

November 2023

ATD LAW in association with MHM Legal Insights

Key Contacts



Abadi Abi Tisnadisastra

☎ +62-8111-83700 (Indonesia)

✉ abadi.t@mhm-global.com



Noor Prayoga Mokoginta

☎ +62-8212-5288330 (Indonesia)

✉ prayoga.m@mhm-global.com



Farhan N Kharismatyaka

☎ +62-8776-0821-540 (Indonesia)

✉ farhan.p@mhm-global.com

SEOJK 19/2023: A Codification of Best Industry Practices and Industry-Driven-Guidelines to Strengthen Technical Aspects of P2P Lending Industry

On 8 November 2023, the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") finally enacted the implementing regulation for the operation of P2P Lending services in the form of OJK Circular Letter No. 19/SEOJK.06/2023 on the Operation of Information Technology-Based Co-Funding Services ("**SEOJK 19/2023**"), effective on the date of its issuance. The SEOJK 19/2023 was issued about a year after the enactment of the main peer-to-peer lending ("**P2P Lending**") regulation, namely OJK Regulation No. 10/POJK.05/2022 on the Information Technology-Based Co-Funding Services ("**POJK 10/2022**").

As mandated by POJK 10/2022, SEOJK 19/2023 regulates several technical aspects of the P2P Lending business activities, which includes: (i) the scope of business activities; (ii) maximum limit for economic benefits (previously interests and service fees); (iii) risk management; (iv) data processing; and (v) debt collection. Previously, these areas were solely governed by a set of industry guidelines ("**Code of Conduct**"), issued and enforced by the P2P Lending association, namely *Asosiasi Fintech Pendanaan Bersama Indonesia* ("**AFPI**").

Below, we have highlighted certain noteworthy provisions under the SEOJK 19/2023.

1. The Scope of P2P Lending Business Activities

The scope of business activities for P2P Lending services is explicitly defined under the SEOJK 19/2023 which includes the following:¹

- a. Provision of P2P Lending services: providing electronic system that facilitates lenders and borrowers in conducting direct lending transactions and provides other facilities/features, such as escrow accounts and virtual accounts or payment gateways, lending risk analysis submitted by borrowers, and verification for users' identity and document authenticity.

¹Section II of the SEOJK 19/2023.

- b. Management of P2P Lending services: verification of users' identity, processing of users' data and other personal data in accordance with business operations, channeling funds from lenders to borrowers, paying funds from borrowers to lenders, and collecting funds from borrowers.
- c. Operation of P2P Lending services: full operation of P2P Lending operators' electronic systems.

2. Technical Rules Regarding the Operation of P2P Lending Services

SEOJK 19/2023 generally codifies rules and requirements regarding the technical aspects of the operation of P2P Lending services, which were previously governed by best industry practices and the Code of Conduct. These technical aspects include:

A. Information Disclosure Requirement

P2P Lending operators are required to disclose certain information to potential users via their electronic systems, including:²

- a. The P2P Lending operator is a licensed company from and under the supervision of the OJK;
- b. The P2P Lending operator may only access, collect, store, manage, process, and/or use users' personal data after obtaining the users' consent;
- c. Lenders will bear all lending risk, while the P2P Lending operator is only liable for its own negligence or misconduct resulting in losses to lenders;
- d. The P2P Lending operator may only access users' devices, cameras, locations, and microphones;
- e. The transaction and the terms of the P2P loan agreement, including the maximum lending facility limit which is proportionate to the users' transactional capacity, must be understood by users;
- f. The P2P Lending operator reserves the right to take legal action in the case that users falsify any of documents they submitted, and users guarantee the authenticity of all documents they submit to the P2P Lending operator;
- g. Users shall not be charged with any fees for filing complaints about the services provided by the P2P Lending operator; and
- h. The methods for settlement and collection in cases of borrower default.

B. Information Disclosure Requirement

Section IV point 3 of SEOJK 19/2023 provides certain mechanisms and steps that must be followed by P2P Lending operators when assessing lending/borrowing applications that are submitted through their electronic systems. The mechanism involves a sequence of steps which include the verification, analysis, and scoring of prospective lenders and borrowers:

²Section IV point 1 of the SEOJK 19/2023.

