Financial Technology: Legal Challenges for Indonesia 
Financial Sector

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Abstract. The global financial services sector is transforming as technology advances. Various types of technology based innovative financial business models or financial technology (fin-tech) are growing rapidly around the world, including Indonesia. The Financial Stability Board (FSB) incorporates the fin-tech progress in its work plan in 2017 in the perspective of financial stability. In Indonesia, the Financial Services Authority has issued the Financial Services Authority Regulation No: 77 /FSAR.01/ 2016 on Technology-Based Lending and Borrowing Services to provide a legal basis for fin-tech activities, in particular with peer to peer lending models. In practice, fin-tech in Indonesia is not only used to facilitate lending and borrowing, but also used for other business models, especially start-up business, investment and social activities, which are not included in the scope of lending and borrowing. On the other hand, fin-tech development in Indonesia is expected to contribute to economic development, particularly in facilitating micro, small and medium enterprises to gain access to finance. The advantages of fin-tech include cost efficiency and ease of access to finance, but on the other hand there are some obstacles and risks that potentially arise, such as credit risk, insufficient technology, misuse of funds and user/consumer data and protection of national interests such as money laundering as well as disruption to monetary stability. Therefore, in addition to the need for comprehensive regulation, supervisory aspects by the financial services authorities are urgently needed to make fin-tech a part of the financial services sector.

Keyword: Fin-tech- legal challenges- financial industry

1. Introduction

Financial Technology (Fin-tech) is a financial product and services service through a combination of the technology platform and innovative business model. [1] Fin-tech is based on the LASIC Principle of 5 key attributes of the business model, which successfully controls Fin-tech to enhance the goal of creating sustainable social business for inclusive finance. The fives attributes are: low margin, light asset, scalable, innovative and compliance easy. [2] The development of Fin-tech in Indonesia is driven by the development of technology, which opens opportunities for start-up establishment to provide various platforms that make it easier for people to do financial activities. In addition, some banks in Indonesia utilize the services offered by Fin-tech in the framework of efficiency by using non-traditional credit scoring to screen potential borrowers. Currently, the number of Fin-tech companies and Fin-tech's business scale in Indonesia has not been large, but its development has grown rapidly. If it is managed well, Indonesia’s fin-tech has a potential to increase and a significant impact on financial system stability. Based on data released by Financial Services Authority (FSA), [3] the number of fin-tech companies in Indonesia per February 2017, reaching 600 fin-tech companies, and which reported its activities as many as 157 companies. [4] Fin-tech listed in FSA only 7 companies and 40 companies in the registration process. In 2017, FSA targets 50 fin-tech companies are registered and Fin-tech is expected until the end of 2017 can channel up to 1 trillion rupiah. Based on data, many fin-tech organizers have not been registered therefore FSA cannot be supervised. Fin-tech model developed in Indonesia is Peer to Peer (P2P) Lending. [5] The development of fin-tech encourages the Financial Services Authority to issue a Financial Services Authority Regulation on Money Lending & Borrowing Based on Information Technology.
This regulation is expected to encourage alternative financing for the community; supporting the growth of technology-based financial services institutions in order to contribute to the national economy. The FSAR No. 77/FSAR.01/2016 only regulates lending and borrowing activities with technology-based (P2P lending), so other fin-tech models such as non-financial return crowd funding; direct balance sheet or e-commerce lending; non-traditional credit scoring and crowd funding security are not included in the scope of this FSA regulations arrangement. Thus, fin-tech regulations in Indonesia are partial and have not yet reached other fin-tech models. As a result of the law, the Financial Services Authority has not been able to conduct thorough monitoring. Other strategic legal issues from fin-tech activities in Indonesia is the absence of comprehensive regulation, particularly on consumer protection, protection against the use of personal data, the settlement of non-performing loans, and the use of investor funds. Comprehensive Fin-tech's regulatory readiness becomes urgent, considering that the fin-tech activities are borderless, open to owners and users of funds from anywhere, requiring assurance of certainty and legal protection for parties, especially for fund owners.

