

CHAPTER IV

RESEARCH RESULT & ANALYSIS

4.1 Research Result

4.1.1 Non-Performing Loans during Covid-19

The Covid-19 pandemic greatly affected the Indonesian economy starting in the early second quarter of 2020, this was due to Large-Scale Social Restrictions (PSBB) which caused a lockdown in several cities aimed at breaking the chain of the Covid-19 spread.⁶³ Restrictions on community activities related to the Covid-19 pandemic that have been in place since April 2020 have paralyzed businesses in many sectors, resulting in the weakening of the national economy.⁶⁴ This may be seen in the national economy, which decreased by 5.32% (year-on-year/YoY) in the second quarter of 2020, followed by the third quarter of 2020 showed a contraction of 3.49% (YoY), and the fourth quarter of 2020 showed a loss of 2.17% (YoY), and lastly by the first quarter of 2021 that has shown a negative growth of 0.7% (YoY).⁶⁵

⁶³ Kementerian Keuangan Republik Indonesia, “Pemulihan Perekonomian Indonesia Setelah Kontraksi Akibat Pandemi Covid-19”. <https://www.djkn.kemenkeu.go.id/kpknl-banjarmasin/baca-artikel/14769/Pemulihan-Perekonomian-Indonesia-Setelah-Kontraksi-Akibat-Pandemi-Covid-19.html>, accessed by 10 November 2022

⁶⁴ Databoks, “Kredit Bermasalah Perbankan Masih Tinggi sampai Awal 2022”. <https://databoks.katadata.co.id/datapublish/2022/04/14/kredit-bermasalah-perbankan-masih-tinggi-sampai-awal-2022>, accessed by 10 November 2022

⁶⁵ Databoks, “Kredit Bermasalah Perbankan Masih Tinggi sampai Awal 2022”. <https://databoks.katadata.co.id/datapublish/2022/04/14/kredit-bermasalah-perbankan-masih-tinggi-sampai-awal-2022>, accessed by 10 November 2022

According to Bank Indonesia, bank credit distribution increased rapidly in April 2022 in keeping with the ongoing economic recovery.⁶⁶ Bank Indonesia's Governor Perry Warjiyo, has stated that bank lending increased 9.1% (YoY) in April 2022 compared to the same month the previous year.⁶⁷

With this growth in bank lending through the beginning of 2022, it also has an impact on the level of NPL in banks. According to the OJK's Indonesian Banking Statistics, the amount of NPL in January 2022 was IDR 176.93 trillion. As a result, the NPL ratio in January 2022 was 3.1% of the total credit value, or ID 5.71 quadrillion.⁶⁸

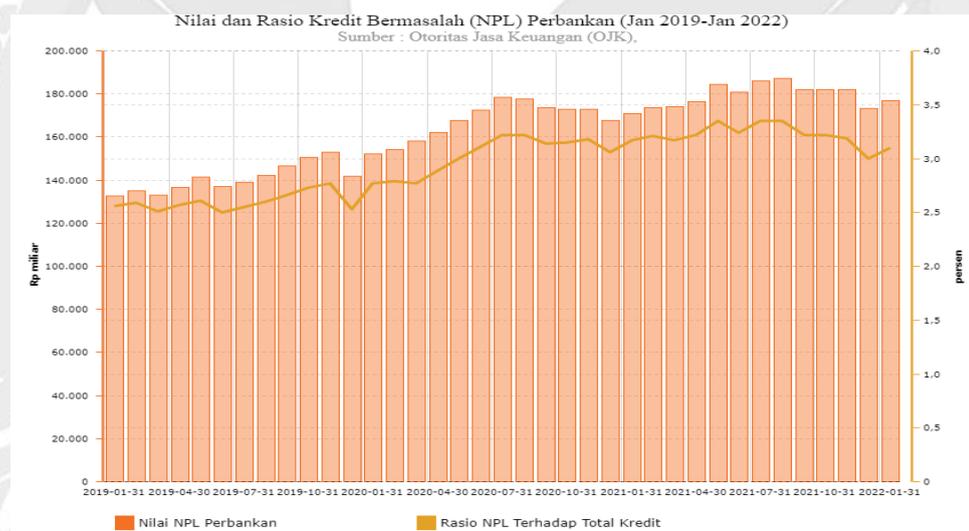


Figure 4.1 Banking Non-Performing Loans (NPL) Value and Ratio

The illustration above has shown that the ratio increased compared to the previous month which was still at 3%.⁶⁹ Compared to January 2020 when the

⁶⁶ Databoks, "Penyaluran Kredit Perbankan Tumbuh 9,1% pada April 2022". <https://databoks.katadata.co.id/datapublish/2022/05/31/penyaluran-kredit-perbankan-tumbuh-91-pada-april-2022>, accessed by 10 November 2022

⁶⁷ Databoks, "Penyaluran Kredit Perbankan Tumbuh 9,1% pada April 2022". <https://databoks.katadata.co.id/datapublish/2022/05/31/penyaluran-kredit-perbankan-tumbuh-91-pada-april-2022>, accessed by 10 November 2022

⁶⁸ Databoks, "Kredit Bermasalah Perbankan Masih Tinggi sampai Awal 2022". <https://databoks.katadata.co.id/datapublish/2022/04/14/kredit-bermasalah-perbankan-masih-tinggi-sampai-awal-2022>, accessed by 10 November 2022.

pandemic had not yet occurred, the banking NPL value for January 2022 had increased by IDR 24.78 trillion (16.28%).⁷⁰

Micro, Small and Medium-Sized Enterprises (MSME) are one industry that has also been severely impacted by the Covid-19 pandemic. This makes sense given the significant impact MSME have on the national economy. The Ministry of Cooperatives, Small and Medium Enterprises (KUKM) reports that 64.2 million or 99.99% of Indonesia's business players are MSME actors as of 2018. MSMEs made up 61.1% of the national economy's (GDP) contribution, while major business actors who accounted for just 5,550, or 0.01% of all company actors contributed the remaining 38.9%.⁷¹