- a. For prospective lenders, P2P Lending operators are required to:³
 - verify the authenticity of submitted documents;⁴
 - conduct clarification and confirmation processes on prospective lenders in line with OJK regulations regarding the implementation of anti-money laundering programs, prevention of terrorism financing, and prevention of financing of proliferation of weapons of mass destruction within the financial services sector; and
 - perform an analysis of the prospective lenders.⁵
- b. For prospective borrowers, P2P Lending operators shall conduct scoring to evaluate the borrowing applications submitted by the prospective borrowers by considering the prospective borrowers' eligibility and ability to fulfill repayment obligations (based on criteria such as character, capacity for repayment, capital, economic conditions, and/or collateral) through the following steps:⁶
 - verify the authenticity of the submitted documents;⁷
 - conduct clarification and confirmation processes on prospective borrowers in line with OJK regulations regarding the implementation of anti-money laundering programs, prevention of terrorism financing, and prevention of financing of proliferation of weapons of mass destruction within the financial services sector;
 - process data from other parties relevant to the scoring (if necessary); and
 - analyze the identity, eligibility and repayment capacity of the prospective borrowers.⁸

For consumptive lending, the scoring of a borrower's repayment capacity is carried out by examining the composition of the principal amount and economic benefits paid by the borrowers⁹ and their income, which is set at a maximum of of:¹⁰

- a. 50% in the first year following the enactment of the SEOJK 19/2023;
- b. 40% in the second year following the enactment of the SEOJK 19/2023; and
- c. 30% in the third year following the enactment of the SEOJK 19/2023;

³Section IV point 3 letter c-f of the SEOJK 19/2023.

⁴Documents for individual lenders shall at least consist of (i) an identity card/driver license/passport; (ii) a tax identification number (if any); (iii) a self-photograph of the individual; and (iv) account number. Meanwhile, Documents for business entity lenders shall at least consist of (i) an identity card/driver license/passport of the owner/director; (ii) a business identification number/company registration certificate/company business license; (iii) tax identification number; (iv) legal entity documents (a deed of establishment, latest amendment of articles of association, and the notification receipt or an approval letter from the relevant authority); (v) non-legal entity documents (an establishment document along with the latest amendment and a document showing the registration or ratification of the business entity from the relevant institution); (vi) latest operational transactions and profit and loss report; and (vii) other supporting documents.

⁵For individual lenders shall at least consist of the following data: (i) name; (ii) an identity card /driver license/passport number; (iii) a tax identification number (if any); (iv) phone number; (v) birthplace; (vi) birth date; (viii) gender; (ix) occupation; (x) income; (xi) source(s) of income; and (xii) a complete domicile address. Meanwhile, Business entity lenders shall at least consist of the following data: (i) business identification number; (ii) tax identification number; (iii) line of business; (iv) phone number; (v) a complete domicile address; (vi) income; and (vii) an identity of owner/director (name, identity card/driver license/passport number, tax identification number, phone number, and complete domicile address).

⁶Section IV point 3 letter g-m of the SEOJK 19/2023.

⁷Please refer to footnote number 4.

⁸Please refer to footnote number 5. In addition, to also include (i) emergency contact; and (ii) latest education for individual borrowers.

⁹Including the amount paid by the borrowers to the other financial service institutions in addition to the P2P Lending operator, such as banks, multi-finance companies, and venture capital companies.

¹⁰Section IV point 3 letter l of the SEOJK 19/2023.

In addition, the SEOJK 19/2023 also introduces a new obligation: P2P Lending operators must ensure that the prospective borrowers have yet to receive lending from more than 3 (three) P2P Lending operators (the assessing P2P Lending operator included) to prevent over-lending practices.¹¹

C. Unsound Lending

The SEOJK 19/2023 prohibits P2P Lending operators from providing "unsound lending". It is a lending practice that imposes unreasonable terms, conditions, economic benefits, and/or late fees on borrowers without regard for their repayment capacity, or provides lending to borrowers who already received loans from more than 3 P2P Lending operators.¹² Examples of unsound lending are further explained as follows:

- a. Establishing terms, conditions of economic benefits, and/or late fees that contain elements of deception;
- b. Establishing terms, conditions of economic benefits, and/or late fees without taking into account the borrower's ability to repay the loan; or
- c. Lending to small and medium enterprises, microfinancing, and/or other forms of lending that impose terms, conditions of economic benefits, and/or late fees that are unreasonable.

