

Legalization of Deed of Establishment of Limited Liability Company Fintech Without Permit from Financial Services Authority (OJK)

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Abstract : *Fintech companies engaging in crowdfunding services based on information technology (LPBBTI) are required to establish a deed of incorporation as a limited liability company (PT) through a notary and obtain a license from the Financial Services Authority (OJK). However, there is a phenomenon where fintech companies that are already established as PTs operate without a license from OJK. The primary issue to be analyzed is the legal consequences on the validity and existence of the incorporation deed that has been created by the notary and whether it can be revoked or erased due to the company being classified as illegal. The research approach used in this study is a normative juridical approach, focusing on the use of secondary data as references, with qualitative data as the type of data employed. The establishment of a PT is a requirement from OJK that must be fulfilled by fintech companies. For fintech companies that engage in LPBBTI activities without a business license, criminal sanctions can be imposed. Additionally, the notary is not obligated to ensure that the fintech company has obtained a business license from OJK. The deed of incorporation of the PT remains legally valid, even if the fintech company does not have a business license from OJK, because the incorporation deed serves as evidence that the PT is registered as a legal entity, and it does not result in the annulment or removal of the deed of incorporation.*

Keywords : *Deed of Incorporation, Fintech, Legality of the Deed, Notary, Financial Services Authority*

Abstrak : *Perusahaan fintech dalam melakukan kegiatan usaha layanan pendanaan bersama berbasis teknologi informasi (LPBBTI) wajib membuat akta pendirian sebagai perseroan terbatas (PT) oleh Notaris dan izin dari Otoritas Jasa Keuangan (OJK), terdapat fenomena perusahaan fintech yang sudah berbentuk PT melakukan kegiatan usaha tanpa izin dari OJK. Tujuan utama yang dianalisis yaitu masalah yang dapat timbul terhadap legalitas dan keberadaan akta pendirian badan hukum yang sudah dibuat oleh Notaris apakah dapat dibatalkan dan/atau hapus karena fintech dikategorikan ilegal. Pendekatan yang digunakan dalam penelitian ini yaitu yuridis normatif yang memfokuskan penggunaan bahan sekunder sebagai referensi, dan jenis data yang digunakan yaitu data kualitatif. Pendirian PT merupakan syarat dari OJK yang harus dipenuhi oleh fintech, bagi perusahaan fintech yang tidak melakukan usaha LPBBTI tanpa izin usaha dapat dikenai sanksi pidana, selain itu Notaris tidak memiliki kewajiban untuk memastikan bahwa fintech telah mendapat izin usaha dari OJK. Akta pendirian PT tetap memiliki legalitas yang sah meskipun perusahaan fintech belum memiliki izin usaha dari OJK karena akta pendirian hanya menjadi bukti bahwa PT tersebut telah terdaftar sebagai badan hukum, dan tidak berimplikasi pada batal serta hapusnya akta pendirian tersebut.*

Kata kunci : *Akta Pendirian, Fintech, Legalitas Akta, Notaris, Otoritas Jasa Keuangan*



I. INTRODUCTION

The development of companies in Indonesia is inseparable from the development of today's information technology. The types of businesses are increasingly varied. A company or business entity is an economic, technological, and legal entity created for the purpose of making a profit. Various legal forms exist for business, including sole proprietorship, partnership, limited liability company, cooperative, and foundation. The status of a legal subject allows a business to perform legal acts like a legal subject of an individual, but not all business entities are legal entities. Some business entities are not incorporated depending on the needs of the business actors. On the other hand, there are more advantages to having a legal entity or business entity. According to Article 1654 of the Civil Code, a legal entity is defined as an association that has the same legal capacity as a person and the ability to bind itself in law, subject only to the limitations established by law.

There are various types of business entities in Indonesia, but limited liability companies (hereinafter referred to as PT) are currently considered the best compared to other business entities. The biggest advantage of a PT is that it has the principle of limited liability to the assets included only, which means that it is not liable beyond the personal assets. This means that any losses suffered by the PT cannot have a direct impact on the personal assets of the shareholders.¹ PT in Indonesia is regulated in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the UUPt).

