Indonesia

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Approaches and developments

The fintech-related regulations in Indonesia have been in place since the issuance of Bank Indonesia (**BI**) Regulation on card-based payment instruments in December 2004. This was followed by the issuance of the fund transfer regulation in December 2006 and the electronic money (e-money) regulation in April 2009; however, there seemed to be few developments in this area of law compared to the development of the fintech business models seen in other jurisdictions. At that time, the regulatory bodies overseeing fintech sectors (i.e. BI and the Indonesian Financial Service Authority, *Otoritas Jasa Keuangan*, **OJK**) did not seem to be able to catch up with the varying fintech business models, perhaps primarily because the business players themselves were not as aggressive in entering into this business sector. There were times when BI ceased issuing fintech-related licences (e.g. e-money licences). This was presumably because it was quite nervous knowing that the e-money business could involve a significant amount of the public's money (and therefore could put the public's money at risk), but the underlying regulations did not seem to contain sufficient details to address that risk.

The significant developments in the fintech-related regulations began in 2016 with the issuance of regulations on: (i) payment processing services in November 2016; (ii) peer-to-peer (**P2P**) lending in December 2016; (iii) the national payment gateway in June 2017; (iv) fintech operation in November 2017; (v) amendment to e-money regulation in May 2018; (vi) fintech innovation in financial services in August 2018; and (vii) equity crowd funding in December 2018. These significant developments could be mainly attributed to the rising popularity of e-retail and online marketplace providers (including those providing ride-hailing and other on-demand services such as food delivery and shopping) and the exponential deepening of market penetration enabled by affordable mobile devices and internet connection. Another driving aspect could also be the surge of the P2P business players from China entering into Indonesia and the issuance of Presidential Decree No. 82 of 2016 on National Strategy for Financial Inclusion that sets a target to expand public access to financial services to 75% by the end of 2019 (**SNKI**). Under the SNKI, one of the principles to achieve the economic inclusion target is to push technology innovation and institutions as tools to broaden the access and utilisation of the financial system.

The most significant impact from the issuance of the foregoing fintech regulations is the approach taken by BI and OJK in determining whether a specific fintech activity is subject to any licensing requirements. Previously, BI and OJK would strictly limit their authority to regulate activities that qualify or correspond with the specific elements set out in the regulations. Consequently, market participants would usually conduct a study to check if their proposed offerings would qualify as those specific elements set out in the regulations.

With the new approach, specifically through the implementation of the mandatory fintech registration and sandbox mechanism, BI and OJK could take a more flexible approach in determining their authority over the market participants. It remains to be seen how the implementation of the regulatory sandbox will turn out, given the significant number of fintech players (and business variations) out there and taking into account the limited resources that the relevant authorities have.

In the mandatory fintech registration, both BI and OJK set a broadly defined criteria of fintech services (e.g. innovative in nature, may have an impact on the existing products, services, technologies and/or financial business models, and can be widely used), and require any provider whose services meet the criteria to register itself with the regulatory bodies. Following the registration, BI or OJK may impose a licensing requirement on certain service providers as it deems necessary. In effect, BI or OJK can now monitor and regulate any fintech services that were previously not explicitly captured by the regulations. OJK announced that in January 2020 there were 50 fintech companies that are in the regulatory sandbox phase out of 90 fintech companies that are under its mandatory fintech registration.1

Further, in the last three years, OJK and BI as the respective authorities overseeing the financial institutions and payment system, have also given more attention to the fintech sector due to the rapid growth in market penetration as well as the M&A activities in the fintech industry led by the national and multinational online marketplaces, e-retail providers and other tech start-ups, including by limiting the foreign ownership in certain fintech lines of business.

Fintech offering in Indonesia

Electronic money (e-money)

The use of e-money has increased rapidly in recent years. As well as being used as one of the means of payment for e-retail and marketplace providers in the gaming, consumer goods, ride-hailing, healthcare and logistics industries, e-money is also widely used in other brick-and-mortar retail businesses. The Indonesian government has also in many instances expressed its support for non-cash payment, making the use of e-money more attractive. One of the moves initiated by the government was the implementation of non-cash payment exclusively on all toll roads across Indonesia since 2017. Some Indonesian state-owned enterprises (notably banks) have their own e-money products so as to ensure they do not miss the bandwagon.

