

Financial Services

Versi Bahasa Indonesia

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29 December 2017

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OJK Regulates Technology-Based P2P Lending Services

With the ultimate aim of offering certainty and support for the development of a technology-based financial industry in Indonesia, the Financial Services Authority (“OJK”) has issued Regulation [No. 77/POJK.01/2016](#) on Technology-Based Fund-Lending Services (“**Regulation 77/2016**”).

With this ultimate objective in mind, Regulation 77/2016 sets out a range of comprehensive guidelines relating to the organization of technology-based peer-to-peer lending services (“**P2P Lending Services**”).

Due to the broad scope of Regulation 77/2016, this edition of Indonesian Legal Brief (ILB) will limit its discussion to the following topics:

1. P2P Lending Services in general;
2. Requirements and procedures for parties wishing to become providers of P2P Lending Services; and
3. The obligations and restrictions which are placed upon providers of P2P Lending Services.

P2P Lending Services

Pursuant to Regulation 77/2016, P2P Lending Services generally refer to financial services which are provided via online systems and which facilitate meetings between lenders and borrowers for the purpose of entering into loan agreements in the Indonesian Rupiah currency.¹

¹ Art. 1 (3), Regulation 77/2016.

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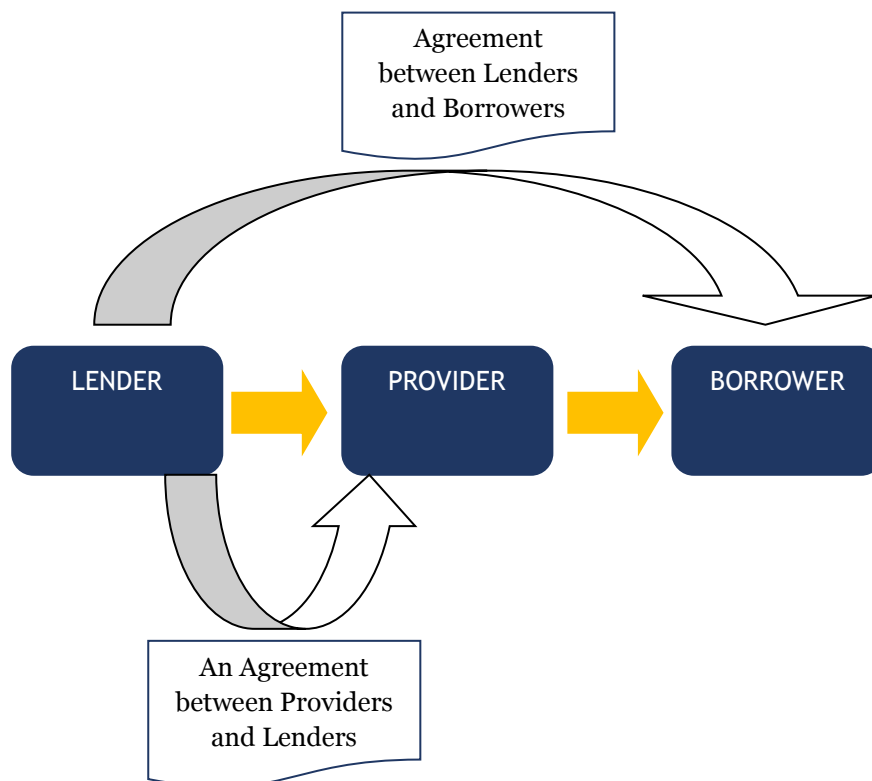
There are three main parties involved in such transactions, specifically:²

1. Providers of P2P Lending Services, which refer to Indonesian legal entities which provide, maintain and operate P2P Lending Services by managing funds supplied by lenders which are distributed to the borrowers ("**Providers**");
2. Borrowers, which refer to Indonesian citizens or legal entities which originate from and which are domiciled within Indonesia ("**Borrowers**"); and
3. Lenders, which refer to Indonesian and/or foreign citizens and/or entities, as well as international organizations ("**Lenders**").

Under such lending schemes, these parties can engage in two types of agreement, which must be drawn up in the form of electronic documents, specifically:³

1. Agreement between Providers and Lenders;
2. Agreement between Lenders and Borrowers.

In brief, such schemes may be described as follows:



² Art. 1 (6-8), Art. 5, Art. 15 and Art. 16 Regulation 77/2016.

³ Art. 18, Regulation 77/2016.

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Providers of P2P Lending Services

Through the issuance of Regulation 77/2016, Providers are now classified as other financial-service institutions, along with pawnshops, guarantee institutions, export financing institutions, secondary house-financing companies, as well as other institutions which are specifically mandated under certain laws and regulations (e.g. Social Security Agency/BPJS).⁴

In general, a Provider is required to be established as a legal entity in the form of:⁵

1. A limited-liability company (*perseroan terbatas* -“PT”), as regulated under Law [No. 40 of 2007](#) on PT;⁶ or
2. A cooperative, as regulated under Law [No. 25 of 1992](#) on Cooperatives.