D. Publication of Lending Performance

SEOJK 19/2023 introduces new metrics of repayment success rates (*Tingkat Keberhasilan Bayar* or "TKB") that must be published by the P2P Lending operators on their electronic systems, namely: TKB0, TKB30, TKB60, and TKB90. These metrics represent the P2P Lending operator's success in facilitating the settlement of lending obligations within:

- a. 0 calendar day for TKB0;
- b. 30 calendar days for TKB30;
- c. 60 calendar days for TKB60; and
- d. 90 calendar days for TKB90;

after the maturity date.

The TKB shall be displayed at the top right corner of the main screen on all websites, applications, and/or electronic systems operated by P2P Lending operators. The above lending performance information shall be updated at least once a week.

3. Maximum Limit for Economic Benefits for P2P Lending Operators

SEOJK 19/2023 introduces a new framework for calculating the maximum limit on economic benefits (interest, administrative fees, and other fees) as well as late fees.¹³ The maximum limit on economic benefits and late fees under the SEOJK 19/2023 is set to decrease progressively as follows:¹⁴

¹¹Section IV point 3 letter j of the SEOJK 19/2023.

¹²Section IV point 6 letter e of the SEOJK 19/2023.

¹³Section VI of SEOJK 19/2023. The term "economic benefit" was first coined in POJK 10/2022 to replace the previously used term of interest rate and service fee used in the previous regulatory framework.

¹⁴Section VI point 3 of the SEOJK 19/2023.

	Types of Lending				
	Productive Lending		Consumptive Lending ¹⁵		
	Valid for 2 years from 1 January 2024	Valid from 1 January 2026	Valid for 1 year from 1 January 2024	Valid for 1 year from 1 January 2025	Valid from 1 January 2026
Economic Benefits ¹⁶	0.1%	0.067%	0.3%	0.2%	0.1%
Late Fees ¹⁷	0.1%	0.067%	0.3%	0.2%	0.1%

The above limit on economic benefits and late fees is noticeably reduced compared to the maximum limits that were set under the previous applicable industry guidelines.¹⁸

Furthermore, SEOJK 19/2023 also stipulates that the overall economic benefits and late fees that may be charged to the users shall not exceed 100% of the value of the loan specified in the P2P loan agreement.

4. Processing of Personal Data and Information

Section VIII of SEOJK 19/2023 stipulates the rules and requirements regarding the processing of users' personal data and information by P2P Lending operators.

SEOJK 19/2023 still upholds the primacy of consent as the primary lawful ground for any actions by P2P Lending operators related to users' personal data, including access, collection, storage, management, processing, and/or use. Notwithstanding, Section VIII point 3 suggests that SEOJK 19/2023 demonstrates an attempt to adopt other mechanisms stipulated by the PDP Law as the lawful grounds for any actions by P2P Lending operators related to sharing the data to third parties.¹⁹ In this regard, while it is not explicitly mentioned, the reference to "exceptions provided under applicable laws and regulations" may be interpreted as a reference to other lawful grounds provided by the PDP Law, such as: (i) performance of a contract; (ii) legal obligation; (iii) vital interests; (iv) public interests; and (v) legitimate interests.

Further, for the purposes of lending risk assessment and users' identity verification as part of risk mitigation, the P2P Lending operators are permitted to utilize data, in compliance with the provisions under the PDP Law, from:²⁰ (i) duly registered or licensed information management service providers; (ii) government agencies or state-owned enterprises or regional-owned enterprises; and/or (iii) other duly registered or licensed institutions. In this regard, P2P Lending operators may obtain users' data from other institutions, such as multi-finances, banks, and securities companies—by ensuring compliance with the PDP Law.

5. Outsourcing and Debt Collection

Outsourcing of Work Functions

SEOJK 19/2023 provides further explanation on the work functions that are not allowed to be outsourced, namely (i) creditworthiness scoring; and (ii) information technology (IT).

¹⁵For short-term funding tenors of less than 1 year.