The most recent regulation on e-money operation is BI Regulation No. 20/6/PBI/2018 dated 3 May 2018 on E-Money (**BI E-Money Regulation**). The BI E-Money Regulation defines e-money as a payment instrument in which:

(a) it is issued based on the value of money paid in advance to the issuer;
(b) the value of money is stored electronically in a server or on a chip; and
(c) the value is managed by the issuer, and does not constitute savings under the prevailing banking laws and regulations.

BI is the main regulatory authority of the e-money business and has the authority to: (i) issue an e-money business licence; (ii) supervise the e-money business operation; and (iii) impose administrative sanctions for any violation of, and/or non-compliance with, the BI E-Money Regulation.

The BI E-Money Regulation classifies e-money service providers into six categories:

(a) **E-Money Issuer** – refers to a party that issues the e-money.
(b) **E-Money Acquirer** – refers to a party that enters into a cooperation agreement with

goods and/or services merchants so that the merchants are able to process data relating to e-money issued by another party. The E-Money Acquirer is also responsible for the settlement of payments to the merchants.

(c) **E-Money Principal** – refers to a party responsible for: (i) channelling the e-money transaction data through a network; (ii) the implementation of the rights and liabilities calculation; (iii) the payment settlements; and (iv) the stipulation of business mechanics and procedures.

(d) **E-Money Switching Operator** – refers to a party that procures and operates the infrastructure used as the centre and/or hub for the channelling of payment transactions data using e-money.

(e) **E-Money Clearing Operator** – refers to a party that calculates the financial rights and liabilities of each E-Money Issuer and/or E-Money Acquirer in the context of e-money transactions.

(f) **E-Money Final Settlement Operator** – refers to a party that acts and is responsible for the final settlements of the financial rights and liabilities of each E-Money Issuer and/or E-Money Acquirer in the context of e-money transactions based on the calculations made by an E-Money Clearing Operator.

The E-Money Issuers and E-Money Acquirers are considered front-end providers, while the rest are back-end providers. An e-money service provider can only provide services at either the front-end or the back-end. For example, an E-Money Issuer can also be an E-Money Acquirer, but cannot be an E-Money Principal. The rationale for this grouping is to avoid potential conflicts of interest in operating front-end as well as back-end services. Aside from the front-end and back-end classification, the BI E-Money Regulation also recognises closed-loop services and open-loop services. Closed-loop e-money is defined as e-money that can only be used as a payment instrument for goods/services of the E-Money Issuer. Meanwhile, open-loop e-money is defined as e-money that can be used as a payment instrument for goods/services of other parties aside from the E-Money Issuer.

Payment processing services

Various payment processing services hold a substantial role in both the conventional offline and the newly emerging e-retail sectors, especially in bridging the online-to-offline transactions and reducing "friction" in the payment process.

BI is the main regulatory authority of the payment transaction processing business pursuant to BI Regulation No. 18/40/PBI/2016 dated 8 November 2016 on Payment Transaction Processing Activities (**BI Payment Processing Regulation**). The BI Payment Processing Regulation classifies payment service processors into 10 categories (each a **Payment Processor**):

(a) **Principal** – refers to a party responsible for: (i) channelling electronic transaction data through a network; (ii) the implementation of the rights and liabilities calculation; (iii) the payment settlements; and (iv) the stipulation of business mechanics and procedures.

(b) **Switching Operator** – refers to a party that procures and operates the infrastructure used as the centre and/or hub for the channelling of the data relating to payment transactions using cards, e-money and/or fund transfer.

(c) **Issuer** – refers to a party that issues e-money, credit cards or debit cards.

(d) **Acquirer** – refers to a party that enters into a cooperation agreement with goods and/or services merchants so that the merchants are able to process data relating to electronic payment instruments issued by another party. The Acquirer is also responsible for the settlement of payments to the merchants.

(e) **Payment Gateway Operator** – refers to any party that enables merchants to process payments of transactions that use electronic payment instruments such as cards, electronic money and/or proprietary channels.
(f) **Payment Clearing Provider** – refers to a party that calculates the financial rights and liabilities of each Issuer and/or Acquirer in the context of electronic payment transactions.
(g) **Final Settlement Operator** – refers to a party that acts and is responsible for the final settlements of the financial rights and liabilities of each Issuer and/or Acquirer in the context of electronic payment transactions based on the calculations made by a Clearing Operator.
(h) **Fund Transfer Provider** – refers to any party that holds a licence from BI to provide fund transfer services.
(i) **E-Wallet Operator** – refers to any party that holds a licence from BI to provide e-wallet services.
(j) **Other Payment Processors** as stipulated by BI – refers to parties that provide payment processing services at the stage of authorisation, clearing and/or final settlement activities other than the Payment Processors mentioned in paragraphs (a) to (i) above.

