



Who Should Regulate The Industry of Financial Technology?

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DOI: <http://dx.doi.org/10.15294/pandecta.v17i1.34048>

Article Info

Article History:

Received : December 20th 2021

Accepted: March 15th 2022

Published: June 29th 2022

Keywords:

authority; supervision;
financial technology

Abstract

Financial technology (fintech) has outgrown its capacity. Industry supervision and consumer protection have become a challenge. Until now, the Indonesian Financial Services Authority (OJK) has been considered responsible for supervising the financial technology industry. The purpose of this research is to determine whether the Indonesian Financial Services Authority is capable of leading the fintech industry and whether a separate agency to oversee the fintech industry is necessary. This study employs a normative juridical methodology. This study examines the entire financial industry. According to this research, the Indonesian Financial Services Authority lacks the authority to regulate the fintech industry. The government should enact special legislation and regulations to govern the fintech industry. The regulator must consider creating a separate agency to supervise the fintech industry, similar to the Indonesian Financial Services Authority. This particular agency is comprised of individuals with ties to the financial sector, the telecommunications industry, and other law enforcement personnel.

A. Introduction

Fintech is a term that refers to an innovation in the financial services industry that makes use of technology (Indonesian Financial Services Authority, 2016). According to Financial Services Authority Law No. 21 of 2011 (OJK Law), the Indonesian Financial Services Authority has authority over three areas: supervision and regulation of bank financial service institutions, regulation of financial service institutions (banks and non-banks), and control of financial service institutions (banks and non-banks) (Fauzia, 2021). Over the last three years, the Fintech industry, particularly P2P lending, has exploded in size (Johan, 2021b; Njatrijani, 2019).

Fintech, according to the Indonesian Financial Services Authority (FSA/OJK), is a development of existing services rather than

a new financial service. As a result, fintech is still considered to be a part of financial services. Fintech remains subject to supervision by the OJK (Indonesian Financial Services Authority, 2016).

On the other hand, Puteri Komarudin, a member of the House of Representatives' (DPR) Commission XI, stated that Indonesia requires a regulation with a higher status than the Indonesian Financial Services Authority's (OJK) Regulation. This law governs the provision of financial products and services, including information technology. This law has the potential to serve as an early warning system for fintech supervision (Commission XI of the House of Representatives, 2021).

Fintech industry fall into two categories: established financial service providers expanding their business into the fintech sec-

tor, and new entrants to the fintech industry.

Researchs have focused exclusively on the authority of the Indonesian Financial Services Authority, as defined in the Indonesian Financial Services Authority's Regulation 77/POJK.01/2016 on Information Technology-Based Lending and Borrowing Services. The Indonesian Financial Services Authority's regulation addresses only one fintech industry within the broader fintech industry. Online lending and borrowing enabled by information technology is a small subset of the fintech industry. There is a payment industry based on technology, such as GoPay and OVO, a crowdfunding industry, such as kitabisa.com, a capital market investment industry, and a money market, among others (Franedy & Bosnia, 2018). Payment gateways, online loans, online product offerings, and financial literacy are all examples of financial technology (Johan, 2020).

Additionally, the research discusses tasks that must be completed without delving into the essence of the Indonesian Financial Services Authority's authority as defined by law and the definition of fintech itself. This research is novel in discussing the Indonesian Financial Services Authority's authority to supervise the fintech industry and the development of broader laws and regulations governing the fintech industry's supervision, including the establishment of a specific agency.

Rosmida dan Wahyuni (2017) conducted research on the fintech industry, with a particular emphasis on peer-to-peer lending. The study focuses exclusively on one sub-industry of fintech. This research concludes that Bank Indonesia and the Indonesian Financial Services Authority's supervision should be enhanced. Regulation and oversight of fintech must be based on existing laws and regulations (Faried & Dewi, 2020).

The Indonesian Financial Services Authority's authority and control over P2P lending are based on three pillars: direct supervision, indirect supervision, and market conduct (Firanda, Prananningtyas, & Lestari, 2019). Fintech supervision can be carried out by the Indonesian Financial Services Authority

in a preventive and repressive manner (Pramana, Atmadja, & Utama, 2018). Additionally, the Indonesian Financial Services Authority can develop an effective system for supervising and enforcing regulations in order to improve the fintech industry's compliance (Disemadi, 2021).