According to an analysis by Badan Pusat Statistik, 7 out of every 10 MSME need venture capital assistance as the most needed during a pandemic.⁷² As a consequence, OJK's report shows that the number of online lending or P2P Lending has reached IDR 19.49 trillion as of September 2022. This achievement grew by 1.45% (month-on-month/MoM) compared to August 2022 which amounted to IDR 19.21 trillion.⁷³ When compared to last year, the distribution of

⁶⁹ Databoks, "Kredit Bermasalah Perbankan Masih Tinggi sampai Awal 2022". <https://databoks.katadata.co.id/datapublish/2022/04/14/kredit-bermasalah-perbankan-masih-tinggi-sampai-awal-2022>, accessed by 10 November 2022

⁷⁰ Databoks, "Kredit Bermasalah Perbankan Masih Tinggi sampai Awal 2022". <https://databoks.katadata.co.id/datapublish/2022/04/14/kredit-bermasalah-perbankan-masih-tinggi-sampai-awal-2022>, accessed by 10 November 2022

⁷¹ Kementerian Keuangan Republik Indonesia, "UMKM Bangkit, Ekonomi Indonesia Terungkit". <https://www.djkn.kemenkeu.go.id/artikel/baca/13317/UMKM-Bangkit-Ekonomi-Indonesia-Terungkit.html>, accessed by 14 November 2022

⁷² Kementerian Koordinator Bidang Perekonomian Republik Indonesia, "Peningkatan Potensi Ekonomi Digital untuk Mendukung UMKM". <https://ekon.go.id/publikasi/detail/3429/peningkatan-potensi-ekonomi-digital-untuk-mendukung-umkm>, accessed by 14 November 2022

⁷³ Databoks, "Penyaluran Pinjaman Online RI Capai Rp19,49 Triliun per September 2022". <https://databoks.katadata.co.id/datapublish/2022/11/02/penyaluran-pinjaman-online-ri-capai-rp1949-triliun-per-september-2022>, accessed by 14 November 2022

P2P Lending increased by around 36.67% (YoY) compared to September 2021 which amounted to IDR 14.26 trillion.⁷⁴

On the contrary, the OJK has noted that NPL in the P2P Lending industry has reached IDR 1.49 trillion as of September 2022, an increase of 9.55 percent (month-on-month/MoM).⁷⁵ According to OJK's Fintech Lending Statistic data, which was released in early November 2022 for the September 2022 period, NPL consists of individual online loans totaling IDR 1.32 trillion and loans to businesses totaling IDR 169.58 billion.⁷⁶

4.1.2 Interview with Achmad Syarif Kadir, Head of Business Development Department at PT Bank Resona Perdania

During an interview with Achmad Syarif Kadir as the Head of Business Development Department PT Bank Resona Perdania, he mentioned that:⁷⁷

“PT Bank Resona Perdania had a significant increase in NPL, almost 40% of the bank's assets were in trouble at the start of the pandemic. Especially with the existence of PSBB), all activities; including the supply chains of businesses, are hampered. “

Knowing that, PT Bank Resona Perdania immediate response is to assess customers who have NPL. Syarif explains that a stress test is used to do the evaluation, which entails projections for customers under reasonable assumptions.

⁷⁴ Databoks, “Penyaluran Pinjaman Online RI Capai Rp19,49 Triliun per September 2022”. <https://databoks.katadata.co.id/datapublish/2022/11/02/penyaluran-pinjaman-online-ri-capai-rp1949-triliun-per-september-2022>, accessed by 14 November 2022

⁷⁵ Bisnis.com, “Kredit Macet di Pinjol Menggembung, Tembus Rp1,49 Triliun”. <https://finansial.bisnis.com/read/20221108/563/1596059/kredit-macet-di-pinjol-menggembung-tembus-rp149-triliun>, accessed by 14 November 2022.

⁷⁶ Otoritas Jasa Keuangan, “Statistik Fintech Lending Periode September 2022”. <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/default.aspx>, accessed by 14 November 2022

⁷⁷ Interview with Achmad Syarif Kadir, Head of Business Development Department PT Bank Resona Perdania, Zoom Meeting, 16 November 2022, 9:00 am WIB

Following this assessment, PT Bank Resona Perdania communicated with the client which resulted in solutions, among them are credit restructuring.

The credit restructuring experience for PT Bank Resona Perdania has been very effective. In the interview, Syarif explained how the implementation of the Credit Restructuring Policy relieves consumers and, of course, gives them a chance to repair the unexpected circumstance. Before offering credit restructuring as an option to the debtors, PT Bank Resona Perdania has to take into account a number of factors. Credit scoring cards, cash flow, and financial history are among the factors taken into account. Lastly, Syarif stated:

“To manage and prevent NPL, assessments to the parties involved are crucial. Therefore, we always appreciate debtors who are open and willing to talk about the circumstances they are facing.”

4.1.3 Interview with Ivan Nikolas Tambunan, Chief Executive Officer of Akseleran

The current growth rate of P2P Lending also gave an impact to the quantity of NPL, which also increased. The Chief Executive Officer of Akseleran, Ivan Tambunan, was asked about the current NPL industry in an interview. He responded:⁷⁸

"Industry-wise, data from the OJK shows a rise in NPL from April to March 2020. The borrower's ability to pay is automatically affected by the Covid pandemic because a lot of individuals are unable to work and businesses are unable to open.”

Ivan also added that since it is probable for people to lose their jobs and see a large decline in income, the most impacted P2P sector are those who focus on consumer loans and legal online loans. As for Akseleran, they mostly concentrate

⁷⁸ Interview with Ivan Tambunan, Co Founder and CEO of Akseleran, Zoom Meeting, On 14 November 2022, 9:00 am WIB

on invoice and PO financing, which means the users project has already been finished and is simply waiting for payment. Thus, from the risk perspective, it is very easy to mitigate. In fact, Akseleran did not experience an increase in NPL during Covid-19.