Fund transfer

A fund transfer service, a relatively traditional service, has discovered vast, new market development opportunities in the wake of both the e-retail and marketplace industries. Most established marketplace and e-retail providers include fund transfer capability as part of their overall services to their customers.

The current regulation on fund transfer is BI Regulation No. 14/23/PBI/2012 on Fund Transfer (the **BI Fund Transfer Regulation**). The BI Fund Transfer Regulation defines a fund transfer as a series of activities that begins with an instruction from an originator, with the purpose of transferring a certain fund to the beneficiary as stated in the instruction, and ends when the fund is received by the beneficiary. The BI Fund Transfer Regulation also classifies the fund transfer processors into the following:
(a) **Originator** – a party that first issues the fund transfer instruction.
(b) **Sender** – the Originator, Originator Processor and all Intermediate Processor(s) that issue the fund transfer instruction.
(c) **Receiving Processors** – the Originator Processor, Intermediate Processor, and Final Processor which receive the fund transfer instruction.
(d) **Originator Processor** – a processor that receives the fund transfer instruction from the Originator to pay or instruct another fund transfer processor to pay a certain amount of funds to the beneficiary.
(e) **Intermediate Processor** – a processor that is not an Originator Processor or a Final Processor.
(f) **Final Processor** – a processor that transfers or delivers the funds to the beneficiary.

Capital raising (P2P lending and equity crowd funding)

OJK has only recently regulated two forms of tech-enabled capital raising in Indonesia: (i) PSP on 29 December 2016 through the promulgation of OJK Regulation No. 77/POJK.01/2016 (**P2P Regulation**); and (ii) equity crowd funding on 31 December 2018 through the promulgation of OJK Regulation No. 37/POJK.04/2018 (**Crowd Funding Regulation**).

Despite the recent breakthrough of recognising and regulating these two forms of capital raising, OJK has taken a cautious approach with these industries. For example: (i) OJK has set lending and crowd funding limitations to confine these industries to catering to

small-to-medium enterprises; and (ii) OJK has only handed out P2P licences to a handful of companies,2 and to our knowledge has only issued a couple of equity crowd funding licences. This cautious approach is likely to be in part designed to limit the disruption to existing, traditional fund-raising institutions such as banks, financing companies, and the capital markets – all industries under the authority of OJK.

Of the two (P2P and equity crowd funding), P2P has grown more in recent years, in part because it has been regulated for longer and, prior to the promulgation of the P2P Regulation, there have already been players in the P2P lending space using various structures to operate in Indonesia. For example, in a typical structure, foreign P2P lending platforms would lend to Indonesian-based lending cooperatives, which will in turn loan onwards to the debtors. Other online lending companies simply lent directly to the debtors, without a licence and were often accused of being illegal loan sharks. Media scrutiny of the practices of these supposed "online loan sharks" in part prompted the issuance of the P2P Regulation and OJK's increased scrutiny to protect both the public and existing industry players. Other than issuing the P2P Regulation, OJK also regularly publishes a list of illegal online lending companies of which to warn the public to steer clear.

Key provisions of the P2P Regulation include: (i) a two-step licensing regime in which P2P lending platforms first register with OJK, following which it applies for a P2P licence; (ii) an 85% foreign ownership (direct or indirectly) cap; (iii) a maximum IDR2 billion per borrower lending limit; and (iv) prohibition for the P2P lending platform to borrow money (certain exemptions based on unwritten policies applied inconsistently). While some industry players may view P2P Regulation as restrictive, it is at least a first step in recognising the legality of P2P lending platforms.

While P2P is still in its infancy, equity crowd funding in Indonesia is yet to really kick off. Prior to the Crowd Funding Regulation, the existing regulations rule out a legal and viable equity crowd funding structure. Company and capital markets regulations effectively obliges companies that are crowdfunded to go through the public offering and are hence subject to various requirements of disclosure, obtaining OJK approval, and other various requirements applicable to a public offering which effectively made crowd funding untenable (especially for small-to-medium enterprises). These barriers have in the past led to platforms initially contemplating an equity crowd funding scheme to pivot to a P2P lending structure.