2. Methodology

This research is theoretical legal research and using descriptive approach, for academic legal research can be purely descriptive; It generally includes normative standpoints and description of the law from the point of view of achieving particular aim. The research data done by compiling the material i.e. primary and secondary sources. Primary sources are FSA regulation No:77/FSAR.01/2016 concerning the Information Technology Based Lending Borrowing Services (P2P lending). Secondary sources are Law Journal, articles and text books. This research also uses tertiary law material such as law dictionary and encyclopedia for the interpretation that couldn't find in the primary source.

3. Findings

Fin-tech in Indonesia is growing and developing as an alternative solution to meet the society's needs for financial services as a result of the decreasing of public trust to a formal financial system. This cannot be separated from the global financial crisis, followed by an authorization response that tightened the regulatory regime of financial institutions, thus creating a wide financing gap. The rapid development of the fin-tech is not followed by adequate regulation so that it is feared to cause harm to the users. Before 2016, there is no legislation governing Fin-tech activities in Indonesia, so it is feared could cause harm to the users due to potentially emerging risks. Some risks to be feared in fin-tech activities are a credit risk, compliance risk, operational risk and data security. [5] After 2016, P2P lending is stipulated in FSA Regulation No: 77 / FSAR.01 / 2016 Concerning the Information Technology Based lending Borrowing Services (P2P lending). Since 2016, the Financial Services Authority issues regulations as the legal basis for the existence of Fin-tech, especially for P2P lending.

The purpose of the arrangement is to ensure the qualification of the organizer in P2P lending and provide a strong legal basis for the provision of cash funds quickly, easily and efficiently. In addition, P2P lending is expected to be a solution to assist micro, small and medium scale enterprises in gaining access to funding. Fin-tech FSA Regulation sets very important things for Fin-tech activities, namely surveillance and protection of users, as well as organizing P2P Lending activities. Article 7 of 11 FSA Regulation, regulates that Fin-tech requires the organizers to apply for registration and permission from FSA. This Article provides the basis for FSA to ensure the organizers meet the qualifications according to the regulation and facilitate FSA to conduct supervision. This provision is a measure of the company's seriousness in running its business because a good-faith company will comply with the requirements that required by legislation. In addition, supervision is also done through the obligation to reconcile periodic reports every 3 months regarding the number of givers and borrowers; The quality of loans received following the basis of loan quality assessment; As well as activities undertaken after registration.
Another obligation set forth in Fin-tech FSA Regulation is the qualification of human resources, which must have expertise in information technology. Section 21 of the FSA Regulation provides that the P2P lending operator may become a member of the FSA’s financial information service system or other information service system registered in FSA by complying with the requirements in accordance with the provisions. It shows that FSA attempts to mitigate risks. However, regulation is still needed to ensure the security of the technology used and the protection of the user's personal data. Currently Indonesia has not set about protecting personal data. The prohibition on the use of personal data is only stipulated in FSA Regulation No.1/FSAR.07/2013 concerning on Consumer Protection and FSA Circular Letter No.18/FSACL.02/2017. In the opinion of the author, this provision has not been able to be a strong legal basis, given the legal system of Indonesia which prioritizes the law as the main source of law. Required a comprehensive reform of the legislation to provide a legal basis for future fin-tech activities.

Especially for P2P lending, it is already sufficient to provide legal protection for both organizers and users. Regarding the legal protection of users, Article 40 requires that providers report electronically each month in the event of a user complaint accompanied by the follow-up of the settlement of complaints to FSA. To ensure that qualified and technically P2P organizers are conducted professionally, FSA issues FSA Circular Letter no. 18 / FSACL.02 / 2017 concerning on Information Technology Governance and Risk Management on Information Technology Borrowing Services, which governs governance and provides guidelines for P2P lending operators how to manage the risks arising in P2P lending. In addition, FSACL also regulates the obligations and responsibilities of Directors and Commissioners P2P lending organizers. Broadly speaking, the fintech regulation in Indonesia provides an identity for P2P lending operators but does not regulate legal relationships that occur when the organizer has not been registered and obtained FSA’s licence. Therefore, parties harmed by the organizers find it difficult to claim their rights.