Akseleran itself has experienced the increase of NPL during the early period of establishment, which happened to be in 2019. At that time, the loan disbursement increased almost 4 (four) times compared to 2018. Ivan claimed to have learned that since money is the commodity, loan disbursement cannot be aggressive and that loans should be evaluated in the most suitable manner. As a result, Akseleran started to strengthen loan assessments, establish joint account arrangements, and develop credit insurance schemes within the second half of 2019.

One of the options Akseleran offered for people that face NPL is by credit restructuring. He explains the following when asked about the effectiveness of credit restructuring:⁷⁹

“Restructuring from Akseleran is uncommon; it frequently only applies to online merchants. It has been quite effective due to Akseleran being very selective in providing restructuring. We avoid giving credit restructuring to debtors who truly lack the means to pay; doing so will simply make the situation worse by setting off a ticking time bomb.”

According to his statement above, Akseleran has only given out credit restructuring for loans where payment failure occurs because the cause of it is

⁷⁹ Interview with Ivan Tambunan, Co Founder and CEO of Akseleran, Zoom Meeting, On 14 November 2022, 9:00 am WIB

temporary. Therefore, restructuring is done in a way that will allow the debtor to resume making payments after the cause of the default has passed.

4.2 Analysis of Current P2P Lending Regulation in Addressing Non-Performing Loan Issues

Since its establishment, Indonesia's P2P Lending industry has experienced amazing growth, thanks to the digital revolution and a growing public interest in financial technology. As previously mentioned, OJK's report shows that the number of P2P Lending has reached IDR 19.49 trillion as of September 2022. This achievement grew by 1.45% (month-on-month/MoM) compared to August 2022 which amounted to IDR 19.21 trillion.⁸⁰ When compared to last year, the distribution of P2P Lending increased by around 36.67% (year-on-year/YoY) compared to September 2021 which amounted to IDR 14.26 trillion.⁸¹

However, the industry's rapid expansion has brought about its fair share of issue, including unethical business practices (such as debt collection, data privacy, and exorbitant interest rates), and a sharp increase in illegal P2P Lending platforms.⁸² Recently, OJK has issued a new regulation, namely POJK 10/2022, dated July 4, 2022. The prior regulation, POJK 77/2016, which was initially

⁸⁰ Databoks, "Penyaluran Pinjaman Online RI Capai Rp19,49 Triliun per September 2022". <https://databoks.katadata.co.id/datapublish/2022/11/02/penyaluran-pinjaman-online-ri-capai-rp1949-triliun-per-september-2022>, accessed by 14 November 2022

⁸¹ Databoks, "Penyaluran Pinjaman Online RI Capai Rp19,49 Triliun per September 2022". <https://databoks.katadata.co.id/datapublish/2022/11/02/penyaluran-pinjaman-online-ri-capai-rp1949-triliun-per-september-2022>, accessed by 14 November 2022.

⁸² Bareksa, "Fintech P2P Lending:Habis Mudah Terbitlah Masalah". <https://www.bareksa.com/berita/berita-ekonomi-terkini/2019-01-08/fintech-p2p-lending-habis-mudah-terbitlah-masalah>, accessed by 18 November 2022.

enacted to immediately address the fast-expanding P2P Lending market, was revoked by POJK 10/2022.

POJK 10/2022 was issued to develop the financial industry which can encourage the growth of alternative financing, simplify and increase access to funding for the public and business actors through an information technology-based funding service.⁸³ The new regulation also aims to comprehensively protect all users and operators from all potential risks inherent in fintech lending business activities.⁸⁴

The table below shows a summary concerning various points of new discussion provision listed in POJK 10/2022 which were not previously regulated in POJK 77/2016:

Table 4.1 Comparison on POJK 77/2016 and POJK 10/2022

No	Relevant Issue	POJK 77/2016	POJK 10/2022
1	Legal Entity	a. Limited liability company b. Cooperative	a. Limited liability company
2	Operator's Capital Requirement	Operators are required to have paid-up capital at least Rp 2,500,000,000.00 at the time of establishment	Operators are required to have paid-up capital of at least Rp25,000,000,000.00 at the time of establishment
3	Controlling Shareholder		Operators are required to determine at least 1 (one)

⁸³ Otoritas Jasa Keuangan, "Siaran Pers: OJK Perkuat Operasional Fintech Peer to Peer Lending". <https://www.ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/OJK-Perkuat-Operasional-Fintech-Peer-to-Peer-Lending-.aspx>, accessed by 18 November 2022.

⁸⁴ Investor.id, "OJK Ramu Juknis Regulasi Terbaru Fintech Lending". <https://investor.id/finance/304063/ojk-ramu-juknis-regulasi-terbaru-fintech-lending>, accessed by 18 November 2022.

		–	Controlling Shareholders (<i>Pemegang Saham Pengendali</i> or PSP)”
4	Operator’s Equity	–	Operators are required to have equity of at least Rp 12,500,000,000.00 at any time.
5	Risk Mitigation	Does not specify the details on risk mitigation	Specify the minimum action for operators on risk mitigation

The comparison in the table above led to the following discussion of the points stated below:

1. Legal Entity

OJK has finally set restrictions on the legal entities that can act as operators in POJK 10/2022. The current regulation only permitted limited liability companies (PT) as the sole organizing entity, in contrast to POJK 77/2016, which allowed cooperatives to act as operators.⁸⁵ This provision would strengthen the restriction of P2P Lending operators and thus target those existing illegal P2P Lending operators. In addition, operators are required by POJK 10/2022 to have a single controlling shareholder, whereas this is not covered by the Law on Cooperatives.