While it is true that certain businesses can engage in lawful activities like everyone else, not all businesses qualify as legal organizations. The requirements of business actors determine whether or not a company should be formed. Legal organizations or companies, on the other hand, offer greater benefits. A legal entity is defined as an association that has the same authority to bind itself in law and the same legal capacity as a person, subject only to the limitations established by law, according to Article 1654 of the Civil Code.² An authentic deed is a deed made by or in the presence of a notary according to the form and procedure regulated by law.³ As regulated in Article 7 paragraph 1 of the UUPt, the deed of establishment is made by a notary as an authorized public official. In addition to company deeds, notaries are also authorized to make deeds of establishment for business entities in the form of other legal entities, because of what the author has mentioned previously as complete evidence.

Fintech is an innovative technological advancement in the banking and insurance sectors.⁴ Innovative business models can facilitate public access and expand market

¹ Adhityo Adyhardiyanto, "3 Advantages of PT Compared to Other Forms of Business," Smartlegal, last modified 2023, accessed August 31, 2024, <https://smartlegal.id/badan-usaha/pendirian-pt/2023/07/10/3-kelebihan-pt-dibandingkan-bentuk-usaha-lain/>

² Siti Fauziah Dian Novita Sari, "The Role of Notaries in the Process of Making Deeds of Incorporation of Limited Liability Companies," *Lex Renaissance* 3, no.2 (2018), p. 412

³ Friko Rumadanu, Esther Masri, and Oti Handayani, "The Use of Cyber Notary in Authentic Deeds and Their Evidentiary Power from the Perspective of the Notary Position Law," *KRTHA Bhayangkara*, Vol. 6 No. 1, 2022, p. 92

⁴ Lukmanul Hakim dan Recca Ayu Hapsari, *Financial Technology Law*, (Indramayu: Penerbit Adab, 2022), hlm. 90

reach,⁵ Usually, fintech products are systems designed to operate certain methods for financial transactions.⁶ One of the many benefits of fintech, a new type of company made possible by advances in information technology, is that it facilitates faster access to finance for local businesses. Fintech has made it easier for start-ups to access finance, among other things. Money will be spent in a much more productive and efficient way. Better yet, LPBBTI (a term for information technology-based shared financing services) streamlines access to interest-bearing financing for local residents.⁷ In addition, *fintech* companies work to improve financial inclusion.⁸ Financial technology in Indonesia is overseen by OJK Regulation No. 77 / POJK.01/2016, which relates to information technology-based money lending services in 2016. However, in 2022, OJK Regulation No. 10 / POJK.05/2022 (hereinafter referred to as POJK LPBBTI) took over from this regulation and dealt with shared financing services that rely on information technology. In accordance with Article 8 paragraph 1 of POJK, the regulation explains that fintech business actors are required to obtain a business license from OJK.⁹

Law Number 21 of 2011 establishes the Financial Services Authority (hereinafter referred to as the OJK) as the main government agency tasked with overseeing and regulating the banking sector, capital markets, and non-bank financial services (such as insurance, pension funds, banking, and similar entities). The OJK is responsible, among other things, for coordinating the regulation and supervision system for the financial services sector. Registering fintech with the OJK is a must, as explained in the POJK LPBBTI, which aims to provide comfort, security and protection for consumers and also to avoid fraudulent practices because when fintech is registered, the OJK will supervise the business activities of the *fintech*.

Fintech businesses in Indonesia have very promising prospects for the future, but the requirements for registering a fintech business in Indonesia can be said to be not easy. There are several requirements that are considered quite burdensome for fintech businesses, especially in terms of the amount of money needed to fulfill capital. As recorded on the OJK website dated July 12, 2024, there are 98 fintech companies that have been licensed by the OJK,¹⁰ this has led to several fintech companies continuing to operate without obtaining a license from the OJK. One such company is a fintech

⁵ Indah Kusuma Wardhani, "Legal Protection for Lenders for Credit Risk in the Implementation of Information Technology-Based Money Lending and Borrowing," *Jurnal Hukum Mimbar Justitia* 6, no. 2 (2020), p. 135

⁶ Otoritas Jasa Keuangan, "Faq: Kategori Umum," OJK, last modified 2019, accessed September 01, 2024 ojk.go.id/id/kanal/iknb/data-dan-statistik/direktori/fintech/Documents/FAQ%20Fintech%20Lending.pdf.

⁷ Administrator, "The Development of Fintech in Indonesia and Its Positive Impact," *Upitra*, last modified 2024, accessed September 01, 2024, www.upitra.ac.id/berita/read/perkembangan-fintech-di-indonesia#:~:text=Making%20it%20easy%20to%20get%20business%20capital,to%20get%20interest-bearing%20capital.