According to Indonesian Financial Services Authority Regulation 77/POJK.01/2016, supervision by the Indonesian Financial Services Authority is divided into two (two) phases, namely the pre-operational stage of the business and the operational stage of the business. The Indonesian Financial Services Authority's fintech supervision is currently unable to operate optimally because control is limited to the pre-operational stage of the business due to regulatory constraints and inadequate supervisory infrastructure (Ernama Santi, Budiharto, & Saptono, 2017).

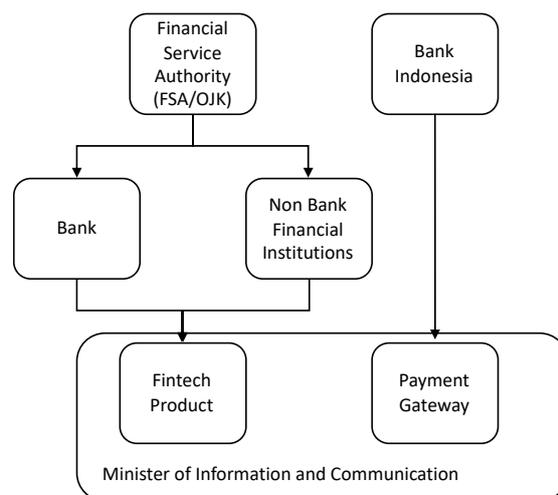


Figure 1. Fintech Industry Supervision Structure

The Indonesian Financial Services Authority has not played an optimal role in providing legal protection for consumer complaints. This is not fair to the parties (Pranita & Suardana, 2021). Apart from the Financial Services Authority of Indonesia, two institutions regulate the fintech industry in Indonesia: the Ministry of Communication and Information and Bank Indonesia, (Benuf, Njatrijani, Priyono, & Adhim, 2020). This supervisory structure is described in Figure 1. The rules regarding the implementation of Fintech in Indonesia have not gone well be-

cause there are still shortcomings in terms of the legal structure, legal substance, and legal culture (Benuf, Priyono, et al., 2020).

The Indonesian Financial Services Authority's role in addressing illegal P2P lending includes establishing an Investment Alert Task Force, listing registered and licensed P2P lending lists on the official website of the Indonesian Financial Services Authority, disseminating information to the public about the characteristics of illegal P2P lending to avoid and data on unlawful P2P lending in Indonesia, closing illegal P2P lending, and blocking illegal P2P lending (Salvasani & Kholil, 2020).

The Investment Alert Task Force discovered 126 illegal fintech companies that preyed on people's financial hardships during the pandemic. The Indonesian Financial Services Authority will immediately issue a regulation or amend POJK Number 77 of 2016 regarding fintech to enable it to regulate illegal fintech and shadow banking specifically, beginning with the enforcement of criminal fintech laws, the investigation of shadow banking practices, and the imposition of strict sanctions that can act as a deterrent to unlawful fintech (Stefanie & Suherman, 2020).

The government, in this case the Indonesian Financial Services Authority, must rethink how fintech such as equity crowdfunding is implemented. Previously, equity crowdfunding was governed by the Indonesian Financial Services Authority's Regulation 37/POJK.04/2018 on Crowdfunding Services via Information Technology-Based Stock Offerings (Emmanuela Isubagyo & Budi Kharisma, 2019). Fintech development should take ethical considerations into account, as they may affect Indonesia's readiness to embrace the Disruptive Era (Ulya & Musyarri, 2020). The government must provide some form of legal protection, both for business operators and for individuals acting in the capacity of customers (Fitriyani Pakpahan, Jessica, Winar, & Andriaman, 2020).

As a result of the foregoing, OJK's supervision of the fintech industry has not been optimal. The Ministry of Information and Communication, Bank Indonesia, and the In-

donesian Financial Services Authority regulate the fintech industry. The following are the research questions:

1. Does the Indonesian Financial Services Authority have the authority to regulate financial technology companies?
2. Does the Indonesian Financial Services Authority have the capability to regulate the entire industry of financial technology companies?
3. Does the government need to establish a particular agency to regulate the financial technology industry?