The Crowd Funding Regulation, however, effectively sets aside the abovementioned requirements to allow a crowd funding structure outside of the traditional capital markets. Key provisions of the Crowd Funding Regulation include: (i) an exception to the requirement for a public offering if the offering amongst others has obtained OJK approval; (ii) a limit of 300 shareholders and a maximum paid-up capital of IDR30 billion in order not to qualify as a public company; (iii) a maximum IDR10 billion fundraising limit every 12 months for each issuer; (iv) a maximum limit of IDR10 billion of assets (outside of land and building) for the issuer; (v) a licensing requirement for the crowd funding platforms; and (vi) various requirements for the crowd funding platform to review, supervise and disclose information on the issuer; (vii) obligation for the crowd funding platform to provide an internal dispute resolution service mechanism; and (viii) restriction to have affiliated relationships between the crowd funding platform and the issuer. There are other various technical rules and restrictions – which are arguably more onerous than the P2P Regulations, and it remains to be seen how these rules and restrictions will be implemented and whether the Crowd Funding Regulation is attractive enough to promote the growth of equity crowd funding.

Although there is optimism with OJK's approach of regulating P2P and equity crowd funding, it remains to be seen whether OJK will eventually relax the regulations to allow these sectors to

further develop. OJK is also yet to regulate in depth other variation loan and equity structures including if a P2P company is actually giving on-balance-sheet loans through its holding company, instead of actually gathering funds from the public to be extended as loans (which is the main essence of a P2P lending business); and, as of now, "plain vanilla" structures are still predominant. Given the impression that OJK's primary focus is still on regulating the traditional industries (i.e. banks, multi finance, insurance and capital markets), OJK is likely to approach P2P and equity crowd funding with caution – as P2P and equity crowd funding can potentially disrupt the traditional industries OJK was primarily tasked to regulate and protect.

Crypto-assets trading platform

While cryptocurrencies cannot be used as a payment instrument in Indonesia, the government has acknowledged that certain cryptocurrencies can be traded as assets (but not considered a "currency") in futures exchanges in Indonesia by way of the issuance of Ministry of Trade Regulation No. 99 of 2018 on General Policies of the Crypto-Assets Trading and the Commodity Futures Trading Supervisory Agency (*Badan Pengawas Perdagangan Berjangka Komoditi,* **Bappebti**) Regulation No. 5 of 2019 as lastly amended by Regulation No. 3 of 2020 on Technical Provisions for the Implementation of Crypto-Asset Physical Markets on the Futures Exchange (the **Crypto-Asset Trading Regulation**). Key provisions of the Crypto-Asset Trading Regulation include: (i) a two-step licensing regime in which trading platforms first register with Bappebti, following which it applies for a trading platform licence; (ii) a requirement that the crypto-assets to be traded must be listed in the top 500 coin market caps or crypto-backed assets which are listed under the largest crypto-exchange transactions worldwide; and (iii) a minimum paid-up capital of IDR200 billion for the trading platforms. To our knowledge, Bappebti has yet to issue a crypto-assets trading platform and up to March 2020 has only received registration from six trading platforms.

Regulatory and insurance technology

In Indonesia, regtech-related or insurtech-related regulatory development is not as advanced as the other fintech cohort. To date, there has been no specific regulation on the implementation of insurtech in Indonesia. One of the possible reasons for this is that the tech-based services that could be generally seen as "regulatory or insurance technology", for example: KYC-related; electronic signature; and data processing services can be captured by the existing regulations concerning conventional financial institutions, electronic information and transactions (albeit not seamlessly).

In terms of insurtech activities, we have seen, in practice, established insurance companies cooperating with tech-based companies which engage in data collection and analysis, cloud computing, KYC-related services and the insurance policies marketplace. There are also a handful of tech-based on-demand healthcare service companies that cooperate with hospitals as third-party administrators of insurance claims.

Regulatory bodies

Supervision of the financial sector and system

There are two primary institutions in Indonesia which regulate the financial sector and system – BI and OJK. OJK is responsible for the regulation and supervision of all financial services which includes the traditional financial industries such as banks, capital markets, insurance, pension funds, and multi-financing, as well as newer industries such as P2P lending and equity crowd funding. BI, on the other hand, sets and regulates monetary policy and payment systems, with the latter encompassing e-money, payment processing and fund transfers.

Supervision of commodity future trading

Bappebti supervises and regulates any aspects related to commodity trading including crypto-assets trading.