2. Operator’s Capital Requirements

In terms of capital requirements, there has been an increase in the operator's capital requirements on the start of establishment. Prior to POJK 10/2022, the operator’s capital requirement was Rp 2,500,000,000 (two billion,

⁸⁵ Financial Services Authority Regulation Number 10/POJK.05/2022 Concerning Information Technology Based Collective Funding Services, Article 2 (2)

five hundred million rupiah) at the time of establishment, but the current regulation has increased it to a minimum of Rp 25,000,000,000 (twenty five billion rupiah).⁸⁶ The possibility of illegal P2P platforms to operate is constrained by the significant difference of capital needed for P2P operators in establishing their platforms.

3. Controlling Shareholder

Regulations pertaining to PSP that were not previously covered by POJK 77/2016 are now regulated by POJK 10/2022. As stated under Article 1 (29) of POJK 10/2022, PSP is defined as:

“...badan hukum, orang perseorangan, dan/atau kelompok usaha yang memiliki saham atau modal Penyelenggara sebesar 25% (dua puluh lima persen) atau lebih dari jumlah saham yang dikeluarkan dan mempunyai hak suara, atau memiliki saham atau modal Penyelenggara kurang dari 25% (dua puluh lima persen) dari jumlah saham yang dikeluarkan dan mempunyai hak suara namun yang bersangkutan dapat dibuktikan telah melakukan pengendalian Penyelenggara, baik secara langsung maupun tidak langsung.”

Companies that have obtained business licenses at the time POJK 10/2022 was promulgated are required to report the determination of PSP and its changes.⁸⁷ PSP is obliged to be responsible for the losses suffered by the operator, if the loss arises due to:⁸⁸

- a. PSP directly or indirectly in bad faith takes advantage of the operator for the benefit of PSP;
- b. PSP is involved in unlawful acts committed by operators; or

⁸⁶ *Ibid*, Article 4

⁸⁷ *Ibid*, Article 5

⁸⁸ *Ibid*, Article 7

- c. PSP either directly or indirectly unlawfully uses the operator assets, which results in the operators assets becoming insufficient to meet financial obligations.

4. Operator's Equity

According to *Pernyataan Standar Akuntansi Keuangan (PSAK) No. 21 tentang Akuntansi Ekuitas*, equity is defined as: “the part of the owner's rights in the company, after deducting the amount of assets to liabilities.” Article 50 (1) of POJK 10/2022 regulates that operators are required to have equity of at least Rp 12,500,000,000.00 at any time. Operators are required to achieve equity of at least Rp 12,500,000,000 (twelve billion five hundred million rupiah) after going through several milestones, namely:⁸⁹

- a. First milestone, Rp 2,500,000,000.00 (two billion five hundred million rupiah) is valid for one year from the promulgation of POJK 10/2022;
- b. Second milestone, Rp 7,500,000,000.00 (seven billion five hundred million rupiah) valid for two years from the promulgation of POJK 10/2022; and
- c. Third milestone, Rp 12,500,000,000.00 (twelve billion five hundred million rupiah) is valid for three years from the promulgation of POJK 10/2022.

5. Risk Mitigation

To minimize and manage credit risks and operational risks associated with all P2P Lending services fintech, it is necessary to identify, measure,

⁸⁹ Financial Services Authority Regulation Number 10/POJK.05/2022 Concerning Information Technology Based Collective Funding Services, Article 50 (2)

monitor, and regulate these risks.⁹⁰ POJK 10/2022 has provisions regarding risk mitigation, regulated in Article 35, specifically under section “Risk Management by the Operator”. Operators are required to facilitate the users risk mitigation, which at least contains:⁹¹

- a. Risk analysis of the proposed Funding by Fund Recipients;
- b. Verify user identity and authenticity document;
- c. Perform billing on funding optimally against the funds disbursed;
- d. Facilitating the transfer of funding risk; and
- e. Facilitating the transfer of risks to the collateral object, if there is a collateral object

Following the previous discussion on risk mitigation, each P2P Lending platform has its own method of risk mitigation for the users from NPL. The research conducted by the Author is by comparing two P2P platforms, namely Akseleran and Investree in having a preventive action to NPL, as follows:

1. Akseleran

Christopher Gultom, Chief Credit Officer & Co-Founder of Akseleran explains the strategies of mitigation risk, he stated:⁹²

“There are three strategies of mitigation risk implemented by Akseleran. First, Akseleran is tightening credit assessments for prospective borrowers including conducting a thorough assessment of the impact of Covid 19 on their business, secondly, continuous

⁹⁰ Trisadini P.Usanti and Fiska Silvia R.R, “Legal Protection of the Contracting Parties in The Peer to Peer Lending Based on Financial Technology (P2P Lending Fintech) in Indonesia”, *Advances in Social Science, Education and Humanities Research (ASSEHR)*, Vol.131, International Conference on Law, Governance and Globalization 2017 (ICLGG 2017), Atlantis Press, pg. 291.

⁹¹ Financial Services Authority Regulation Number 10/POJK.05/2022 Concerning Information Technology Based Collective Funding Services, Article 35 (4)

⁹² Akseleran, “New Normal, Strategi Akseleran Mitigasi Risiko Kredit”. <https://www.akseleran.co.id/blog/new-normal-strategi-akseleran-mitigasi-risiko-kredit/>, accessed by 22 November 2022.

portfolio monitoring, and thirdly, continuous implementation of credit insurance.”

Ivan Tambunan clarified in the interview that every P2P Platform is not liable for any losses incurred by the borrower, lender, or payor in the case of a payment default.⁹³ P2P platforms are prohibited in providing guarantees in all its forms above fulfillment of the obligations of the parties.⁹⁴ Therefore, risk mitigation has always been a priority in every P2P platform and acts out as a first line of defense NPL.