B. Method

The research examines the Indonesian Financial Services Authority's supervision and authority over the fintech industry. This research employs a normative judicial methodology. The information or data used is secondary data and other auxiliary data. This research examines all regulations pertaining to the authority and supervision of financial institutions and the fintech industry by the Indonesian Financial Services Authority. This regulation serves as the primary source of data. Simultaneously, the secondary data source is a source of information about the primary data source. Secondary data sources consulted include scientific studies on the regulation of the fintech industry. By contrast, tertiary data sources are sources of additional information or data. Secondary data sources include information found on websites and in the news (Johan, 2021a).

C. Discussion

1. Authority of the Indonesian Financial Services Authority in regulating the Fintech industry

Financial Services Institution (LJK) is as an institution that engages in banking, capital markets, insurance, pension funds, financing institutions, and other financial service institutions (Rahmawati & Mantili, 2016). The definition of financial service institutions is defined in the Indonesian Financial Services Authority Law. Financial Services Institutions are regulated by the Indonesian Financial Services Authority. The Indonesian Finan-

cial Services Authority's oversee the financial technology industry is not stated in the Indonesian Financial Services Authority Law (Pramana, Atmadja, & Utama, 2014). If existing Financial Services Institutions develop financial technology products, they will be considered part of their scope. However, if a company or business that is not an existing Financial Services Institution provides financial technology services, the company or business is not classified as a Financial Services Institution.

The Indonesian Financial Services Authority was established to ensure that all financial services activities are conducted in an orderly, fair, transparent, and accountable manner; capable of realizing a sustainable and stably growing economic system; and capable of protecting the interests of consumers and the general public (Rahmadani, Prananingtyas, & Mahmudah, 2016). The Indonesian Financial Services Authority (OJK/FSA) is mandated to organize an integrated regulatory and supervisory system for all financial services sector activities. Article 5 explains that the Financial Services Authority is responsible for supervising all activities in the financial services sector but makes no mention of the financial technology services sector (Hesti, 2018).

The Indonesian Financial Services Authority is responsible for regulating and supervising financial service activities in the banking sector, financial service activities in the capital market sector, and financial service activities in the insurance, pension fund, financing institution, and other financial services institution sectors (Pikahulan, 2020). The Indonesian Financial Services Authority's regulatory and supervisory authority over other Financial Services Institutions. The term "Financial Services Institution" is defined differently. Financial technology firms are not included in the definition of financial services institutions. A fintech company is one that specializes in technology, not financial services (Indonesian Financial Services Authority, 2016).

The Indonesian Financial Services Authority has the authority to: establish imple-

menting regulations for this law; establish laws and regulations in the financial services sector; establish OJK regulations and decisions; establish rules for financial services sector supervision; establish policies for the implementation of OJK duties; establish rules for determining written orders against Financial Services Institutions and certain parts thereof (Diba, Disemadi, & Prananingtyas, 2019). Without registration with the Indonesian Financial Services Authority, a business cannot provide administrative sanctions such as license revocation or suspension. The Indonesian Financial Services Authority has the authority to report this violation to other authorities, such as the Indonesian National Police.

The Indonesian Financial Services Authority has the authority to: establish operational policies for supervising financial service activities; supervise the Chief Executive's implementation of supervisory duties; and conduct control, examination, investigation, consumer protection, and other actions (Nazaruddin, 2019).

The Board of Commissioners, as defined in paragraph (3), is composed of the following members: a Chairman who is also a member; a Deputy Chairperson who serves as Chair of the Ethics Committee; a Chief Executive of the Banking Supervisor who is also a member; a Chief Executive of the Capital Market Supervisor who is also a member; and a Chief Executive of the Supervisory Insurance, Pension Funds, Financing Institutions, and Other Financial Services Institutions who is also a member. According to the structure outlined in Article 10, the fintech industry is not represented on any of the boards of commissioners of the Indonesian Financial Services Authority. As a result, fintech is not regulated or supervised by the Indonesian Financial Services Authority. Fintech may be regulated and supervised by the Indonesian Financial Services Authority if it is a product of a Financial Service Institution regulated and supervised by the Indonesian Financial Services Authority. However, if a fintech is a self-contained entity, it is not subject to supervision by the Indonesian Financial Services Authority.