⁸ Serlika Aprita, "The Role of Peer to Peer Lending in Channeling Funding to Small and Medium Enterprises," *Journal of Oceanic Law of Justice* 16, no. 1 (2021): 39.

⁹ Jadzil Baihaqi, "Financial Technology Peer to Peer Lending Berbasis Syariah di Indonesia," *Tawazun: Journal of Sharia Economic Law* 1, no. 2 (2018), hlm. 120

¹⁰ Otoritas Jasa Keuangan, "Penyelenggara Fintech Lending Berizin di OJK per 12 Juli 2024," OJK, last modified 2024, accessed September 02, 2024, <https://ojk.go.id/id/kanal/iknb/financial-technology/Pages/Penyelenggara-Fintech-Lending-Berizin-di-OJK-per-12-Juli.aspx#:~:text=%E2%80%8BSampai%20dengan%2012%20Juli,Kuangan%20adalah%20sebanyak%2098%20perusahaan.>

company that has not obtained a license from the OJK but continues to operate due to the costs required for investment. However, the company claims that it has delayed fulfilling its capital obligations because the costs are considerable. Apart from this obstacle, the company has fulfilled all the requirements, such as the deed of establishment, the company's tax ID number, the business registration number, and other requirements. the company's Taxpayer Identification Number (NPWP), Business Registration Number (Nomor Induk Berusaha) and other requirements, but as the company has not been registered with the OJK, it has not been registered as a fintech company that has obtained permission from the OJK, so whether the business activities of the fintech company can be considered legal even though they use the reason of delaying the obligation to fulfill capital as a requirement for registering their business with the OJK.

Given these realities, notaries have started customizing their defense of party obligations in the deed of formation as approved by the Ministry of Law and Human Rights. But failing to get a business license from the OJK might cause the deed to be invalid, as stated in Article 15 Paragraph 2 letter e of Law No. 2 of 2014, which changed Law No. 30 of 2004 regulating the status of Notary. Basically, the issue is if fintech is infringing the law therefore the deed of establishing the legal business may be revoked or annulled.

II. RESEARCH METHODS

This work uses the normative method of law, which emphasizes reference to secondary sources in the literary canon. Both literacy and law have origins, which the author examines. At the same time, rules and regulations related to the problem are explained using a descriptive analytical approach in the specifications of this study. By conducting a normative study, we can ascertain whether the rule of law and legal norms are coherent or not, that is, whether the norms stated as prohibitions or commands are in accordance with legal principles or not. The secondary objective of this study is to determine whether individual behavior complies with established legal standards and principles or not.¹¹

III. DISCUSSION

Legalization of Deed of Establishment of a Limited Liability Company in a FinTech Company that Does Not yet Have a License from the Financial Services Authority (OJK)

The authority to execute legally binding instruments is held by public officials known as Notaries according to Article 1868 of the Civil Code (KUHPerduta). A legally valid deed is a deed made in a specific location, by a designated authority, and in accordance with all applicable legal requirements. Article 7 Paragraph 1 of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) regulates the formation of limited liability companies (PT), that Notaries can authenticate this form of document. In

¹¹ Peter Mahmud Marzuki, *Introduction to Legal Research*, (Jakarta: Prenada Media Group, 2014), p. 47

order for the deed to be legally binding, it must be legalized, written in Indonesian, and presented in the form of an official deed.

The deed of establishment of a limited liability company made by a notary must contain the articles of association and other information relating to the establishment of the limited liability company. This additional information includes the full name of the founder, place and date of birth, occupation, place of residence and nationality, as well as the name, place of residence and full address of the founder of the legal entity. Additional information contained is the number and date of the ministerial decree approving the legal entity, the initials of the board of commissioners' members (both directors and commissioners), the names of the shareholders who have bought shares, the nominal value of the shares, as well as the value issued and paid. Article 2 of the Company Law details this clause. PT Indonesia has to be established as a distinct legal entity compliant with Company Law Article 1 Paragraph 1 criteria. Legal activities executed on behalf of a firm without legal entity status may only be executed by all board of directors along with the founders and all board of commissioner members. Article 14 paragraph 1 of the UUPT states that all those engaged in the lawful act share joint and multiple liability.¹²

Legalities are very important because with a business license, the business will be protected by law. In addition, legality has several functions, namely:¹³

1. Business identity;
2. Business development requirements;
3. Requirements for conducting transactions with foreigners; and
4. Proof of business credibility because it is official in the eyes of the law.