In Indonesia, there are 4 main categories Fin-tech, namely (1) payment, clearing, settlement; (2) deposit, lending, capital raising ; (3) market provisioning, and (4) investment & risk management. The share of Fin-tech activities in Indonesia in 2016 was dominated by 56% by the first group. [6] There are several legal issues in Fin tech activities in Indonesia, which are related to consumer protection; data security, as well as potential risks, both credit risk, operational risk and funding. To support the development of sound technology-based financial transactions required a balance between innovation and risk management, regulations that support consumer protection and coordination between the parties concerned. In practice, to ensure the security of the managed funds, the fintech company adopted the principles of banking in lending, by applying the analysis in lending.

Bank Indonesia as the payment system authority, has inaugurated the Bank Indonesia Fin-tech Office with 4 main objectives, namely: (1) facilitate the development of innovation in technology-based financial system in Indonesia; (2) preparing Indonesia to optimize the development of technology in order to develop the economy; (3) improving the competitiveness of Indonesia's financial technology-based industry; and (4) absorb information and provide feedback to support the formulation of Bank Indonesia policy. Bank Indonesia Fin-tech Office is equipped with a regulatory sandbox for Fin-tech actors, who are mostly start up companies on a small scale, have the opportunity to mature and develop healthy concepts and in time to provide safe financial services to the community.

With regard to consumer protection, other than FSA Regulation 77 / POJK.01 / 2016 as regulation determining P2P lending qualification, Bank Indonesia shall issue Bank Indonesia Regulation No. 18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing. This regulation is a kind of Bank Indonesia's commitment to support the implementation of secure and efficient e-commerce transaction payments. By Bank Indonesia regulation, those regulates the arranging, licensing and supervising of payment system services performed by Principals, Issuers, Acquirers, Clearing Organizer, Final Settlement Provider, and Fund Transfer Provider.
Through Bank Indonesia's innovations in the payment system, it is expected to continue to improve the enhancement of financial technological-based innovations in Indonesia, while maintaining consumer protection and risk mitigation. The development of Fin Tech in Indonesia, provides benefits to the development of the financial services sector, while creating challenges for financial authorities and payment systems to update regulation so that Fin-tech can deliver optimum benefits and create no turmoil in the financial system. Regulation serves as a tool for the authority to monitor Fin tech's activities, while maintaining the monetary system, because the credibility of the entire financial system can be disrupted if the public's trust is not well maintained by Fin tech that in fact performs intermediary functions like banks or non-bank financial institutions. Currently, the Fin Tech regulations in Indonesia partly rely on regulations issued by the Financial Services Authority and Bank Indonesia, so coordination between the two financial authorities is indispensable.

Furthermore, the Fin-tech regulation refers to existing regulations and is spreading in several laws and regulations, including Law No: 11/2008 Concerning Information and Electronic Transactions, and the Civil Code, Book III as a general provision for Contracts, including e-commerce. Fin Tech's regulatory policy made by the authorities, made after looking at and examining the various potential risks that arise, so the regulation does not precede innovation. Regulation regime used is a balanced and proportional regulation without having to turn off the rate of innovation.[6]

Based on the previous description, it is known that the fin-tech regulation in Indonesia is regulated in a regulation under its law. Therefore, it still needs stronger regulatory support, or at least it should refer to the legislation pertaining to the fin-tech activities.

4. Conclusion

a) The development of technological innovation on financial services offered by Fin-tech in Indonesia is an alternative solution for the community, especially for small micro businesses to obtain financing through P2P lending model. In addition, Fin-tech offers new options for consumers in conducting payment traffic, remittances, and investments.

b) Fin Tech regulations in Indonesia are still partial and dispersed in a variety of rules, but regulations specifically governing Fin-tech are issued by the Financial Services Authority and Bank Indonesia as payment system authorities.

c) The regulatory regime is used for the development of financial innovation challenge, is not to precede innovation, but to accompany and manage as many potential risks arising in relation to consumer protection and risk mitigation.

d) Required regulatory reform regarding the information technology, particularly on the protection of misuse of personal data.

5. References

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