2. Investree

Investree has a similar risk mitigation with Akseleran. According to the website, there are various of ways Investree implement the provision of risk mitigation in their platform, such ways are:⁹⁵

- a) Investree urges investors to consider the various risks involved predicted to occur before granting a loan through the Investree platform.
- b) Investree has a risk mitigation system in the form of accurate credit scoring, a competent credit assessment team, complete credit grading as a service without collateral and will only provide loans to body or individual who has a level of eligibility good credit.
- c) Users are reminded by Investree that the accuracy of credit scoring and grading does not entirely reflect the condition and personality of credit borrowers.

⁹³ Interview with Ivan Tambunan, Co Founder and CEO of Akseleran, Zoom Meeting, On 14 November 2022, 9:00 am WIB.

⁹⁴ Financial Services Authority Regulation Number 10/POJK.05/2022 Concerning Information Technology Based Collective Funding Services, pg. 1 (a)

⁹⁵ Investree, “Ketahui Risikonya untuk Mendanai Secara Cermat”. <https://investree.id/how-it-works/know-your-risk>, accessed by 22 November 2022.

The study above has shown that P2P platforms have implemented risk mitigation for their users in order to prevent NPL. Even though risk mitigation has been implemented, NPLs are still a possibility, particularly in the P2P lending sector.⁹⁶ POJK 10/2022 focuses more on how to prevent NPL and not on how NPL settlement should be. This could be seen in the provision of agreement between parties of P2P Lending. Article 30 of POJK 10/2022 regulates *Layanan Pendanaan Bersama Berbasis Teknologi Informasi (LPBBTI)* agreement must at least consist of:

- a. Agreement between the Operator and the Lender; and
- b. Agreement between the Lender and the Borrower.

The clauses of agreement between the Operator-Lender are regulated under Article 31 of POJK 10/2022, while clauses of agreement between the Lender-Borrower are set forth under Article 32 of POJK 10/2022. Each of the agreement must follow the minimum clauses listed under Article 31 and Article 32 of POJK 10/2022, as follows:

Table 4.2 Clauses of Agreement between Operator-Lender and Lender-Borrower

Article 31 (2) of POJK 10/2022 (Operator-Lender)	Article 32 (2) of POJK 10/2022 (Lender-Borrower)
a. agreement number; b. agreement date; c. name and identity number of the Lender d. the rights and obligations of the parties; e. amount of lending; f. economic benefits of Lending;	a. agreement number; b. agreement date; c. the identity of the parties; d. the rights and obligations of the parties; e. amount of lending; f. economic benefits of lending; g. installment value;

⁹⁶ Interview with Ivan Tambunan, Co Founder and CEO of Akseleran, Zoom Meeting, On 14 November 2022, 9:00 am WIB.

<ul style="list-style-type: none"> g. the size of the commission; h. time period; i. cost breakdown; j. provisions regarding fines, if any; k. use of Personal Data; l. Lending billing mechanism; m. risk mitigation in the event non-performing loans; n. dispute settlement mechanism; and o. mechanisms for settling rights and obligations in the event that the operator is unable to continue the activity operational. 	<ul style="list-style-type: none"> h. time period; i. collateral object, if any; j. related costs; k. provisions regarding fines, if any; l. use of Personal Data; m. dispute settlement mechanism; and n. mechanism for settlement of rights and obligations accordingly with the provisions of laws and regulations if the operator is unable to continue the activity operational.
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The comparison in the table above led to the following discussion stated below:

As stipulated under Article 31 letter (m) of POJK 10/2022, operators are required to include the clause of “risk mitigation in the event of NPL” under agreement between the Operator-Lender in the Electronic Document. Moreover, explanation regarding “risk mitigation in the event of NPL” of Article 31 (m) of POJK 10/2022 has stated that:

“Yang dimaksud dengan ‘mitigasi risiko dalam hal terjadi Pendanaan macet’ adalah penyelesaian Pendanaan macet yang dapat dilakukan oleh Pemberi Dana yang terdiri dari penagihan oleh Penyelenggara, pengalihan penagihan kepada pihak ketiga, dan klaim asuransi atau penjaminan.”

The context of risk mitigation in this matter has served as an NPL settlement for Lender since this clause particularly applies to only the Operator and Lender. This clause, however, does not exist under the agreement between the Lender and Borrower which is regulated in Article 32 (2) of POJK 10/2022. Under Article 32 concerning the agreement between Lender-Borrower, there are no clauses

detailing how NPL should be resolved in the context of the borrower or protecting the borrower from the occurrence of NPL.

In the occurrence of an agreement between operator, lender and borrower, the principle of Freedom of Contract is applicable. According to Civil Code Article 1338(1), "All agreements established lawfully apply as law for those who make them." As a result, this principle has granted the parties to the agreement the ability to create clauses that apply to those who create them.

With that in mind, Akseleran has been able to incorporate NPL settlement mechanisms into their under "Lending Agreement," which includes clauses that covers insurance protection for lenders and credit restructuring. According to the study that the author has conducted on Akseleran, the clause on insurance protection under the "Lending Agreement" is as follows:⁹⁷

"11.1 Apabila setelah Agen Fasilitas melakukan upaya penagihan, Penerima Pinjaman telah atau, berdasarkan pertimbangan Agen Fasilitas, akan gagal melakukan pembayaran terhadap kewajibannya selama lebih dari 90 (sembilan puluh) hari kalender terhitung sejak tanggal jatuh tempo pembayaran, maka Agen Fasilitas dapat melakukan melakukan hal berikut ini:

11.1.1 Khusus untuk Pinjaman yang diproteksi dengan asuransi pinjaman, maka Agen Fasilitas akan mengajukan klaim sesuai dengan nilai pertanggungan kepada perusahaan asuransi yang bekerjasama dengan Agen Fasilitas, dengan ketentuan sebagai berikut:

- a. Asuransi hanya berlaku untuk sisa pokok Pinjaman yang belum dibayarkan oleh Penerima Pinjaman;*
- b. Apabila perusahaan asuransi telah membayarkan klaim kepada Agen Fasilitas, maka Agen Fasilitas akan segera meneruskannya kepada Pemberi Pinjaman;*
- c. Untuk sisa pokok Pinjaman yang tidak ditanggung oleh perusahaan asuransi, maka Pemberi Pinjaman dan Agen*

⁹⁷ Askeleran, "Draf Perjanjian Standard Akseleran", https://core.akseleran.com/media/documents/templateddocuments/draft_perjanjian_standard_akseleran.pdf, accessed by 12 December 2022

Fasilitas dengan ini setuju untuk mengklasifikasikannya sebagai pinjaman tidak tertagih;”

The clause on credit restructuring under the “Lending Agreement” is as follows:

“11.1.2 Melakukan restrukturisasi terhadap Pinjaman tersebut dengan cara-cara sebagai berikut ini:

- a. Perpanjangan tenor Pinjaman maksimal 1 (satu) tahun: dan/atau*
- b. Pemotongan besarnya bunga dan/atau denda yang harus dibayarkan oleh Penerima Pinjaman.”*

Akseleran meets with the guidelines stated in Article 31 (m) of POJK 10/2022 concerning risk mitigation in the event of NPL, which list "*upaya penagihan*" as one of the risk mitigations in the event of NPL as stated in clause 11.1. In accordance with clause 11.1.1, Akseleran continues to follow the guidelines outlined in Article 31 (m) of POJK 10/2022, which stipulates that insurance is a valid form of protection and risk mitigation for lenders in the event of NPL. Addressing clause 11.1.2, Akseleran has stipulated a clause regarding restructuring in which neither POJK 10/2022 nor Article 31 itself contain any regulations on the matter. This demonstrates how Akseleran has incorporated the Freedom of Contract principle into their agreement clauses and exhibits leniency for borrowers in this circumstance.

4.3 Analysis of Options for Addressing Non-Performing Loan in Conventional Bank Credit Regulation as a Solution in P2P Lending

When compared to conventional bank credit regulation, there is a fundamental difference between bank credit and funding through P2P Lending. The difference lies in the legal subjects involved and the mechanism for

channeling funds. The following table lists several differences between bank and P2P Lending regulations:

Table 4.3 Comparison of Bank and P2P Lending Regulation

No	Issue	Bank Regulation (POJK 40/2019)	P2P Regulation (POJK 10/2022)
1	Parties	Creditors and Debtors	Lender, Borrower, and Operator
2	Risk Allocation	The bank carries the risk of debtor's NPL	The lenders carries the risk of Borrower's NPL
3	Credit Restructuring	Yes	No, except for the Covid-19 pandemic that has been regulated under POJK 30/2021.

The comparison in the table above led to the following discussion of the points stated below:

1. Parties

Bank credit agreements are carried out by banks as creditors with borrowers as debtors. Meanwhile, the P2P Lending mechanism involves three parties, namely lenders as creditors, borrowers as debtors and the platform operators as the party that provides and manages the platform.

2. Risk Allocation

In conventional bank credit, the bank serves as both the lender and, in essence, bears the risk of NPL. This differs with P2P Lending, in which the main risk that the lender must bear is the possibility of the borrower defaulting on the loan. Stipulated under Article 29 (4) of Banking Law, the bank is obliged to provide information regarding the possibility of risk in users

transactions conducted by banks. Furthermore, Financial Services Authority Regulation Number 40/POJK.03/2019 concerning Assessment of Commercial Bank Asset Quality (POJK 40/2019) sets forth the Prudential Principle, which is also governed by Article 2 of Banking Law.

The Five C's Principle of Credit Analysis is an implementation of the provisions on Prudential Principle.⁹⁸ 5C analysis in the banking sector aims to make granting decisions Credit by banks is carried out appropriately to prevent NPL. The 5C analysis includes a feasibility analysis of aspects of Character, Capacity, Capital, Conditions, Collateral. The five criteria are as follows:⁹⁹

a. Character

While trust is the primary element of credit, the applicant's personality, morals, and honesty are also taken into consideration when evaluating their character. Applicants that have bad characters cannot be trusted when applying for credit.

b. Capacity

The applicant's capacity to return, lead and control business opportunities are evaluated in order to ensure the smooth operation and financial success of the loan application.

c. Capital

⁹⁸ Diah Pradhani Perwirasari And Zulfika Ikrardini, "Penerapan Prinsip Kehati-Hatian Dalam Penyaluran Kredit Usaha Rakyat Non Agunan Ditinjau Dari Sisi Hukum Perikatan (Studi Kasus pada PT. Bank Negara Indonesia (Persero) Tbk. Cabang Padalarang)", *Jurnal Dialektika Hukum* Vol. 2 No.2 Tahun 2020, pg. 152

⁹⁹ Diah Pradhani Perwirasari And Zulfika Ikrardini, "Penerapan Prinsip Kehati-Hatian Dalam Penyaluran Kredit Usaha Rakyat Non Agunan Ditinjau Dari Sisi Hukum Perikatan (Studi Kasus pada PT. Bank Negara Indonesia (Persero) Tbk. Cabang Padalarang)", *Jurnal Dialektika Hukum* Vol. 2 No.2 Tahun 2020, pg. 154-155

A credit applicant must have their own capital and not solely rely on bank credit before filing a credit application to a bank. In this instance, bank credit is simply supplementary and not primary.

d. Condition

The condition here is a determining factor in whether or not they will be able to repay the loan given their existing financial position.

e. Collateral

The term collateral refers to assets that can be used to guarantee future repayment in the event that the debtor is unable to repay the debt.

3. Credit Restructuring

In granting credit restructuring to its customers, there are criteria that must be followed by the bank. Banks can only perform credit restructuring of debtors who meet the following criteria:¹⁰⁰

- a. The debtor experiences difficulties in paying principal and/or interest credit;
- b. The debtor still has good business prospects and is considered capable of fulfilling obligations after the Credit is restructured.