Practically, a PT has not yet achieved legal entity status for several reasons, including not meeting the authorized capital, not meeting administrative requirements, having an application rejected by the ministry, and other similar issues. In addition, the process of registration and acceptance of proof of registration takes a long time. The notary is required to register the company and act as the founding agent, ensuring that the company obtains legal status from the deed of establishment until its announcement in the state news of the Republic of Indonesia. For the purpose of having the legally formalized application legalized “in the capacity and capacity as attorney” of the founder, the person authorized to submit the application must grant power of attorney to the Notary. The application for legal entity status of the company must be submitted by a Notary as the founder's attorney, as regulated in Article 2 Paragraph 1 of Ministerial Regulation No. M. 01-HT 01-10/2007.¹⁴

The notary does not just make a deed of establishment without knowing what type of business will be established and what requirements are needed to set up the business. The notary must provide legal advice on these matters as a form of preventive action to the parties, because when a company has registered itself with the Ministry of Law and Human Rights and the name of the company has been announced in the official

¹² Thomas Aryanto, “Can the Founder Perform Legal Acts Before the Company Becomes a Legal Entity?,” *Hukumonline*, last modified 2023, accessed September 23, 2024, <https://www.hukumonline.com/klinik/a/bisakah-pendiri-melakukan-perbuatan-hukum-sebelum-pt-berbadan-hukum-lt640ef7fb75080/>

¹³ Teten Masduki, *Smart Book on Legality: Legal, Certified, and Safe Business*, (Jakarta: Ministry of Cooperatives and Small and Medium Enterprises, 2022), p. 5

¹⁴ Siti Fauziah Dian Novita Sari., *Op. Cit.*, hlm. 413

gazette of the Republic of Indonesia, the company may not necessarily be able to immediately carry out its business activities, because there are types of businesses that must obtain permits from authorized agencies as stipulated by laws and regulations. Registration of a fintech business requires a license from the OJK so that the fintech business is registered with the OJK and becomes a legal fintech business, and at this stage, the process of obtaining a location permit, license and environmental building permit is also carried out if needed.

Businesses need to ensure that they have all the necessary licenses and permits before they can open for business. This includes environmental permits, operational/commercial permits, location permits, construction permits, and company permits. License payments, including non-tax state revenues (PNBP), levies, and others, must be paid in accordance with applicable laws and regulations before any licenses obtained through Online Single Submission (OSS) can be activated and enforced.¹⁵

A fintech company is a type of business that, when established, not only requires an articles of association and registration with the Ministry of Law and Human Rights, but also a business license from the Financial Services Authority (OJK), so that it can conduct its business activities under OJK supervision. Registered fintech companies provide certainty of consumer protection because they must comply with strict regulations to avoid shady banking practices and protect consumers from fraud or other crimes.¹⁶ In addition, registered fintech companies must provide transparency to consumers about loan risks and terms, and have a clear dispute resolution mechanism to ensure that consumers can make informed and protected decisions when conducting financial transactions.

Establishing a fintech company in Indonesia can be quite complicated and requires a lot of funds, but many business people still insist on setting up a fintech company without registering with the OJK. If a fintech company does not register with the OJK, it can be considered an illegal company. Therefore, it is important for notaries to provide legal advice to fintech business actors before executing the company's deed of establishment. This is stated in Article 15 Paragraph 2 letter e of Law No. 30 of 2004 which was amended by Law No. 2 of 2014 concerning the position of notaries (UUJN).¹⁷

Legal counseling that a notary can provide can be in the form of providing information on how to establish a company, the time frame for establishing a company, the parties involved in establishing a company, and the consequences that will occur if there are procedures or requirements that are ignored.¹⁸

Basically, the legal counseling provided by a notary is not coercive and is only a reminder, so that what happens in the future that harms certain parties cannot blame the notary. The decision to make an authentic deed is returned to the parties so that if there

¹⁵ Sri Siti Munalar, Dkk., "The Role of Notaries in Processing Business Permits for Limited Liability Companies (Juridical Review of Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services)," *Bhakti Hukum* 1, no.1 (2022), p. 136

