

The Efforts to Align Legal Vacancies in Law Number 4 of 2023 to Strengthen the Independence of the Financial Services Authority in Supervising the Financial Services Sector

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Abstrak

The legal gap in Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector is a significant challenge to the effectiveness of supervision of the Financial Services Authority (OJK) in Indonesia. Issues such as unclear definitions, lack of specific provisions, ambiguity in inter-agency relations, and minimal strict law enforcement have resulted in doubts about the implementation of OJK's duties. To overcome these problems, efforts are needed to harmonize through the formulation of clear definitions, the regulation of more specific provisions, and increased coordination between institutions. In addition, providing law enforcement powers and facilitating the preparation of derivative regulations are also important to strengthen OJK's independence. With these alignment steps, it is hoped that OJK can operate more effectively and contribute to the stability of the financial services sector in Indonesia.

Keywords: Legal Vacancy, Law Number 4 of 2023, Financial Services Authority (OJK), Independence.

INTRODUCTION

The Financial Services Authority (OJK) plays a strategic and vital role in maintaining the stability of the financial sector in Indonesia (Manurung, 2013). As an institution mandated to regulate and supervise all activities in the financial services sector, OJK's independence is a key factor in carrying out its duties effectively (Adrian Sutedi, 2014). This independence allows OJK to work without political intervention or sectoral interests so that it can enforce regulations objectively for the public interest. The stability of the financial sector is crucial for the national economy, considering that this sector not only supports investment and financing activities but also touches almost all aspects of people's lives (Yudiana, Suartini, & Supraptha, 2022). Without institutions that can act independently, the potential for financial crises could increase, which in turn could disrupt economic growth and social welfare.

In Indonesia, the dynamics of the financial sector continue to experience significant changes along with technological developments, globalization, and the increasing complexity of financial products (Iskandar, 2013). This requires flexible yet firm regulations to anticipate various potential risks, both from the banking sector, capital markets, insurance, and other financing institutions. OJK acts as the main supervisor that ensures that financial institutions operate following the principles of prudence, transparency, and fairness. In addition, OJK also has an important function in preventing practices that can harm consumers, such as fraud or market manipulation. In this case, OJK's independence ensures that this institution can enforce regulations without being influenced by pressure from industry players or political influence (Nasution, 2014).

The financial services sector is part of an interconnected global financial system, so external challenges such as international economic crises, market volatility, or changes in global monetary policy can have a direct impact on the stability of the domestic financial sector (Sartono, 2008). In facing this dynamic, OJK is required to be able to respond quickly and appropriately, which can only be achieved if it operates with full autonomy. This independence is important to ensure that OJK's supervisory policies are not influenced by the short-term agenda of certain parties, but rather focus on managing systemic risk and maintaining public trust in the financial system (Aprita, 2021). For example, in the event of a bank or other financial institution failure, OJK must be able to act quickly in taking corrective action without being hampered by external interests. In addition to the supervisory aspect, OJK also plays a role in maintaining the integrity and transparency of the financial services sector. Integrity refers to the conformity between existing regulations and the implementation of ethical financial practices that follow international standards. Meanwhile, transparency is important to ensure that information related to the financial condition of financial institutions is clearly and accurately available to all stakeholders, including investors, consumers, and the wider community (Farida & Rochmani, 2020). In carrying out this task, OJK requires independence to ensure that the information presented by financial institutions is valid and not manipulated for the benefit of certain parties.

The establishment of the Financial Services Authority (OJK) through Law Number 21 of 2011 concerning the Financial Services Authority emphasizes the importance of the independence of this institution in regulating and supervising the financial services sector. This sector acts as a catalyst for economic growth. Hence, OJK's involvement in its supervision is key to maintaining industry stability. In carrying out its duties, OJK is based on the principles of independence, transparency, accountability, and fairness. In addition to ensuring the separation of regulatory and supervisory functions to prevent concentration of power, OJK remains bound by the public interest and national economic prosperity. Although independent from the influence of the government and the financial sector, OJK remains responsible for supporting Indonesia's economic growth (Amir, 2020).

Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector (UU P2SK) was issued by the government in response to the increasing challenges in the increasingly competitive financial services sector, especially due to the development of information technology. This technology has strengthened the role of the Financial Services Authority (OJK) as the main pillar in maintaining the stability of the financial services sector, especially in the macroprudential aspect. This new regulation aims to strengthen supervision and regulation in the financial sector, as well as improve the stability of institutions and the financial system as a whole. One way is to strengthen coordination between OJK and other institutions involved in supervising the financial sector.

However, the implementation of the P2SK Law also presents significant challenges for the OJK in carrying out its supervisory duties. One sensitive issue that has emerged is the OJK's obligation to consult with the House of Representatives (DPR) on various technical aspects of regulation and supervision. The involvement of the DPR in the preparation of OJK regulations can raise concerns about the potential for intervention, which could ultimately affect the OJK's independence in setting policies. This concern is based on the perception that the involvement of the DPR in this process could open up

space for different interpretations of the role and authority of the OJK, especially in supervising the increasingly complex financial services sector.

In addition, the P2SK Law also emphasizes that the OJK must maintain its independence in designing technical regulations. This independence includes the OJK's ability to set rules governing the financial services industry without intervention from external parties. This is important so that the resulting regulations remain objective and in accordance with the objectives of the law, as well as to avoid conflicts of interest between the various parties involved. However, although the OJK is given autonomy in preparing regulations, supervision is still carried out by the DPR through consultation and budget discussions, which are one aspect of legislative oversight of the institution.

One of the important provisions in the P2SK Law is that the OJK budget is now funded from the State Budget (APBN). This article of the P2SK Law states that the OJK budget is part of the State Treasury budget and must be discussed with the DPR. This adds a new dimension to the relationship between the OJK and the DPR, where the DPR has a greater role in the budget process and supervision of OJK's performance. This condition raises concerns among stakeholders, who view that dependence on the APBN and the involvement of the DPR in budget preparation could reduce OJK's independence.

In addition, the formation of the OJK supervisory body regulated in Article 38A of the P2SK Law further challenges OJK's independence. This body was formed to help the DPR monitor OJK's performance, with the task of summoning OJK commissioners, requesting information, and receiving OJK financial reports. This body is also elected and dismissed by the DPR, which gives the DPR great authority to supervise OJK. The formation of this supervisory body could raise concerns that the DPR has too much influence on policies issued by the OJK, which in turn could threaten the autonomy and institutional integrity of OJK as an independent institution.

A legal vacuum refers to a situation where an important aspect of a law is not explicitly regulated or even not covered at all. In the context of Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector, a legal vacuum arises related to the clear boundaries regarding the independence of the Financial Services Authority (OJK). Although this law aims to strengthen the OJK in maintaining the stability of the financial services sector, intervention from the legislature, especially through a consultation mechanism with the House of Representatives (DPR) and the establishment of a supervisory body that is directly tied to the DPR, creates a legal vacuum in determining the extent of the OJK's autonomy in setting policies that are free from political influence. This ambiguity has the potential to hinder the implementation of supervision that should be independent, which is very important in maintaining the stability of the dynamic financial services sector.

This legal vacuum is also seen in terms of OJK funding, where OJK's dependence on the State Budget (APBN) discussed with the DPR is a crucial point. Although OJK is given the status of an independent institution, the regulation regarding funding from the APBN raises the potential for conflicts of interest, especially when budget decisions are influenced by political pressure or sectoral interests that conflict with the principle of independence. The absence of clearer provisions regarding the separation of political influence in the OJK's supervision and funding mechanisms shows that this law still leaves gaps in the law that require further alignment, either through more specific implementing regulations or future regulatory revisions.

