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Draft OJK Regulation on P2P Lending Services: Insights You Need to Know

Introduction

The Indonesian Financial Services Authority (Otoritas Jasa Keuangan – "**OJK**") is currently in the process of revising regulations governing Peer-to-Peer (P2P) Lending services. OJK has recently released and circulated a draft regulation ("**Draft Regulation**") that is expected to replace the existing OJK Regulation No. 10 of 2022 on P2P Lending Services ("**OJK Reg. 10/2022**"). The Draft Regulation aims to address various challenges and risks faced by the industry by enhancing supervision and protection of P2P Lending operators, while promoting development and innovation in the field.

This newsletter highlights some of the key changes and new provisions that will be introduced by the Draft Regulation (in the current publicly accessible version).

I. New Lending Limits to be Introduced for Productive Lending

Under OJK Reg. 10/2022, borrowers may only receive up to IDR 2 billion, irrespective of whether the lending type is productive or consumptive. This cap was introduced to curb unsound lending practices. However, it is anticipated that the ceilings for productive and consumptive lending should ideally be differentiated. While IDR 2 billion is a substantial amount for consumptive lending, this amount may not be attractive or sufficient for productive lending, especially for companies seeking financing for projects.

The Draft Regulation proposes distinct lending limits for productive and consumptive lending.[1] It suggests increasing the maximum lending limit for productive lending to IDR 5 billion, while retaining the current lending limit of IDR 2 billion for consumptive lending. To facilitate productive lending amounts between IDR 2 billion and IDR 5 billion, P2P Lending operators must maintain a TWP90 of no more than 5% over the past six months and must not be subject to any business activity restriction sanctions from OJK.[2]

[1] The Draft Regulation and OJK Reg. 10/2022 provide similar definitions for both types of lending: (i) productive lending is defined as lending for businesses that produce goods and/or services, including activities that add value and increase the borrower's income, such as invoice financing, purchase orders, project funding; (ii) consumptive lending (multipurpose) is defined as lending/funding for goods/services required by the borrower for consumptive purposes, not for business/productive activities.
[2] Article 51(5) of the Draft Regulation. Further, TWP90 is the default level stipulated in the loan agreement for defaults extending beyond 90 days from the due date.

Additionally, the Draft Regulation retains similar lending limitations for lenders and their affiliates, i.e., 25% of the final lending position of the P2P Lending operators at the end of the month (and 75% if the lender is a financial service institution under OJK's supervision). Unlike OJK Reg. 10/2022, the Draft Regulation does not specify a gradual implementation of the lending limitations for lenders, implying that such limits will be effective immediately upon the enactment of the Draft Regulation.[3]

II. Changes relating to Provisions relating to "Change of Ownership" and "Lock-up Period"

One of the key provisions under the Draft Regulation is on change of ownership.

Unlike OJK Reg. 10/2022, which requires OJK approval for any "change of ownership"[4], the Draft Regulation differentiates between the types of ownership changes that require approval and those that only need to be reported to OJK. In its current publicly accessible version, the Draft Regulation only requires OJK approval only for direct changes of ownership of P2P Lending operators, while indirect changes are subject to reporting requirements.[5]

Another significant difference between OJK Reg. 10/2022 and the Draft Regulation is the approach to the lock-up period for changes of ownership of P2P Lending operators.

Currently, OJK Reg. 10/2022 imposes a blanket prohibition on any change of ownership that results in the introduction of new shareholder(s) and/or changes in PSP within three years from the date of the P2P Lending operator's license.[6] This lock-up period has been a point of contention within the industry, as it limits P2P Lending operators' ability to secure investment and funding that may be essential for their business growth or operational needs. In response to such concerns, the Draft Regulation appears to recalibrate the lock-up provision by focusing on changes in PSP rather than any change of ownership within the three-year period after obtaining the license. Furthermore, the Draft Regulation introduces an exception to the lock-up rule for changes of ownership conducted for the purpose of the P2P Lending operator's revitalization (e.g., to comply with the minimum capital requirements for P2P Lending operators that still have viable business prospects).[7]