¹⁶ Elvira Fitriyani Pakpahan, et al., "Urgency of *Financial Technology* Regulation in Indonesia," *Jurnal Darma Agung* 28, no.3 (2020), p. 449

¹⁷ Ferdiansyah Putra., Ghansham Anand., "Legal Protection for Parties Injured by Legal Counseling by Notaries," *HUMANI (Law and Civil Society)* 8, no. 2 (2018), p. 107

¹⁸ Ranggapandu Cindarputera1, Mohamad Fajri Mekka Putra., "Notary Authority in the Issue of Legal Counseling and Mediation," *Journal of Social and Educational Sciences (JISIP)* 6, no. 3 (2022), p. 10192

is a loss incurred by the parties regardless of the authentic deed made by the notary, it cannot be concluded that the notary was involved in the loss.

Notaries, in carrying out their position, provide legal counseling to parties who, in this case, will establish a fintech company, informing them of the requirements and other necessary matters, but the decision is returned to the company's founders. To apply the principle of prudence, the notary has the right to refuse to make an authentic deed if it will cause problems or losses in the future. However, if in the implementation the notary has provided legal counseling and applied the principle of prudence, in the case of a fintech company not registering its business license with the OJK, there is no impact on the validity of the deed of establishment made by the Notary, because basically the deed of establishment of the company made by the Notary is proof that the PT is a legal entity and is registered in the database of the Ministry of Law and Human Rights and is recorded in the state gazette of the Republic of Indonesia.

A notary is a public official authorized to authenticate and provide legal advice to parties, but ultimately the notary cannot impose the will of the parties. In addition, the notary has no obligation to check the authenticity of the files brought by the parties in this case for the establishment of the company, and if any documents or information provided by the parties turns out to be false or incorrect, then all consequences arising therefrom shall be the responsibility of the parties outside the responsibility of the Notary, so that in the case of a fintech company that does not register its business license with the OJK, it is not the responsibility of the Notary, and the legality of the deed of establishment of the company made by the Notary remains valid, unless the court decides otherwise. In addition, the notary has no obligation to ascertain whether a fintech company that has had a notary draw up a deed of incorporation has applied for a business license from the OJK.

Legal Implications of the Financial Services Authority's (OJK) Delay of Licensing Obligations for Limited Liability Company Deed of Incorporation for FinTech Companies

To conduct business activities in Indonesia, fintech companies must obtain a license from the Financial Services Authority (OJK). One proof of legality that the company has received a license from the OJK is the inclusion of the OJK logo on the fintech business platform. With this proof, the fintech company can conduct digital economy-based business to the public and the company is under the supervision of the OJK.

Businesses in the financial technology sector that use LPBBTI, or information technology-based shared funding services, are known as financial technology companies. OJK has issued Regulation Number 10/POJK.05/2022 concerning information technology-based shared financing services, also known as POJK LPBBTI. To be able to carry out LPBBTI business activities, organizers must first obtain a business license from OJK.¹⁹ Of course, the implication for companies that do not have permission from the

¹⁹ Regulation of the Financial Services Authority of the Republic of Indonesia Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services, Article 8 paragraph 1

OJK is that they cannot carry out business activities in the LPBBTI sector. If they continue to do so, it will be categorized as illegal.

Companies engaged in LPBBTI must be in the form of a limited liability company (PT),²⁰ therefore PT, a financial technology company, must be a legitimate business. Notaries play an important role in the formation of PT for fintech businesses to make authentic deeds.

Sudikno Mertokusumo argues that legal clarity guarantees the proper implementation of the law. Legal control through legislation is necessary for legal certainty, which provides a juridical aspect that ensures that the law is a norm that must be respected.²¹ In addition, legally controlled procedures must be followed when a company is established. First of all, it must fulfill the prerequisites set by the relevant regulations, just like any other company that wants to be legally established and run.²² So to create legal certainty for the public, the fintech company must meet the requirements determined by the OJK so that it can carry out LPBBTI business activities legally and under OJK supervision.