The provisions for credit restructuring are regulated under POJK 40/2019, which specifies that banks may consider the following six types of credit restructuring:¹⁰¹

- a. Reduction in loan interest rates;

¹⁰⁰ Financial Services Authority Regulation Number 40/POJK.03/2019 concerning Quality Assessment Of Commercial Bank Assets, Article 53

¹⁰¹ Jerry Shalmon, et al, "Upaya Sektor Perbankan Guna Menanggulangi Tingginya Non-Performing Loan Pada Masa Pandemi Covid-19", Jatiswara, Vol. 37 No. 1 Maret 2022, pg. 28–29

Reduction in loan interest rates means lowering the interest rate agreed at the beginning of the credit agreement on the remaining unpaid installments. The condition of each debtor becomes a determinant for banks in reducing the interest rates. In order to ensure that the bank's assets are restored undamaged and without any loss, the debtor is still required to pay the arrears of the principal of the debt in full even when interest rates have been reduced.

b. Extended period of loan;

This policy extends the credit tenor from what has been agreed upon. By extending the time period scheme, it will provide breathing space for debtors, because business income that should be used to pay off debts that are due can be used to continue and develop their business within a certain period of time. The reasonable extension scheme offered by the bank is for 1 year.

c. Reduction of principal arrears;

The reduction of principal arrears is carried out by reducing the amount of loan principal with the hope of making it easier for debtors to pay off the principal debt in arrears.

d. Reduction of interest arrears;

This policy has the same concept as the reduction of principal arrears, but the difference is that the reduction is made on interest arrears that have not been paid by the debtor.

e. Additional credit facilities;

This form of restructuring is carried out by adding new credit facilities to debtors. The addition of this facility aims to ensure that the debtor's business continues so that he can obtain benefits for repayment of his credit. This scheme is also carried out with the hope that the debtor's business will resume running so that it can generate profits that can be used to pay off its debts both before and after the restructuring.

f. Conversion of credit into temporary equity participation;

Converting credit to temporary equity participation means that the credit in arrears by the debtor will be converted into temporary capital in the debtor's business entity. Acquisition of debt repayment in credit is obtained through dividends and capital gains (the effect of selling debtor shares).

Due to the existence of Covid-19 pandemic, the possibility of default comes when debtors make credit payments to creditors (banks), which puts them at risk of experiencing NPL as a result of their inability to meet obligations and carry out the terms of the bank credit agreement. The major risk in the banking industry is the incidence of NPL if the total amount of credits exceeds the cap and has an impact on the assets quality of the bank.¹⁰² POJK 10/2022 has demonstrated their commitment to transparency on establishing credit quality by status rates. The status are listed by:¹⁰³

- a. Current loans (*lancar*)
- b. Loans under special attention (*dalam perhatian khusus*)

¹⁰² Esther Masri and Sri Wahyuni, "Restrukturisasi Kredit Perbankan Sebagai Upaya Penyelamatan Kredit Bermasalah Pada Masa Pandemi Covid-19". KRTA BHAYANGKARA, Vol. 16, No. 2 (2022), pg. 259-266

¹⁰³ Financial Services Authority Regulation Number 40/POJK.03/2019 concerning Quality Assessment Of Commercial Bank Assets, Article 51 (1)

- c. Non-current loans (*kurang lancar*)
- d. Doubtful loans (*diragukan*), and
- e. Non-performing loans (*macet*).

The government was alerted to create a new regulation to this situation which happened to be the enactment of Financial Services Authority Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Coronavirus Disease 2019.¹⁰⁴ The regulation has provided a credit restructuring policy during the pandemic Covid-19 which aims so that people can apply for relief in doing so credit payment.

On the contrary, the recent POJK 10/2022 regulation does not mention restructuring credit. Operators are therefore able to implement restructuring in accordance with their own policies and within the consent of the parties involved. The Head of Public Relations and Institutional Affairs of *Asosiasi Fintech Pendanaan Bersama Indonesia (AFPI)*, Tuambur Pardede has emphasized that:¹⁰⁵

“P2P Lending operators can only facilitate loan restructuring requests by conducting an assessment and analysis of loan restructuring requests which are then submitted to the lender, whether or not the lender has approved it.”

Credit restructuring in P2P Lending is only regulated under one exception, which is during Covid-19, regulated under POJK Number 30/POJK.05/2021 concerning Second Amendment to the Financial Services Authority Regulation

¹⁰⁴ Esther Masri and Sri Wahyuni, “Restrukturisasi Kredit Perbankan Sebagai Upaya Penyelamatan Kredit Bermasalah Pada Masa Pandemi Covid-19”. *KRTHA BHAYANGKARA*, Vol. 16, No. 2 (2022), pg. 259-266

¹⁰⁵ Kompas.com, “Soal Restrukturisasi Kredit, Ini Bedanya Kebijakan Bank dan Fintech”. <https://money.kompas.com/read/2020/04/20/140201326/soal-restrukturisasi-kredit-ini-bedanya-kebijakan-bank-dan-fintech?page=all>, accessed by 22 November 2022

Number 14/POJK.05/2020 Concerning Countercyclical Policies Impact of the Spread of Coronavirus Disease 2019 for Non-Bank Financial Service Institutions (POJK 30/2021). According to Article 20H of POJK 30/2021:

“Money lending service providers information technology-based can facilitate credit restructuring application filed by the affected borrower the impact of the spread of COVID-19 on the given loan.”