Regulation 77/2016 is basically silent on the various parties which may establish and own a Provider in the form of cooperative, however the regulation requires Providers in the form of PTs to be established and owned by the following parties:⁷

1. Indonesian citizens and/or legal entities; and/or
2. Foreign citizens and/or legal entities, provided that their direct and/or indirect ownership does not exceed 85% of the total shares.

Furthermore, Regulation 77/2016 requires that a Provider (in any form) should have IDR 1 billion in capital (i.e. paid-up capital for a PT and self-capital for a cooperative) during its registration stage and IDR 2.5 billion in capital during the licensing stage.⁸

In this context, any PT or cooperative which is intending to become engaged in the P2P Lending Services business is required to register with the OJK. It should be noted that any party which was engaged in such business before the issuance of Regulation 77/2016 must register with the OJK by no later than June of 2017.⁹

⁴ Art. 1 (2) and Art. 2 (1), Regulation 77/2016.

⁵ Art. 2 (2), Regulation 77/2016.

⁶ For further information, see ILB [No. 660](#) and ILD [No. 71](#).

⁷ Art. 3, Regulation 77/2016.

⁸ Art. 4, Regulation 77/2016.

⁹ Art. 8 (1-2), Regulation 77/2016.

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Within a year of registering, the Provider must then secure a license from the OJK or the registration certificate will be invalidated and, moreover, the Provider will not be able to apply for another registration.¹⁰

In order to register and secure an official OJK license, a Provider must submit an application (using form 1, which is set out under the Appendix to Regulation 77/2016 for registrations, or form 2 for licensing purposes) to the Chief Executive of Supervision over Insurance Companies, Pension Funds, Financing Institutions and Other Financial Institutions, along with the required supporting documents, as listed under the following articles:¹¹

1. For registration: Article 8 (3) of Regulation 77/2016; or
2. For licensing: Article 11 (1) of Regulation 77/2016.

The OJK then has 10 business days upon taking receipt of a complete and compliance application to issue a registration certificate, or 20 business days to either approve or reject an application to secure a license.¹²

Obligations and Restrictions

Regulation 77/2016 sets out a number of obligations which have to be met by Providers, including:

1. The obligation to comply with the lending threshold for each Borrower, which has been set at a maximum of IDR 2 billion;¹³
2. The obligation to submit several types of report, as outlined below:¹⁴
 - a. Quarterly reports (after the Provider has first secured the relevant registration certificate); and
 - b. Monthly reports and annual reports (after the Provider has first secured the relevant license);
3. The obligation to provide human resources which are both technically qualified and/or employees who have gained at least one year's experience in the technology information sector, as well as members of boards of directors and commissioners who have gained at least one year's experience working in the financial sector;¹⁵

¹⁰ Art. 10 (1-3), Regulation 77/2016.

¹¹ Art. 8 (1) and (3) and Art. 11 (1), Regulation 77/2016.

¹² Art. 8 (4-5) and Art. 11 (3), Regulation 77/2016.

¹³ Art. 6 (1-2), Regulation 77/2016.

¹⁴ Art. 9 (1) and Art. 44, Regulation 77/2016.

¹⁵ Art. 14 (1-2), Regulation 77/2016.

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4. The obligation to provide access for Lenders which relates to the information on usage of their funds and for Borrowers as regards their loan positions;¹⁶
5. The obligation to use an escrow account and a virtual account while running any P2P Lending Services business activities;¹⁷
6. The obligation to protect any confidential information which it manages as well as the obligation to provide records of any of its activities which relate to P2P Lending Services.¹⁸

Furthermore, Providers are also subject to several restrictions, as listed under Article 43 of Regulation 77/2016, namely:

1. Restrictions on the undertaking of any activities other than activities which are regulated under Regulation 77/2016;
2. Restrictions on the ability to act as a Lender or a Borrower;
3. Restrictions which relate to the provision of guarantees in any form, the issuance of bonds or the provision of recommendations for Borrowers and/or Lenders;
4. Restrictions on publishing any misleading information;
5. Restrictions on offering any services via personal communication channels without the Borrower or Lender's consent; and
6. The Restrictions on imposing any additional fees upon Borrowers or Lenders for the handling of any complaints that they may make.

Regulation 77/2016 has been in force since 29 December 2016.^{AP2}

¹⁶ Paragraph (3) of Art. 19 and Art. 20, Regulation 77/2016

¹⁷ Art. 24 (1), Regulation 77/2016.

¹⁸ Art. 26 - 27, Regulation 77/2016.

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- Ministry of Employment Regulation [No. 34 of 2016](#) on Accreditation for Work-Training Institutions
- Ministry of Employment Regulation [No. 35 of 2016](#) on Requirements for, Types of and Procedures for the Granting of Additional Services under the Old-Age Benefits Program

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