



ICLG

The International Comparative Legal Guide to: **Fintech 2019**

3rd Edition

A practical cross-border insight into fintech law

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EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

Two general chapters. These chapters provide an overview of artificial intelligence in fintech, and of the recent trends and challenges in the financing of cross-border fintech start-ups.

Country question and answer chapters. These provide a broad overview of common issues in fintech laws and regulations in 51 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Hans Adiputra Kurniawan



1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

For the past two years, the Indonesian market has seen the rise of technology-based start-up companies that stimulate the rapid development of technology-based transactions (including technology-based “unicorn” companies such as Go-Jek, Tokopedia and Traveloka). The Indonesian Fintech Association indicates that there are 157 fintech start-up companies, as of 5 January 2019.

From a regulatory perspective, the Central Bank of Indonesia (*Bank Indonesia* or “BI”), through BI Regulation No. 19/12/PBI/2017 (“**BI Regulation 19/2017**”), recognises and classifies fintech activities into the following categories:

- Payment systems:** clearing; final settlement; and payment processing (e.g., blockchains or distributed ledgers technology for fund transfer, electronic money, electronic wallet and mobile payments). Notable companies include Go-Pay, OVO, Dana, and Midtrans.
- Market support:** facilitating the distribution of information related to financial products and/or services to the public (e.g., a data provider comparison of certain financial services/products).
- Investment management and risk management:** e.g., online investment products and online insurance.
- Lending, financing/funding and capital raising:** e.g., peer-to-peer lending (“**P2P**”), financing or crowdfunding. According to the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) website (the authority supervising P2P), as per December 2018, there are 88 P2P companies registered with OJK (among others, Investree, Modalku, Rupiah Plus, and Uang Teman), but only one P2P company with a definitive business licence (Danamas).
- Other financial services.**

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

Yes. In 2016 and 2018, BI issued BI Regulation No. 18/40/PBI/2016 on Payment Transaction Processing (“**BI Regulation 18/2016**”) and

BI Regulation No. 20/6/PBI/2018 on Electronic Money (“**BI Regulation 20/2018**”) strictly prohibiting the use of cryptocurrency as means of payment.

In addition, according to news articles, OJK shut down at least 19 cryptocurrency business practice operators in 2018.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Other than equity, the typical funding alternatives are bank-loans, shareholders loans, corporate bonds, warrants or initial public offering (“**IPO**”).

The liquidity in the market allows start-up companies to receive private funding from big Venture Capital or Private Equity companies like Sequoia and Softbank Vision Fund. In 2018, DailySocialid reported the disclosed amount of fintech investment reached USD 182.3 million, most of it injected by Venture Capital or Private Equity companies. Recent rounds of funding include the USD 70 million led by Fanpujinke Group into Akulaku and USD 25 million led by Softbank Ventures Korea into Modalku in April 2018, which was claimed as the biggest series B funding ever received by a P2P platform in Southeast Asia.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

On 8 June 2018, the Indonesian government issued a new regulation, Government Regulation No. 23 of 2018 on Income Tax on Income from Business Received or Earned with Certain Gross Turnover (“**GR 23/2018**”), reducing the final tax rate of income tax for taxpayers (including certain SMEs) whose gross turnover does not exceed IDR 4.8 billion within one fiscal year from a 1.0% to 0.5% final tax rate for a certain period of time, depending on the type of legal entity of the taxpayer:

- Individual taxpayer: seven years.
- Cooperative (*koperasi*), *Comanditer Vennotschap* (“**CV**”), or firm (*firma*) taxpayer: four years.
- Limited liability company taxpayer: three years.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

Before an IPO, the company must first submit a registration statement (*pernyataan pendafitaran*), together with its supporting documents (such as prospectus/information memorandum, audited financial statements, legal due diligence report and legal opinion from an independent legal consultant) to OJK. Once the registration statement is effective, the company must conduct certain public disclosure (among others, its group business conditions and risks) as a part of its public offering process.

After the IPO, the company is not automatically listed on the Indonesian Stock Exchange (“IDX”). To do so, the company must submit an application to and obtain a listing approval from the IDX.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

Considering the complex Indonesian capital market law requirements for an IPO, shareholders’ exits are mostly by way of M&A rather than IP; for example, the exit of Finch Capital and East Ventures from Cermati (a fintech company engaging in the market provisioning sector) through the acquisition by Djarum Group.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

Depending on their characteristics, fintech businesses are subject to the regulations of either BI or OJK. BI regulations cover payment system services while OJK regulations cover P2P lending, investment management, market aggregators, and crowdfunding.