LPBBTI companies must have a paid-up capital of at least IDR 25,000,000,000 (twenty-five billion rupiah) at the time of establishment, as stated in Article 4 paragraph 1 of the POJK LPBBTI.²³ This is a problem for fintech companies that do not yet have paid-up capital as required by the OJK, so they cannot apply for a license from the OJK. This has led to the phenomenon of fintech companies being categorized as illegal because they are secretly conducting LPBBTI business activities outside the supervision of the OJK. One of the reasons for this phenomenon is the delay in the obligation to apply for and obtain legality from the OJK. Even though they are already incorporated and have the good faith to take care of OJK permits in the future, it is not justified to delay OJK permit obligations. If the company does not have the capital, it should be able to hold a General Meeting of Shareholders (GMS) to change/replace business activities through a deed of amendment or, from the beginning, to carry out other business activities outside LPBBTI. So that the postponement of obligations carried out by fintech companies in the above phenomenon is not legally justified and is too much to ask.

Fintech companies that do not have a license from the OJK can be categorized as illegal for conducting LPBBTI business activities in Indonesia because they have violated legal provisions and have not fulfilled their obligation to obtain a license from the OJK. This is as regulated and reinforced in Article 237 of Law Number 4 of 2023 concerning Strengthening and Developing the Financial Sector (UUPPSK) that there is a prohibition on carrying out the following activities for companies without OJK licenses that are engaged in LPBBTI:²⁴

1. Obtaining public funds to be distributed or collected

²⁰ Regulation of the Financial Services Authority of the Republic of Indonesia Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services, Article 2 paragraph 2

²¹ Asikin Zainal, *Introduction to Indonesian Legal System*, (Jakarta: Rajawali Press, 2012), hlm. 11

²² Siti Maisarah, "Business Establishment Mechanism for FinTech Lending (Online Lending) Based on Legislation and Regulations" *Badamai Law Journal* 2, no. 2 (2022), hlm. 219

²³ Regulation of the Financial Services Authority of the Republic of Indonesia Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services, Article 4 paragraph 1

²⁴ Law of the Republic of Indonesia Number 4 of 2023 concerning Strengthening and Development of the Financial Sector, Article 237

2. Offering securities to the public
3. Providing products or services related to payment systems
4. Engaging in any activity similar to fundraising, distribution of funds, management of funds, mediation in the financial sector, or the provision of products or services related to payment systems, unless specifically exempted by law, requires authorization from the authority responsible for the financial sector.

Illegal *fintech* is fintech that is not registered or licensed by the OJK.²⁵ The OJK views illegal fintech as a threat to the industry of technology-based financial services,²⁶ With the number of illegal fintech companies deemed to have unsettled the public, there is OJK supervision focused on the security and resilience of financial institutions, systemic risk prevention, market fairness and efficiency, and consumer and investor protection.²⁷

Any legal entity, in this case a fintech company that does not have a license from the OJK, cannot carry out the activities mentioned in Article 237 of the above-mentioned Law. Normatively, the implications of postponing the OJK license obligation will have an impact on the freezing of business activities due to the non-implementation of the provisions in Article 8 paragraph 1 of the POJK LPBBTI, thus preventing the LPBBTI from conducting business activities. The absence of business activities carried out by a limited liability company will have an impact on the obstruction and/or absence of income for the company. According to Article 142 paragraph 1 letter f of company laws and regulations, the company can be dissolved and liquidated as needed if its business license is canceled.²⁸ In accordance with Article 143 paragraph 1 of the Company Law, the legal status of a dissolved company will not be lost until the liquidation procedure carried out by the liquidator is completed and the GMS or court accepts it.²⁹ Based on this Article, the entity of PT as a legal entity does not automatically disappear because it does not have a business license from the OJK to carry out business activities in the LPBBTI sector.

Fintech companies that violate the provisions of Article 237 of the UUPPSK, as stated in Article 305 paragraph 1 of the UUPPSK, can be subject to imprisonment for five (5) to ten (10) years, with a minimum fine of one billion rupiah and a maximum of one trillion rupiah.³⁰ The corporation as a legal entity, the person who ordered the execution, and/or the person who led the action are all parties who may face

²⁵ Rayyan Sugangga dan Erwin Hari Sentoso, "Legal Protection for Online Loan Users," *Pakuan Justice Journal of Law* 1, no. 1 (2020), p. 47

²⁶ Otniel Yustisia Kristian, "Legal Protection of Fintech P2P Lending Service Users from Economic Crimes and Against Illegal Fintech P2P Lending Service Providers," *Majalah Hukum Nasional* 52, no. 2 (2022), p. 303

