financial coverage for small and medium enterprises (MSMEs) and lower middle class people, the FSA sees the need for a legal basis in order to create a sound pawnshop business atmosphere. Moreover, the existence of legal basis means providing legal certainty to business actors as well as protection to customers.

To accommodate the aforementioned matters, the FSA has issued Regulation of the Financial Services Authority Number 31 / PoJK.05 / 2016 concerning Pawning Business ("POJK 31/2016") to ensure the security of the business. The regulation provides for as follows:

1 The pawning company must be in the form of a limited liability company or cooperative

2 The minimum amount of capital participation in conducting pawning business is Rp 500,000,000 for the scope business area covering a regency / city, and Rp2,500,000,000 for the scope of business area covering a province. That amount is considered sufficient by the FSA for enterprises to engage in business in the field of pawning at local and provincial levels.

3 POJK 31/2016 requires pawning companies to disclose the interest rate on the loan offered clearly and transparently in each service unit. That way, people can choose the lowest interest rate from numerous pawning companies which is expected to create fair business competition among companies.

4 Furthermore, pawning companies are also required to have at least 1 (one) appraiser who has passed the collateral assessment certification exam to estimate the value of the collateral in each service unit. However, customers may lodge a written request to the pawing company they wish to be given a loan fund lower than the estimated actual value of the collateral.

Apart from all the provisions set forth in POJK 31/2016 as mentioned above, direct involvement of the FSA in pawning business is expected to give a sense of security and legal certainty for customers and companies since pawning business is now under the direct supervision of the FSA. **(SMF)**

At present, information technology is developing very rapidly. The financing sector is not spared from the market affected by the development of information technology. As the result, we are now familiar with the term fin-tech or peer to peer lending which is a term commonly used to refer to a technology-based online loan extension process.

However, we will not discuss its types and characters here. Instead, this paper will discuss the potential abuse of the system, especially peer to peer lending system, for crimes of money laundering (TPPU).

As we know, TPPU is provided for in Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes ("AML Law"). The principal categories of TPPU are set forth in Articles 3, 4, and 5 with the elements which include, among other things, act of placing, transferring, transferring, concealing or disguising the origin of an asset which is known or should reasonably be suspected to be the proceeds of a crime.

The punishments imposed on TPPU in these articles vary from 5 (five) years to 20 (twenty) years with a maximum fine of Rp 10 billion.

A question then arises: how can a technology-based loan extension service be abused for money laundering?

Unlike conventional lending process through banks or other financing institutions, the source of funding in the peer to peer lending system is not directly derived from the financing company. The operator is merely an intermediary between the creditor and the debtor so that a legal relation will be formed between the debtor and the creditor without involving the service provider company in the loan extension.

It is understood that the peer to peer lending service company will conduct a debtor's feasibility survey before extending a loan. However, will the service provider company trace the origins of the fund deposited by the financiers? Moreover, so far, peer to peer lending service companies have not yet entered Bank Indonesia system and have not been under the complete supervision of the Financial Services Authority (OJK) - unlike banks and conventional financing companies that have been included in the systems of Bank Indonesia and the FSA.

To date, the government through the FSA has only introduced one regulation, namely Regulation of the Financial Services Authority Number 77 / PoJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Service ("POJK 77/2016"). However, POJK 77/2016 is far from sufficient to regulate the prevention of TPPU and supervision of sources of funds from investors. The FSA so far only requires service provider companies to submit reports to the FSA.

As the value of transactions in technology-based lending is relatively small, it will not be covered by the surveillance radar of the FSA. In addition, it is not required to be reported to the Financial Transaction Reporting and Analysis Center (PPATK). Therefore, a regulation and system that can better monitor and monitor funding sources in technology-based lending is absolutely needed to minimize the occurrence of money laundering. **(ADP)**

TIPS FOR CREDITORS TO SETTLE BAD DEBTS

BY AMICABLE SOLUTIONS / NON LITIGATION MEASURES

By direct communication, negotiation, and conciliation with the debtor to discuss the obstacles (by summoning, visiting or sending correspondence)

If no settlement can be achieved from the aforementioned measure, the creditor can give several options (rescheduling, reconditioning and or restructuring) for the debt- or to:
- Extend the term for repaying the loan
- Reduce the penalty, interest or principal amount of the debt
- Give additional debt and additional repayment time
- Convert the debt into share ownership (if there are business potentials)

Another measure that can be taken by the debtor concurrently with the aforementioned efforts is by making announcement at mass media to urge the debtor to pay the debt (an effort to attack the credibility of the debtor).

Alternatively, the creditor can sell the receivables to other parties by cessie or subrogation.

The creditor can also take over the goods collateralized by the debtor to settle the debt upon approval of the debtor (among banks, there is a term called taken-over assets (AYDA) or taken-over collateral (BJDA).

THROUGH LITIGATION / JUDICIAL SETTLEMENT

To apply for execution of collateral through the district court (if the debt is collateralized) (Legal grounds: Law No. 4/1996 concerning Security Interest - Article 6, Law No. 42/1999 concerning Fiduciary – Article 29

To lodge a civil lawsuit to the district court to apply for compensation for losses and sequestration of the properties of the debtor as the guarantee for meeting the demand (legal grounds: Articles 1365 and 1131 of the Civil Code)

The creditor can submit the issue to arbitration as a measure to settle the issue so long as such measure is specifically provided for in an agreement. The Submission to arbitration shall then be followed by voluntary settlement by the debtor; otherwise, the creditor can lodge an application for the execution of the arbitral award to the district court;

Otherwise, the creditor can lodge a petition or bankruptcy or an application for rescheduling of debt repayment to the local commercial court by observing the provision for submission in accordance with the legislations.

There is also another measure that can be taken by the creditor at the same time with the efforts mentioned above to urge the debtor to pay its debt, namely by lodging a report on alleged crime of fraud or embezzlement or other crimes to the police or other investigating agency (in the event of fictitious collateralization of assets, manipulation of data, false statement or if the act of the debtor violates the criminal law). **(TSH)**

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