A brief summary of the most highlighted matters is as follows:

- E-Money:** regulated under BI Regulation 20/2018, which classifies e-Money operators into two categories, namely (i) front-end, and (ii) back-end operators. Some of the key provisions are, among others: (a) paid-up capital requirements; (b) foreign shareholding limitation of maximum 49% for a non-bank issuer; and (c) restriction to become a controlling shareholder in more than one payment system operators.
- Payment Processing Operators:** regulated under BI Regulation 18/2016, which sets licensing requirements for payment processing operators and 20% maximum foreign shareholding.
- P2P Lending:** regulated under the OJK Regulation No. 77/POJK.01/2016 (“**OJKR 77/2016**”), which, among others, limits the foreign shareholding limitation to a maximum of 85%, prohibits the balance sheet lending model and sets a two-tier licensing mechanism.
- Digital Banking:** regulated under OJK Regulation No. 12/POJK.03/2018 (“**OJKR 12/2018**”), which sets requirements for conventional banks to provide digital banking services (including: (i) account administration; (ii) transaction authorisation; and (iii) finance management).
- Equity Crowdfunding:** regulated under OJK Regulation No. 37/POJK.04/2018 (“**OJKR 37/2018**”), which, among others, sets a minimum issued capital requirement of IDR 2.5 billion, limitation of business activities, crowdfunding amount, licensing and reporting requirement for equity crowdfunding platform operators.

- Regulatory Sandbox BI:** regulated under BI Regulation 19/2017, which requires fintech operators meeting the criteria under BI Regulation 19/2017 to be registered with BI.
- Regulatory Sandbox OJK:** regulated under OJK Regulation 13/POJK.02/2018 (“**OJKR 13/2018**”), which authorises OJK to require fintech operators to undergo the sandboxing under OJK’s supervision.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

BI Regulation 18/2016 and BI Regulation 20/2018 prohibits the use of cryptocurrency as means of payment.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory ‘sandbox’ options for fintechs in your jurisdiction?

Yes. In 2016, BI launched a specific fintech office to focus on regulating and supervising the growing fintech industry followed by the issuance of BI Regulation 19/2017. BI Regulation 19/2017 provides regulatory sandboxing and testing mechanisms to ensure, among others, the fintech players’ risk and risk mitigation profile, reliability of business process, and technology proficiency.

The same approach was also adopted by OJK, where through OJKR 13/2018, the regulatory sandboxing and testing mechanisms were introduced.

Additionally, in several public seminars, the government openly supported the growth of fintech. In another example, on 20 August 2018, OJK launched OJK’s Innovation Centre for Digital Financial Technology, whose goal is to build a fintech ecosystem through the facilitation of a regulatory sandbox, innovation hub and an educational centre.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

Indonesian law requires a foreigner to conduct business in Indonesia through an Indonesian limited liability company (which can be done either by way of establishing a new company or acquiring an existing Indonesian limited liability company) and obtain business licences from either OJK or BI.

The foreign parties’ shares participation are also limited, depending on the contemplated businesses/industries, as follows:

- P2P Lending:** OJKR 77/2016 limits foreign shareholding in a P2P company up to 85%.
- Payment Processing Operators:** BI Regulation 18/2016 limits foreign shareholding in back-end operators (i.e. principals, switching operators, clearing operators, and final settlement operators) by up to 20%. Furthermore, BI Regulation 20/2018 prohibits a payment processing operator (bank and non-bank) to become a controlling shareholder (having more than 25% or less but having factual control) in (a) more than one non-bank payment processing operators engaging in the same business activities (e.g. controlling the shareholder in two switching operators (“**back-end operators**”)), and/or (b) in more than one non-bank payment processing operators under a different payment processing

operators group (e.g. controlling the shareholder in a switching operator and an e-wallet company (“**front-end operators**”)).

3. **E-Money:** BI Regulation 20/2018 limits foreign shareholding in an e-money issuer of up to 49%.

4 Other Regulatory Regimes / Non-Financial Regulation

- 4.1 Does your jurisdiction regulate the collection/use/ transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?**

Yes, collection/use/transmission of personal data is regulated under Law No. 11 of 2008 on Electronic Information and Transaction (as lastly amended in 2016) (“**EIT Law**”), as further implemented by Government Regulation No. 82 of 2012 on Electronic System and Transaction (“**GR 82/2012**”) and Minister of Communication and Informatics (“**MOCI**”) Regulation No. 20 of 2016 on Personal Data Protection in Electronic System (“**MOCI Regulation 20**”). These regulations apply to Electronic System Operators (“**ESOs**”), including fintech services operators.

- 4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?**

As a general rule, the Indonesian law system adopts a jurisdictional system, where the laws and regulations only apply in Indonesia and to organisations established in Indonesia, except for certain tax rules which may have extra-territorial affect.

Nonetheless, there have been news reports that the Indonesian government is currently preparing a bill on personal data protection, which will apply to foreign ESOs if their activities affect Indonesia’s interests.