The Indonesian Financial Services Authority imposes levies on parties engaged in financial services activities (Sari, 2016). Fintech companies do not have the same type of assets as other Financial Service Institutions. Fintech is a term that refers to a business that provides a platform for customers to conduct transactions. Fintech firms are exempt from the Indonesian Financial Services Authority's dues. This distinguishes fintech firms from traditional financial service providers. This demonstrates that fintech firms cannot be compared to traditional financial institutions.

2. The capacity of the Indonesian Financial Services Authority to regulate the entire fintech industry

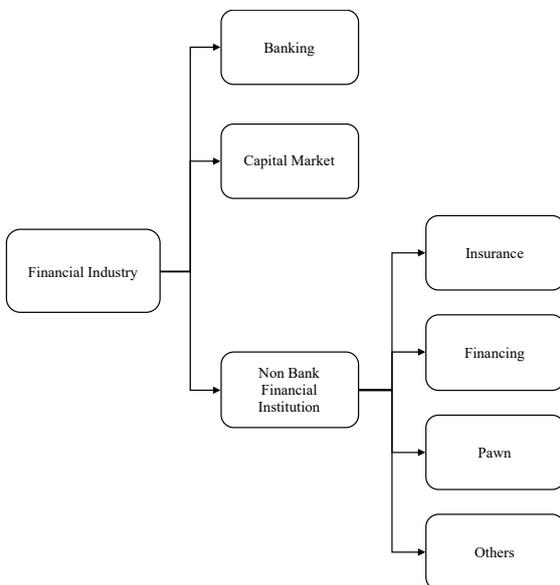


Figure 2. Structure of a Financial Services Industry or Institution

Source: Johan & Vania (2021)

The Indonesian Financial Services Authority is empowered by law to supervise and regulate the financial industry. Financial institutions comprise the financial sector. Bank financial institutions and non-bank financial institutions are the two types of financial service institutions. Insurance, financing, and pawnshops are all examples of non-bank financial institutions. Additionally, there is the capital market, which functions similarly to other financial institutions. Figure 2 illustrates this.

The Indonesian Financial Services Authority regulates a large number of financial institutions. According to the 2020 annual report of the Indonesian Financial Services Authority, total banking assets total 9,177 trillion IDR, average daily share trading value is 9.1 trillion IDR, non-bank financial industry (IKNB) assets total 2.635 trillion IDR, including insurance industry assets of 1,454 trillion IDR; pension fund assets of 314 trillion IDR; and financing industry assets of 591 trillion IDR. Meanwhile, financial technology has a market capitalization of 3.71 trillion IDR.

The insurance industry accounted for 148 companies in the non-bank financial industry; pension funds accounted for 219 companies; financing institutions accounted for 18 companies; and financial technology companies accounted for 149 companies.

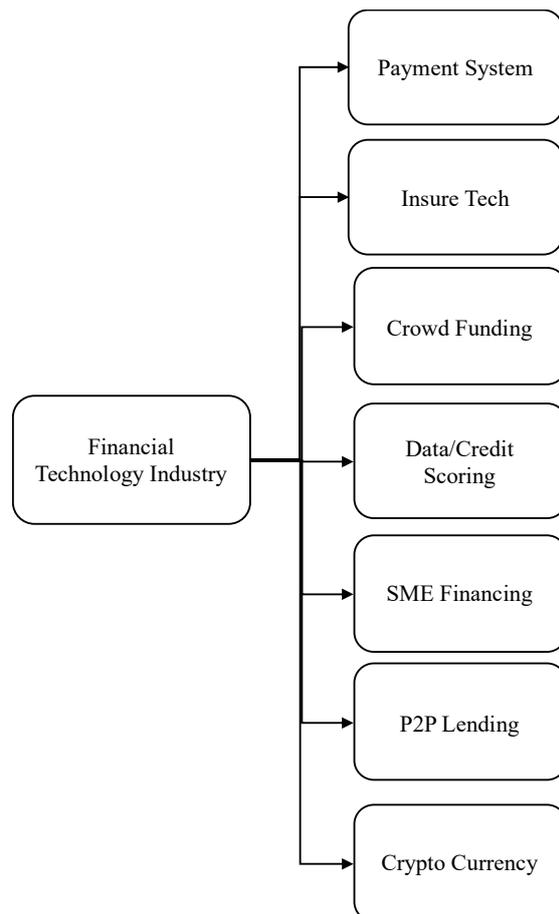


Figure 3. Structure of the Financial Technology Industry

Source: Johan & Vania (2021)