RESEARCH METHOD

The normative legal research method is an approach that focuses on the study of written legal rules, legal doctrines, and applicable principles. In the context of this research, the normative legal method is used to analyze relevant regulations, especially Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector, and Law Number 21 of 2011 concerning the Financial Services Authority (OJK). This research seeks to understand how the legal vacuum exists in the regulation of OJK's independence can affect the effectiveness of supervision of the financial services sector. In addition, this method also allows researchers to study various related regulations, both at the level of laws and other implementing regulations, to provide a comprehensive understanding of how the legal system operates in the context of strengthening and supervising OJK.

The statutory and analytical approaches are integral parts of the normative legal method. The statutory approach is used to study the provisions in the statutory regulations that form the legal basis for OJK, including how these regulations interact and regulate OJK's duties and authorities. This study analyzes the interrelationships between existing laws to understand the legal framework governing OJK, as well as explore the weaknesses or gaps in these regulations. Meanwhile, the analytical approach serves to critically evaluate the contents of these legal regulations, including the implications of their application to OJK's independence. Through in-depth analysis, this approach helps assess how existing regulations can be adjusted or improved to strengthen OJK's independence and effectiveness in facing challenges in the financial services sector.

RESULTS AND DISCUSSION

Legal Vacancy in Law Number 4 of 2023 Affects the Independence of the Financial Services Authority (OJK) in Carrying Out the Supervisory Function of the Financial Services Sector in Indonesia

The Financial Services Authority (OJK) is an institution that has the authority to supervise the financial services sector in Indonesia. The role of OJK is crucial in maintaining the stability and growth of this sector. The financial services sector has an important role in supporting the national economy, and the existence of OJK as an independent institution is expected to be able to carry out its supervisory function independently to achieve this goal (Hesti, 2018). The authority of the OJK in managing the financial services sector is outlined in Article 5 of Law Number 21 of 2011, which states that the OJK has an important role in organizing an integrated regulatory and supervisory system for all activities in the financial services sector, including banking, capital markets, insurance, pension funds, financing institutions, and others (Inkiwang, 2017). The importance of OJK's independence aims to ensure objective and effective supervision in maintaining the stability of the national financial sector.

However, the implementation of OJK's authority cannot be separated from institutional coordination with the government and interested parties. Good and productive coordination between OJK and other institutions is needed so that OJK's supervisory role can run optimally. This emphasizes the importance of the limitations of the duties, functions, and authorities of each institution so that they do not overlap, and can support each other in maintaining the stability of the financial sector (Mamuaya, 2022). In addition, the challenges faced by OJK are increasingly complex along with the development of the very dynamic financial services sector. Therefore, adaptive and

evaluative regulations are needed to respond to changes and needs of stakeholders, both individuals and society.

The existence of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector raises several important issues related to the independence of the OJK. This law regulates the OJK's reporting mechanism to the President and the DPR, which is regulated in Article 38 paragraph (2). Previously, in Law Number 21 of 2011, members of the OJK Board of Commissioners were selected by the DPR based on candidates proposed by the President. Although this law is intended to support the development of the financial services sector, several provisions have the potential for multiple interpretations, especially regarding budget supervision and the independence of the OJK in carrying out its supervision programs.

One of the issues raised is the intervention of the OJK budget, which is regulated in Article 35 Paragraph (4) of Law Number 4 of 2023. This provision states that the cost standards, procurement of goods and services, and management of OJK human resources must be regulated through government regulations with the approval of the DPR. This raises the potential for intervention from the legislature in OJK activities, which could impact OJK's independence in planning and implementing its supervisory programs. This budget consultation process with the DPR could affect OJK's flexibility and autonomy, especially in dealing with the rapidly changing dynamics of the financial services sector.

In addition to budget issues, Law No. 4 of 2023 also regulates the establishment of the OJK Supervisory Body which plays a role in monitoring OJK's performance, including institutional accountability and transparency. The establishment of this body, as explained in Article 38 A paragraph (3), raises the potential for external supervision that can influence OJK's decisions. Although this supervisory body is expected to increase OJK's accountability, the involvement of external parties who are incompetent or do not understand the complexity of the financial services sector has the potential to create obstacles in making quick and appropriate decisions. Thus, OJK's independence can be threatened if external supervision is too strong or not managed properly.