Consumer protection

Although Indonesia has a National Consumer Protection Body, we have not seen it having a substantial role in protecting consumers in the financial services industry. The main regulators involved in consumer protection in the fintech space are OJK and BI, respectively, regulating the areas as previously mentioned above. OJK in particular has been proactive in trying to protect consumers, such as by regularly publishing a list of unlicensed P2P companies and a list of companies known to offer fraudulent investments. BI also has a consumer protection function which, amongst others, allows consumers to report complaints in relation to payment systems. As OJK and BI are the regulating authorities of financial services and payment systems respectively, players in those industries are likely to take heed of any consumer protection issues OJK and BI may raise.

Ministry of Communications and Informatics

The Ministry of Communications and Informatics (**MOC**) also plays a role in fintech, as electronic systems that have a public interest element must be registered with the MOC. This has been interpreted to include fintech-related applications and electronic systems. The MOC also regulates technical matters such as server location and also consumer data protection – which are both issues closely related to fintech.

Key regulations and regulatory approaches

Key regulations with respect to fintech activities include:

(a) the BI E-Money Regulation;
(b) the BI Payment Processing Regulation;
(c) the BI Fund Transfer Regulation;
(d) the P2P Regulation;
(e) the Crowd Funding Regulation;
(f) BI Regulation No. 19/12/PBI/2017 on Provision of Financial Technology;
(g) OJK Regulation No. 13/POJK.02/2018 on Digital Fintech Innovation;
(h) OJK Circular Letter No. 21/SEOJK.02/2019 on Regulatory Sandbox;
(i) BI Regulation No. 19/8/PBI/2017 on National Payment Gateway;
(j) Ministry of Trade Regulation No. 99 of 2018 on General Policies of the Crypto-Assets Trading; and
(k) Crypto-Asset Trading Regulation.

In light of these key regulations and as mentioned in the "Approaches and development" section above, we can see that there has been a shift in perspective by the relevant authorities in regulating certain fintech activities. Further, responding to the vast growth of e-money development, in May 2018 BI imposed more robust risk management and security standards through the issuance of the BI E-Money Regulation, requiring closed-looped e-money players meeting certain managed fund thresholds to obtain a licence (previously the licence requirement applied only to open-loop e-money), and imposing a foreign investment restriction on e-money licence holders at a maximum of 49% (direct and indirectly).

OJK, in contrast, implemented a more lenient regulation in December 2018 for the conventional multi-finance sectors, i.e. the multi-finance companies that are now permitted to disburse cash directly to their debtors with certain limitations. This leniency could be

seen as a measure by OJK to ensure that conventional multi-finance companies can compete against P2P lending companies. We do not believe that this shift in perspective is linear, but rather simply driven by the characteristics of the market and business models (perhaps also by the needs of the disrupted business players under the auspices of BI or OJK).

Restrictions

In addition to the various restrictions and limitations to the P2P lending and equity crowd funding as set out above, all fintech companies in Indonesia are prohibited from using any virtual currency as an instrument of payment in all of their activities.

Cross-border business

While there are no supra-national regulatory regimes or regulatory bodies that directly regulate fintech activities in Indonesia, both OJK and BI have cross-border collaborations with foreign financial authorities. OJK, for example, has entered into cooperation agreements or MOUs with regulators from Singapore, Australia, Japan, China and South Korea. In addition to an exchange of information in innovative financial services, some of the cooperation agreements, such as the cooperation agreement with Singapore, aims at creating a framework to help fintech companies from each respective country to understand the rules and opportunities of the other country. BI, on the other hand, also has various collaborations with foreign regulators and is a part of various international institutions where there is sharing of information in the field of payment systems.

Yet aside from the formal collaborations outlined above, both OJK and BI are cognisant of how foreign regulators in various jurisdictions approach new disruptive developments in fintech. Both OJK and BI have adopted concepts such as the regulatory sandbox, and as a general approach, look at how other jurisdictions regulate a certain matter when contemplating whether to enact a regulation.

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Endnotes

1. https://www.ojk.go.id/GESIT/More/Grafik/31.
2. Based on OJK's publication as per 20 December 2019, there are 139 P2P lending platforms registered and 25 P2P lending platforms with a licence.

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Harun continues to impress clients with his broad corporate knowledge, spanning M&A, investments and corporate restructuring and he is acknowledged by sources as "a technically very good practitioner" (*Chambers Asia Pacific 2017* – Corporate/M&A – Indonesia). Sources say Harun "knows the sector" (*The Legal 500 2017* – IT and telecoms – Indonesia) and he is appreciated by clients for being "always reachable" (*Chambers Asia Pacific 2016*). Sources highlight that Harun is "attentive and experienced" and "a great asset to the firm" (*IFLR1000 2016*).

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