²⁷ Adler Haymans Manurung, *Otoritas Jasa Keuangan: Perlindungan Investor*, (Jakarta: Adler Manurung Pers, 2013), p. 14

²⁸ Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, Article 142 paragraph 1 letter f

²⁹ Law of the Republic of Indonesia Number 40 of 2007 Concerning Limited Liability Companies, Article 143 paragraph 1

³⁰ Law of the Republic of Indonesia Number 4 of 2023 concerning Strengthening and Development of the Financial Sector, Article 305 paragraph 1

consequences (legal sanctions).³¹ These sanctions are the responsibility for the risk that must be borne by the producer or business actor for their business activities.³² Establish guidelines for penalties that include the threat of severe criminal penalties with the intention of preventing individuals from committing crimes.³³

Postponement of obligations is an inappropriate term for the phenomenon of fintech companies that have not been licensed by the OJK, because there are no regulations that allow a fintech company to carry out LPBBTI business activities first and then apply for OJK license after having a paid-up capital of at least Rp. 25,000,000,000 (twenty-five billion rupiah) to comply with the provisions of Article 4 paragraph 1 POJK LPBBTI, so there is no reason for delaying obligations because if it does not have a license, the company cannot carry out LPBBTI activities and if it continues to carry out these activities, it is categorized as illegal activities that violate the law. These activities can be suspended and the fintech company in this case can be subject to criminal sanctions.

In principle, a PT can make changes to its business activities. Based on the GMS agreement, a PT can make a deed of amendment so that in the deed of amendment there can be changes to business activities in accordance with laws and regulations. However, this does not mean that the PT is exempt from criminal liability for the sanctions received. The PT must fulfill this responsibility before making the deed of amendment to the Notary.

A fintech company that does not have OJK (Financial Services Authority) license does not have implications for the deed of establishment that has been made by a notary who has been authorized by the Ministry of Law and Human Rights, this is because the deed of establishment is proof that the fintech company is registered as a legal entity of a PT (Perseroan Terbatas/Limited Liability Company), also as required in Article 2 paragraph 2 POJK LPBBTI (Financial Services Authority Regulation on Business Activities of Financial Technology Companies) that before arranging OJK (Financial Services Authority) license, a fintech company must first have legal status as a PT. There is no connection between not having an LPBBTI business license from the OJK and the cancellation of the deed of establishment of the PT, because basically the impact of not being able to carry out business activities because it does not have a license only has an impact on the freezing of business activities, not the impact on the loss of its legal entity.

The deed of establishment of a fintech company made by a notary does not necessarily become invalid because the company does not implement the conditions regulated by the OJK in conducting LPBBTI activities, so in this case the OJK does not have the legal authority to cancel the deed of establishment of the company.

IV. CONCLUSION

The deed of establishment of a Limited Liability Company (PT) for a fintech company made by a notary is still valid and has legal force as long as it complies with the applicable regulations and has been registered with the Ministry of Law and Human

³¹ Law of the Republic of Indonesia Number 4 of 2023 concerning Strengthening and Development of the Financial Sector, Article 305 paragraph 2

³² Janus Sidabalok, *Hukum Perlindungan Konsumen di Indonesia*, (Bandung: Citra Aditya Bakti, 2014), pp. 90-91

³³ Sofjan Sastrawidjaja, *Hukum Pidana I*, (Bandung: Armico, 1995), 27., in Bilher Hutahaean, "Penerapan Sanksi Bagi Pelaku Tindak Pidana Anak," *Jurnal Komisi Yudisial* 6, no. 1 (2013), p. 69

Rights, even though the company has not obtained a business license from the Financial Services Authority (OJK). The deed of establishment functions as proof of the company's legal status, not as a business license, so that the delay in licensing obligations from the OJK does not cancel the legal status of the PT, but only has an impact on the prohibition on carrying out Information Technology-Based Joint Funding Services (LPBBTI) activities. If a fintech company continues to operate without OJK permission, it is categorized as illegal and can be subject to criminal sanctions and business suspension in accordance with Articles 237 and 305 of the UUPPSK. Although a PT can change its business activities through a General Meeting of Shareholders (GMS) and a deed of amendment, legal responsibility for violations must still be resolved first. Thus, the legality of the deed of establishment of a PT for fintech companies is maintained, but does not exempt the company from the obligation to obtain OJK (Financial Services Authority) license before carrying out LPBBTI activities.

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