III. Financial Soundness for P2P Lending Operators

The Draft Regulation introduces a more comprehensive set of financial soundness rules for P2P Lending operators, covering aspects such as capital ratio, default level quality (TWP90), management, profitability, liquidity, and quality of funding. In its current publicly accessible version, the Draft Regulation retains certain financial soundness rules from the previous OJK Reg. 10/2022, specifically maintaining the capital ratio with a minimum equity requirement of IDR 12.5 billion and the categorization of loan quality. Additionally, it introduces

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[3] This limitation was first introduced in OJK Reg. 10/2022 and implemented gradually. Under OJK Reg. 10/2022, the 25% lending limitation for non-financial service institution lenders will come into force in January 2025.

[4] Article 68 of OJK Reg. 10/2022 defines the following corporate actions as changes of ownership: (i) changes in the shareholders of a non-publicly listed P2P Lending operator; (ii) indirect changes in shareholders of a non-publicly listed P2P Lending operator; (iii) changes in Controlling Shareholders ("PSP") of a publicly listed P2P Lending operator; and (iv) indirect changes in controlling shareholders of a publicly listed P2P Lending operator. In this case, the Draft Regulation retains the same scope for "change of ownership".

[5] Article 100(1-2) of the Draft Regulation.

[6] Article 68(3) of OJK Reg. 10/2022.

[7] Article 100(3) of the Draft Regulation.

new parameters, including a maximum TWP90 of 5%, a mandate for robust general and risk management, a yet-to-be-determined profitability metric, and a liquidity ratio requirement of 10%.[8]

IV. Good Governance Rules for P2P Lending Operators

While maintaining a similar set of rules related to good governance of P2P Lending operators as outlined in OJK Reg. 10/2022, the Draft Regulation introduces the concept of the General Meeting of Lenders (*Rapat Umum Pemberi Dana* – "**RUPD**"). In this regard, Article 88 of the Draft Regulation stipulates the following:

- P2P Lending operators are required to establish guidelines for implementing the RUPD; and
- The RUPD serves as a forum for lenders to make decisions related to changes in the fund disbursement/channeling agreement, such as loan restructuring and write-offs.

The Draft Regulation does not provide further elaboration about the RUPD. However, a close reading of the provision suggests that the RUPD mechanism is intended to promote and maintain transparency between the P2P Lending operators and their lenders, as well as to provide a forum for lenders to participate in the decision-making process regarding certain matters that may affect the loan facilities in which they are involved.

V. New General Compliance Rules

The Draft Regulation introduced new general compliance rules related to anti-fraud measures as well as anti-money laundering, counter-terrorism financing, and prevention of the proliferation of weapons of mass destruction ("**AML/CFT**"):

- Anti-fraud rules: P2P Lending operators are required to prepare and implement anti-fraud strategies, consisting of: (i) prevention; (ii) detection; (iii) investigation, reporting, and sanctions; and (iv) monitoring, evaluation, and follow-up actions.[9]
- AML/CFT: P2P Lending operators must implement an AML/CFT program effectively, by ensuring: (i) active supervision by the BOD and the BOC; (ii) implementation of necessary internal policies and procedures; (iii) internal controls; (iv) a management information system; and (v) appropriate human resources and training.[10]

Key Takeaways

The Draft Regulation proposed by OJK reflects the dynamic and evolving nature of the P2P Lending industry in Indonesia. It introduces several changes and new provisions that may have significant implications for P2P Lending operators, lenders, and borrowers. Nevertheless, the Draft Regulation is still subject to amendments during the legislative process before it is enacted. Therefore, P2P Lending operators and stakeholders should closely monitor the development of this regulation and prepare for its potential impacts on their business and operations.

[8] Article 74 – 81 of the Draft Regulation.
[9] Article 147 of the Draft Regulation.
[10] Article 148 of the Draft Regulation.

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