



www.kk-advocates.com

For further information
please contact:

office@kk-advocates.com

K&K Advocates - Intellectual
Property. KMO Building, Fl. 05,
Suite 502 Jl. Kyai Maja No. 1,
Kebayoran Baru RT03/RW08,
Jakarta Selatan DKI Jakarta
12120

Tel: +62 21 29023331

Fax: +62 21 29023107

BRIEF ON INDONESIAN FINANCIAL SERVICE AUTHORITY REGULATION (OJK) ON P2P LENDING

Following the issuance of BI Regulation No. 18/40/2016 concerning Payment Transaction Providers (PTP Regulation) as part of the effort of the government of Indonesia to regulate the development of financial technology, the Financial Services Authority/*Otoritas Jasa Keuangan* has issued Regulation No. 77/POJK.01/2016 concerning Peer to Peer Lending Services based on Information and Technology (OJK 77/2016). This shows the great interest of the government to support the positive trend of financial technology (Fintech) development. The P2P lending is proven as one of the darling and most attractive industry, as such the government, through OJK, is putting several notable provisions, measures and guidance in the said OJK regulations for the actor and also the user of peer to peer lending (P2P), which seems to be comprehensive, clear and quite technical.

The P2P legislation consists of 52 articles and 15 chapters. The OJK 77/2016 highlights the subject players which are the providers, and users that are divided into creditor and debtor. That said, this regulation imposes restrictions and requirements not just on the providers but also upon the consumer. This step may be seen as a breakthrough on the Fintech regulation realm, as the PTP Regulation previously focuses more on the provider and does not mention specifically on the consumer.

Interestingly, as it may be noted from the OJK 77/2016, the intention of the government to support the development of local entity in the P2P industries may not clearly be seen here, as the regulation allows foreign ownership of the entity operating in the said line of business to control 85% of the ownership. Further governance can be seen in that registration and licensing requirement, the tri-monthly report and annual report mechanism as well as requirement of having both director and commissioner of the company with at least 1 year experience in the financial industry are in place. The 1 year requirement is too short but it is a start in the right direction as this is meant to impact the market meaningfully.

Meanwhile from the perspective of the industries itself, the limit amount of funds that may be borrowed by the user, along with the application of KYC principle, as well as the prohibition of foreign borrower, are also provision that



is worth to note. Accordingly the provision on the limit of minimum capital of amount US\$200,000 which provides startup business to provide only US\$74,500 upfront in registering the business seems the way to provide more lenient requirements for the fintech industry. Notwithstanding that, the OJK 77/2016 also treats P2P provider as an escrow account provider. Since P2P providers are merely a conduit with no access to funds, thus effectively reduce P2P providers liabilities in relation to anti-money laundering sanctions or regulations. However, clear responsibilities as to the obligations of P2P providers will be welcome.

Last but not least, raising the awareness of the government on the issue of technology and information may also be seen from its commitment to insert the provisions on the security of the transaction on the OJK 77/2016. Such provisions cover issues such as data centre, the usage of electronic documents for the purpose of transaction with certain format, and many other IT-related provisions.

In summary, the enactment of OJK 77/2016 is a testament of the effort made by the government of Indonesia to support the development of the Fintech industries in Indonesia. Given the market opportunity, its size and the possible benefits that may harvested from the industries, further development on the Fintech environment in Indonesia would be worth to wait and to follow.