Article 38 A paragraph (7) states that the operational budget of the Supervisory Agency comes from the OJK budget, which creates an ambiguous perception regarding the role and position of this agency. This creates a situation where the supervisory agency, which is supposed to assist the DPR in supervising the OJK, at the same time relies on resources provided by the institution it supervises. This can blur the lines between external and internal supervision and has the potential to affect the independence of the OJK in carrying out its duties. Interventions that arise from less competent parties in this supervisory agency could also worsen the situation, especially if the OJK has to face complex regulatory challenges in the financial services sector.

Nevertheless, OJK faces various challenges in building relationships between financial services sector institutions after the enactment of Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector. One of the main challenges is the importance of coordinating authority between institutions to avoid overlapping or overlapping authority. It is important for OJK and related institutions to understand the limitations of authority that have been set out in the law in order to collaborate constructively in producing strategic regulations for national welfare and the economy. This separation of authority is expected to help build harmonious relationships between institutions, so as to improve the integrity and effectiveness of supervision of the financial services sector.

In its implementation, OJK needs to coordinate the budget with the House of Representatives (DPR) regarding work program planning. Good program planning is a key factor in creating opportunities for cooperation with other institutions, both in the financial and non-financial sectors. Effective cooperation requires adequate funding support to run joint programs in maintaining and developing the financial industry. Therefore, OJK and DPR need to have the same perception regarding the goals to be achieved. In addition, the existence of a supervisory body formed by the DPR is also a challenge for OJK, because this can affect public perception of OJK's authority and the financial services sector as a whole. The involvement of this supervisory body can create diverse public perceptions about OJK's approach in carrying out its supervisory function.

The presence of a supervisory body should be seen as an opportunity to strengthen the independence of OJK. However, if not managed properly, the potential for government intervention through this supervisory body could pose its challenges. In this case, the supervisory body needs to understand the functions and authorities of OJK and have good competence in order to carry out their role objectively. If the supervisory body cannot provide constructive input and only focuses on excessive supervision, this can disrupt the stability and performance of OJK in carrying out its duties.

Alignment Efforts in Law No. 4 of 2023 to Strengthen the Independence of the Financial Services Authority (OJK) in Ensuring the Effectiveness of Financial Services Sector Supervision in Indonesia

A legal vacuum is a condition in which a regulation or law does not provide sufficient provisions to regulate a particular situation or issue, thus causing confusion and difficulty in its implementation. In the context of Law Number 4 of 2023 which regulates the development and strengthening of the financial services sector in Indonesia, several aspects indicate a legal vacuum that needs to be identified and discussed further. One of the most striking aspects is the unclear definition contained in the law. The terms or concepts raised are often not clearly defined, creating doubts in the interpretation and implementation of regulations. For example, the definition of the authority of the Financial Services Authority (OJK) in supervising the financial services sector, which includes various financial institutions, such as banking, insurance, and capital markets, is not specific enough. This ambiguity can lead to differences in understanding among the parties involved, including regulators, industry players, and the general public. As a result, the effectiveness of supervision, which should be the main objective of the OJK can be hampered, because each party can have a different interpretation of what is meant by the authority and responsibility of the OJK.

In addition, there is a lack of specific provisions needed to carry out the duties and functions of the OJK optimally. In many cases, the law does not provide sufficiently detailed provisions regarding the procedures or mechanisms that must be followed in handling violations committed by financial institutions under the supervision of the OJK. For example, there is no clear guidance on the steps that must be taken when a violation occurs, both in terms of administrative sanctions and other legal actions. This has the potential to cause difficulties for the OJK in carrying out its supervisory function because the absence of a standard framework can create uncertainty and ineffectiveness in supervisory actions.