¹⁶Calculated per calendar day based on the lending amount contained under the agreement.

¹⁷Calculated per calendar day based on the outstanding loan amount.

¹⁸Based on the previously applicable industry guidelines under AFPI Decree No. 001/TAP/AFPI/X/2021 on Maximum Interest Rates and Fees, the limit are: (i) 0.4% of the lending amount per day for the economic benefits; and (ii) 0.8% of the actual amount of lending received.

¹⁹Law No. 27 of 2022 on the Personal Data Protection ("PDP Law") serves as a comprehensive and general regulatory framework for personal data processing activities which is generally applicable to all personal data processing activities in Indonesia. On the other hand, other laws and regulations such as financial services regulatory framework may provide additional or more stringent provisions insofar as they are not contradictory with the PDP Law.

²⁰Section VII point 4 of the SEOJK 19/2023.

Creditworthiness scoring is considered as part of the core business activities of P2P Lending services, and thus is not allowed to be outsourced. Although, under the SEOJK 19/2023, P2P Lending operators may cooperate with credit information management institutions to add reference data in the performance of creditworthiness scoring.²¹

Meanwhile, from the IT perspective, work functions that are not allowed to be outsourced are: (i) user access management activities; (ii) database management activities; (iii) backup and restore activities; (iv) troubleshooting; and (v) disaster recovery.

Debt Collection Activities

SEOJK 19/2023 provides further detailed guidelines on debt collection by adopting best industry practices in which generally have been regulated under the industry guidelines,²² such as:

- i. Ensuring that all collection personnel are adequately trained in collection duties and collection ethics in accordance with applicable regulations;
- ii. When appointing third parties for debt collection, a written agreement is mandatory, subject to regular evaluations, and shall cover:
 - a. The scope of work;
 - b. The term of the agreement;
 - c. The contract value;
 - d. The fee structure and payment mechanism;
 - e. The rights and obligations of the P2P Lending operators and the third parties;
 - f. Measures and standards for work execution;
 - g. Provisions for early termination;
 - h. Sanctions; and
 - i. Dispute settlement mechanisms;
- iii. In the event that P2P Lending operators engage third parties for collection, such third parties must employ personnel certified in collection by a professional certification institution registered with the OJK; and
- iv. Collections are permitted only at the specified collection address, or the borrowers' domicile, between 8:00 a.m. to 8:00 p.m., in the local time zone of the borrowers' address, unless otherwise agreed.

In addition, the SEOJK 19/2023 introduces the use of emergency contacts solely to verify the borrower's presence, not for collection purposes. In this case, P2P Lending operators are required to obtain consent from, and confirm the following to, the persons concerned (emergency contact's data subjects):

- a. The emergency contact's details;
- b. The relationship between the person concerned and the borrower;
- c. The concept of emergency contact role to the person concerned; and
- d. The risks associated with agreeing to be an emergency contact.

²¹Section V point 5 of the SEOJK 19/2023.

²²AFPI's Standard Procedure for Collection of Defaulted and Delinquent Loan Recipients No. 001/SOP-PPPMB/EKS/IV/2020.

Key Takeaways

OJK aims to enhance and strengthen the P2P Lending industry's sustainability by adopting best practices, consolidating rules under the existing Code of Conduct into an official an expressive legal instrument, and providing further elaboration of certain matters as mandated by POJK 10/2022.

Despite the foregoing, SEOJK 19/2023 also provides caps on economic benefits and late fees, which may impact the ongoing businesses of existing P2P Lending operators and may necessitate operational adjustments.

SEOJK 19/2023 has come into force, accommodating a grandfather provision for loan agreements entered into prior to the enactment of SEOJK 19/2023. While loan agreements entered into prior to the enactment of SEOJK 19/2023 remain in force until they expire or are amended, new loan agreements entered into after SEOJK 19/2023 must comply with SEOJK 19/2023 accordingly. In light of this, P2P Lending operators are advised to identify these changes and take appropriate action to ensure compliance with the new regulatory requirements.

If you have any questions in relation to the issues raised in this briefing, please contact the authors in the left-hand column.

Contact Us

Public Relations
atdmhm_jakarta_info@mhm-global.com
+62-21-302-00-222
atdlaw.id
www.mhmjapan.com