Cross-border data transmission requires a prior written approval from the owners and reports to MOCI or other appointed authorities.

- 4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.**

MOCI Regulation 20 sets administrative sanctions in the form of either: (i) a verbal warning; (ii) a written warning; (iii) temporary suspension of activities; or (iv) online announcement of violation.

There are additional administrative sanctions under BI Regulation 18/2016 and/or OJKR 77/2016, including a revocation of licence.

- 4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?**

This is set under the EIT Law, which prohibits, among others: unauthorised access (hacking); unlawful interception towards private data; and data manipulation. The applicable sanctions include imprisonment and/or fines.

- 4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.**

AML under Law No. 8 of 2010 on the Prevention and Eradication of

Money Laundering (“**AML Law**”) requires financial services providers to implement certain know-your-customer (“**KYC**”) processes and report to the Financial Transaction Reports and Analysis Centre (“**PPATK**”) on any suspicious transaction and/or cross-border fund transfer transactions. This is further regulated under OJK Regulation No. 12/POJK.01/2017 (“**OJKR 12/2017**”) and BI Regulation No. 19/10/PBI/2017, which require the setting up of AML internal policy by the relevant financial services providers/operators.

- 4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?**

In addition to the regimes of MOCI/OJK/BI, fintech operators are also subject to general corporate laws, including the laws on limited liability companies, foreign investments and, as relevant, the capital markets.

5 Accessing Talent

- 5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?**

The basic rules of employment in Indonesian law is governed under Law No. 13 of 2003 on Employment (“**Employment Law**”).

The Employment Law requires an employment agreement to be made in writing in the Indonesian language, which can be divided into: (i) a definite term; and (ii) an indefinite term. In addition, it requires termination to be carried out only with a mutual consent (except under certain limited conditions). Under the Employment Law, termination will entail obligations such as payment of reward for service, severance, or compensation by the company for the terminated employee.

- 5.2 What, if any, mandatory employment benefits must be provided to staff?**

- (a) Allowance, comprising of fixed allowance, unfixed allowance, and religious holiday allowance.
- (b) Health Social Security and Manpower Social Security.
- (c) Overtime-Pay (as applicable).
- (d) At least 12 days of annual leave for employees who have worked for at least 12 consecutive months, as well as other certain special leave.

- 5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?**

To hire expatriates, the employers must firstly obtain: (a) Foreign Workers Recruitment Plans (“**RPTKA**”) containing reasons for hiring the expatriate, positions which will be filled by the expatriate, employment period, and the appointment of a local employee to assist know-how transfer from the expatriate; and (b) Notification (*Notifikasi*). There is no specific regulation to employ expatriates in fintech businesses, but note that OJK and BI have the discretionary power to require additional documents that they deem necessary.

It is to be noted that expatriates are prohibited from performing as a person in charge of human resources affairs.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Innovations and inventions are protected in Indonesia through IP rights and laws and regulations, which are divided into: (i) copyrights; (ii) trademarks; (iii) patents; (iv) trade secrets; (v) industrial designs; and (vi) integrated circuit layouts.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

For copyright, Indonesian law adopts the concept of “first to declare”, where registration is not mandatory, and the protection automatically exists when the creator declares its invention.

In contrast, for other IP rights, including trademarks, patents, industrial designs and integrated circuit layouts, Indonesian law adopts the *first to register* concept.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

The Indonesian government has ratified certain international treaties/conventions which in turn require the government to

acknowledge and protect certain IP rights registered overseas/in countries which have also ratified the same international treaties/conventions. For example, Indonesia has ratified the Berne Convention for the Protection of Artistic and Literary Works, as implemented in Article 2(c) of Law No. 28 of 2014 on Copyrights and has ratified the Paris Convention for the Protection of Industrial Property with respect to other IP rights (i.e. patents, trademarks and industrial designs), which were implemented through Law No. 31 of 2000 on Industrial Design, Law No. 20 of 2016 on Mark and Geographic Indication, and Law No. 13 of 2016 on Patents.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

In the context of monetising IP, Indonesian law provides the concept of licensing, which allows the IP rights holder to assign its rights and receive compensation in return.

Acknowledgment

The authors would like to thank Sinta Dwi Cestakarani for her invaluable assistance in the writing of this chapter. Ms. Sinta Dwi Cestakarani is a licensed lawyer with more than seven years of experience in assisting domestic and international clients. Her main areas of practice are banking and finance, M&A, multi-finance companies, mining and fintech. During her years of practice, Ms. Sinta Dwi Cestakarani assisted and advised domestic and foreign companies in various notable transactions predominantly in the areas of banking and finance, mergers and acquisitions, mining and fintech.

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