Furthermore, Article 20I of POJK 30/2021 has stated that countercyclical policy impact spread of Covid-19 for LJKNB is valid until April 17, 2023. This regulation was put into place during the Covid-19 to support economic growth and encourage the development of non-bank financial services and institutional performance.¹⁰⁶

Following the enactment of POJK 30/2021, a number of P2P Lending operators have applied programs for credit restructuring. The research conducted by the Author is by comparing 2 (two) P2P platforms, namely KoinWorks and Akseleran:¹⁰⁷

1. KoinWorks

a. Grace Period

The grace period is a 3-6 (three to six) month period that allows the borrower to repay part of the principal with loan interest or loan interest only until the grace period ends. After the grace period ends, the borrower will pay the principal and interest again every month until the loan tenor

¹⁰⁶ Financial Services Authority Regulation Number 30/POJK.05/2021 Concerning Second Amendment to the Financial Services Authority Regulation Number 14/POJK.05/2020 Concerning Countercyclical Policies Impact of the Spread of Coronavirus Disease 2019 for Non-Bank Financial Service Institutions, pg 1 (b)

¹⁰⁷ KoinWorks, “Bagaimana Kebijakan Relaksasi dan Restrukturisasi Pembayaran KoinWorks?” <https://koinworks.com/bantuan/kebijakan-relaksasi-pembayaran-koinworks/>, accessed by 11 January 2023

ends. Borrowers who will receive grace period relief are borrowers whose sales have decreased by 50-70% during the COVID-19 pandemic.

b. Payment Holiday

Borrowers with businesses that directly suffer from the Covid-19 pandemic and see a decrease in sales of more than 70% will be granted exemption from payments for a maximum of 3 (three) months. After the specified time limit is completed, the borrower will return to make payments until it is complete.

c. Restructure

Restructuring is a form of relief that is obtained by borrowers by reducing the installments or extending the length of installments for a maximum of 24 (twenty-four) months for businesses affected by Covid-19 and projects that have experienced delays.

2. Akseleran

Akseleran provides loan restructuring in the form of extending the duration of loan, reducing loan interest rates, and reduce fine. Akseleran's experience with restructuring has been quite effective since the mechanism has been strictly selective.¹⁰⁸ The CEO of Akseleran, Ivan Tambunan has explained that Akseleran hardly offers restructuring, most of the time restructuring credits are given to online merchants.¹⁰⁹ Akseleran believes that restructuring is only for loans where payment failure occurs because the cause is temporary.

¹⁰⁸ Interview with Ivan Tambunan, Co Founder and CEO of Akseleran, Zoom Meeting, On 14 November 2022, 9:00 am WIB

¹⁰⁹ Interview with Ivan Tambunan, Co Founder and CEO of Akseleran, Zoom Meeting, On 14 November 2022, 9:00 am WIB

Therefore, restructuring is done in a way that will allow the debtor to resume making payments after the cause of the default has passed. He also added:

“We refuse in giving credit restructuring to debtors who truly lack the means to pay; doing so will simply make the situation worse by setting off a ticking time bomb. Therefore, it is crucial to review and determine whether or not restructuring is required.”

The table below shows a summary of the credit restructuring applied on KoinWorks and Akseleran:

Table 4.4 Summary of KoinWorks and Akseleran Payment Scheme

Restructuring Scheme	KoinWorks	Akseleran
Grace Period	✓	-
Payment Holiday	✓	-
Restructure	✓	-
Extending duration of loan	-	✓
Reducing the fines	-	✓
Reducing loan interest	-	✓

KoinWorks and Akseleran have applied credit restructuring schemes in variety of ways. It has demonstrated a similarity between the credit restructuring scheme adjustments made by P2P platforms and the provisions of credit restructuring on banking regulated under Article 53 of POJK 40/2019 which are:

- a. Reduction in loan interest rates
- b. Extended period of loan
- c. Reduction of principal arrears
- d. Reduction of interest arrears
- e. Additional credit facilities

f. Conversion of credit into temporary equity participation

The table below explains the correlation between the credit restructuring payment scheme in P2P platforms with credit restructuring in Banks:

Table 4.5 Correlation of Credit Restructuring in P2P Platforms and Credit Restructuring in Bank

Bank (Article 53 of POJK 40/2019)	KoinWorks Credit Restructuring Scheme	Akseleran Credit Restructuring Scheme
Reduction in loan interest rates	-	✓ (Reducing loan interest)
Extended period of loan	✓ (Payment Holiday and Restructure)	✓ (Extending duration of loan)
Reduction of principal arrears	✓ (Grace Period)	-
Reduction of interest arrears	-	✓ (Reducing the fines)
Additional credit facilities	-	-
Conversion of credit into temporary equity participation	-	-

There are options that can be applicable on credit restructuring by P2P platforms referring to Article 53 of POJK 40/2019 and those that were set up by P2P platform prior to the Covid-19 pandemic. The majority approach that P2P platforms favor the most is by reducing the fines, reducing the interest in loan and extending the period of loan. Nevertheless, it shows that credit restructuring is very applicable to P2P Lending. Regulations on credit restructuring will help the borrower regain the ability to make payments and avoid default. The

implementation of the Credit Restructuring policy relieves borrowers and, of course, gives them a chance to repair the unexpected circumstance.¹¹⁰

Credit restructuring must be closely monitored, and that the borrower must first submit an application that complies with the P2P operators regulation.¹¹¹ Restructuring in P2P also requires approval from all lenders due to a change in the agreement, the platform operators require consent from the lender.¹¹² In conclusion, it is crucial to assess and evaluate before the P2P platform operators determine whether to offer users for credit restructuring. Regulations regarding credit restructuring needed to be enacted as a way for P2P operators have a clear and concise guideline to protect the parties to the occurrence of NPL.

¹¹⁰ Interview with Achmad Syarif Kadir, Head of Business Development Department PT Bank Resona Perdania, Zoom Meeting, 16 November 2022, 9:00 am WIB

¹¹¹ Interview with Ivan Tambunan, Co Founder and CEO of Akseleran, Zoom Meeting, On 14 November 2022, 9:00 am WIB

¹¹² Interview with Ivan Tambunan, Co Founder and CEO of Akseleran, Zoom Meeting, On 14 November 2022, 9:00 am WIB