Ambiguity in inter-institutional relations is also highlighted in Law Number 4 of 2023. This law may not regulate the relationship and coordination between OJK and other institutions, such as Bank Indonesia (BI) and other supervisory bodies. This ambiguity can trigger overlapping authorities and conflicts in supervision, which in turn

can disrupt the stability of the financial services sector. Without a clear separation of authorities, the potential for conflicts of interest between these institutions also increases, thus hampering the synergy that should be established in maintaining the health of the financial sector. The lack of strict law enforcement is also an indication of a legal vacuum in this law. In situations where there is a violation of existing regulations, the legal vacuum is seen from the lack of an effective and bold law enforcement mechanism. Without clear and firm sanctions, violations committed by financial institutions may not have significant consequences, thus harming the integrity and stability of the financial services sector as a whole. OJK, as a supervisory institution, must have sufficient tools to enforce the law and ensure that all industry players act by applicable provisions.

Various efforts need to be made to harmonize Law Number 4 of 2023 to strengthen the independence of the Financial Services Authority (OJK) and ensure the effectiveness of supervision of the financial services sector in Indonesia. First of all, formulating clear definitions of key terms and OJK's authority is a very important initial step. Vague or non-existent definitions can lead to doubts among industry players and other stakeholders. With the right formulation, all parties will have the same understanding of the role of OJK and its authority, which can further reduce the risk of misinterpretation that can harm the financial sector. For example, a clear definition of what is meant by supervision can help OJK carry out its duties without ambiguity, providing the legal certainty that is very much needed in implementing regulations.

More specific provisions in the law regarding the duties and responsibilities of the OJK are also needed. These provisions should include supervisory procedures and mechanisms for handling violations faced by supervised financial institutions. With detailed provisions, OJK can operate more effectively, reduce uncertainty in the implementation of supervision, and provide legal certainty for financial institutions. It will also provide clarity on the consequences for institutions that violate the provisions, thereby encouraging compliance with existing regulations. Improved inter-agency coordination is also a crucial step in this alignment. The law needs to establish a clear mechanism for coordination between OJK, Bank Indonesia (BI), and other institutions. Good coordination between these institutions is important to avoid overlapping authority that can cause confusion among industry players. With good arrangements, each institution can perform its functions optimally, and decisions taken will be more integrated and reflect a common understanding of the condition of the financial services sector.

In law enforcement, providing firm law enforcement powers against regulatory violations is no less important. OJK needs to have the authority to impose administrative or even criminal sanctions on financial institutions that violate provisions. Clear and firm law enforcement will not only provide a deterrent effect for violators but also demonstrate OJK's commitment to maintaining the integrity and stability of the financial sector. Thus, compliance with regulations will be more assured. It is necessary to facilitate OJK in preparing more detailed derivative regulations. The law should mandate OJK to be able to prepare regulations that are by market dynamics and the very rapid development of the financial industry. With this flexibility, OJK will be better prepared to overcome various challenges that arise and can be more responsive to the needs of the financial sector. Increasing supervision and evaluation of OJK's performance in carrying out its duties is a very important step to ensure transparency and accountability. A good evaluation mechanism will help OJK to continue to improve itself and adjust a more

effective supervision strategy, as well as provide confidence to the public that OJK acts as a competent and responsible supervisor. With this comprehensive alignment effort, it is hoped that OJK can function optimally in maintaining the stability and integrity of the financial services sector in Indonesia

CONCLUSION

The legal vacuum in Law Number 4 of 2023 shows a gap that can disrupt the effectiveness of the Financial Services Authority (OJK)'s supervision in the financial services sector. Unclear definitions, lack of specific provisions, and ambiguity in inter-agency relations create doubts that can hinder the implementation of OJK's duties. In addition, the lack of a firm law enforcement mechanism weakens OJK's position in maintaining the integrity and stability of the financial sector. This condition requires review and improvement to ensure that OJK can function optimally in supervision. To overcome this legal vacuum, efforts need to be made to align Law Number 4 of 2023. Formulating a clear definition, setting more specific provisions, and increasing coordination between institutions are crucial steps. In addition, providing firm law enforcement powers and facilitating the preparation of derivative regulations are also important to support OJK in carrying out its duties effectively. By making these alignment efforts, it is hoped that OJK can improve its ability to carry out supervision and contribute positively to the stability of the financial services sector in Indonesia.

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