

OJK Tightens Supervision in New Peer-to-Peer Lending Regulation



Last month, Indonesia's Financial Services Authority or OJK (*Otoritas Jasa Keuangan*) introduced a new regulation on peer-to-peer or P2P lending designed to both encourage optimal and healthy growth of the P2P lending industry and accommodate OJK's needs for effective and efficient supervision.

Previously, P2P lending in Indonesia was primarily regulated under OJK Regulation No. 77/POJK.01/2016 ("**Previous Regulation**"). Many view the Previous Regulation as inadequate, especially in light of the rapid growth of P2P lending in Indonesia, which unfortunately also led to an increase in the number of illegal P2P lenders. As of October 2021, OJK had identified more than 100 illegal digital P2P lenders.

The new regulation, OJK Regulation No. 10/POJK.05/2022 on Information Technology-Based Collective Financing Services ("**New Regulation**"), enacted on 4 July 2022, introduced several new concepts in the P2P lending sector, enhanced the provisions on OJK's supervision through market conduct, and revoked several provisions in the Previous Regulation on the lending limit, paid-up capital and equity minimum requirements, and licensing process. Despite revoking these provisions in the Previous Regulation, clients should note that the implementing regulation for the Previous Regulation, namely OJK Circular Letter No. 18/SEOJK.02/2017, remains valid.

While OJK grants some flexible measures in the New Regulation, most notably with respect to the licensing of P2P lenders, it also tightens its supervision of such lenders by, among others, requiring key parties of a P2P lender to undergo a fit and proper test and imposing the controlling shareholder requirement.

We take a closer look at these changes below.

Licensing

With respect to licensing, OJK now allows for more flexibility. Previously, a party intending to apply as a P2P lending operator had to first register its business with OJK. Then, within one year from such registration, the P2P lender must apply for a business licence to OJK in order to operate its P2P lending business.

Now, the New Regulation allows a party to apply for a P2P lending business licence to OJK immediately. However, while registration with OJK is no longer required, a P2P lender must now register as an Electronic System Operator to the Ministry of Communications and Information Technology within 30 calendar days after OJK issues its business licence. Failure to do so will prevent the P2P lender from commencing its business activities, such as conducting fundraising.

Paid-up Capital and Equity Requirements

A P2P lender must now have a minimum paid-up capital of IDR25 billion, and this is a significant increase from the IDR2.5 billion minimum paid-up capital under the Previous Regulation.

Existing P2P lenders who obtained their business licences from OJK before July 2022 are exempted from the new capital requirement. Still, they have to comply with the minimum equity requirement of IDR12.5 billion in these stages:

Timeline	Minimum Equity
One year from 4 July 2022	IDR2.5 billion
Two years from 4 July 2022	IDR7.5 billion
Three years from 4 July 2022	IDR12.5 billion

Controlling Shareholder, Lock-Up, and Approval

Many sub-sectors of the finance industry in Indonesia recognise the concept of controlling shareholders. The New Regulation introduces this concept into the P2P lending sub-sector. Like other regulations on controlling shareholders, the New Regulation deems any legal entity, individual, or business group as a controlling shareholder if such party:

- (1) owns 25% or more of a P2P lender's issued shares with voting rights; or
- (2) owns less than 25% of a P2P lender's issued shares with voting rights but has been proven to have the ability to control the P2P lender, either directly or indirectly.

Moreover, the New Regulation requires a P2P lender to appoint at least one controlling shareholder if more than one party meets the criteria as a controlling shareholder.

With respect to existing P2P lenders, they must report their controlling shareholder as well as any subsequent change in its controlling shareholder's composition to OJK within six months after 4 July 2022. In addition, the New Regulation also requires a P2P lender to obtain OJK's approval before a change of ownership (including with respect to the controlling shareholder) in such P2P lender occurs. It is important to note that this approval requirement applies to both public and private P2P lenders with respect to their direct and indirect shareholding.

The New Regulation also introduces a lock-up provision. It prohibits a P2P lender from changing its shareholder composition within three years of the date of issuance of its business licence if such a change results in a new shareholder or a change of controlling shareholder ((*Pemegang Saham Pengendali* or PSP).

We mentioned above that a P2P lender must obtain OJK's approval before changing its ownership composition. OJK's approval must also be obtained before a P2P lender conducts some corporate actions, namely:

- (1) increase of paid-up capital;
- (2) change of any director, commissioner, and, if relevant, member of the Sharia Supervisory Board; and
- (3) enter into a merger or consolidation.

Fit and Proper Test for Key Parties

In addition to identifying controlling shareholders, the New Regulation also requires key parties of a P2P lender to pass a fit and proper test by OJK. Key parties in this matter consist of a P2P lender's controlling shareholder(s), directors, commissioners, and for sharia-based P2P lenders, members of its Sharia Supervisory Board.

The fit and proper test is carried out in accordance with OJK Regulation No. 27/POJK.03/2016 on the Fit and Proper Test for Key Parties in Financial Service Institutions.

Again, key parties in an existing P2P lender are exempted from the fit and proper test requirement unless such parties have reached the end of their tenure, and the P2P lender intends to re-appoint them.

Super Lender Restriction

Under the Previous Regulation, the maximum loan a borrower can receive is IDR2 billion. However, the Previous Regulation did not regulate the maximum lending limit a lender can provide through its platform. As a result, digital funding was dominated by super lenders, i.e. financial institutions with large capital or banks. This is contrary to the spirit of P2P lending, which emphasises public participation.

Now, the New Regulation limits the loan that a P2P lender and its affiliates can grant to 25% of the total loan disbursed by such lender to borrowers by the end of the month.

The abovementioned lending limit will apply in stages, i.e.:

Timeline	Lending Limit
6 months after any given month	80% of the total loan disbursed by a P2P lender and its affiliates by the end of the 6 th month
12 months after any given month	50% of the total loan disbursed by a P2P lender and its affiliates by the end of the 12 th month
18 months after any given month	25% of the total loan disbursed by a P2P lender and its affiliates by the end of the 18 th month

For example, if a P2P lender and its affiliates have granted a total of IDR100 billion loan to borrowers by the end of the month, then it can only grant IDR80 billion, IDR40 billion, and IDR25 billion, respectively, by the end of the 6-month, 12-month, and 18-month period after that first month.

P2P lenders in the form of financial services institutions and are supervised by OJK are exempted from the above provision. Their lending limit is at 75% rather than 25%.

Conclusion

With digital lending, the only way is up; in our view, the New Regulation could not come at a better time. Undoubtedly, the New Regulation will allow OJK to supervise the sector better and protect borrowers. Moreover, requirements on licensing and minimum paid-up capital should weed out unqualified P2P lenders..

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