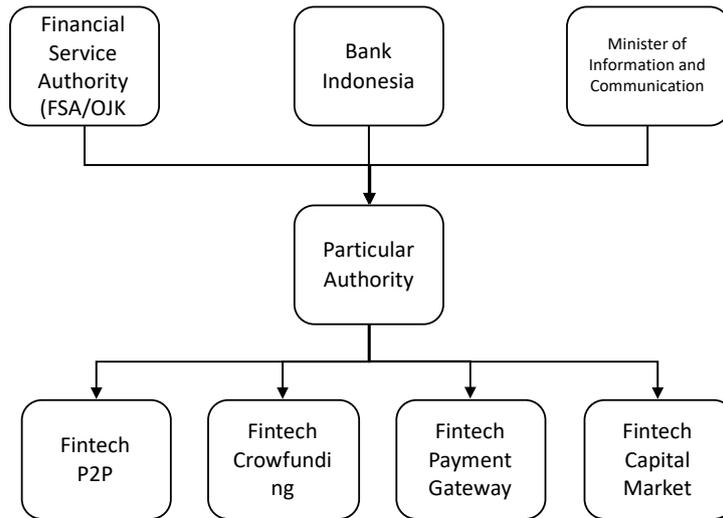


Figure 4. Proposed Particular Authority or Agency

According to the annual report, the financial technology industry is still insignificant in comparison to other financial sectors. Fintech companies have a broad reach and a large customer base. The Indonesian Financial Services Authority’s portfolio of fintech assets is minuscule. The fintech industry is growing at a breakneck pace, and the Indonesian Financial Services Authority has not adequately addressed the issues and challenges raised by the fintech industry, as several previous studies have done.

The fintech industry is comprised of industries that are dissimilar to the current structure of the financial sector. Fintech companies are classified according to the services they provide to customers. Figure 3 illustrates this. This classification is distinct from the existing Indonesian Financial Services Authority Law’s classification of Financial Services Institutions.

2. Establishment of a Special Agency for Supervision of the Fintech Industry

According to the previous analysis, the government should establish a dedicated agency to regulate and supervise the financial technology industry. This particular agency possesses complete authority over all matters pertaining to the fintech industry. This agency can act on behalf of the Indonesian Financial Services Authority, Bank Indonesia, the Ministry of Communication and Information, as well as other law enforcement agencies

such as the Police.

This agency is charged with specific responsibilities pursuant to special legislation that must be ratified by the President. This law has the potential to regulate the entire business process, safeguard the community’s interests, and provide legal certainty for fintech transactions. This law will also address personal data protection and the confidentiality of customer data in the conventional financial industry. Figure 4 depicts a description of this particular agency.

This agency’s oversight is based on the classification of the fintech products offered by each company. Control encompasses the receipt of public funds, the distribution of financing, and the management of customer data. This oversight and regulation extends to currency transactions, including cryptocurrency and other types of transactions.

D. Conclusion

Financial technology (fintech) has outgrown its capacity. Numerous conflicts have arisen between fintech firms and their customers. A special task force is tasked with resolving these disagreements. Fintech regulation is based on the regulations of the Indonesian Financial Services Authority (OJK). Fintech supervision is specifically excluded from the authority of the Indonesian Financial Services Authority under the Indonesian Financial

Services Authority Law. The Indonesian Financial Services Authority supervises a broad range of financial institutions (LJK). According to the Indonesian Financial Services Authority Law, the scope of the Indonesian Financial Services Authority's work, its capabilities, and the size of the fintech industry, supervision and regulation of the fintech industry require a special law in addition to a specific agency with authority and control over the fintech industry. Additional research can be conducted by delving deeply into the non-fintech and fintech industries.

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