

THE ROLE OF THE FINANCIAL SERVICES AUTHORITY IN FOREIGN INVESTMENT IN ILLEGAL FINANCIAL TECHNOLOGY IN INDONESIA

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ABSTRACT

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One of the fintech fields most targeted by investors is the *type of fintech Peer to Peer (P2P) Lending* that provides money loan services. Seeing the magnitude of opportunities in this field, many companies that offer P2P Lending services illegally are called illegal because they are not registered and do not have permission from the OJK. Illegal P2P Lending is very troubling to the community, where the billing system and interest charged to customers who are delinquent in payment bills are very high. Unfortunately, the regulations governing P2P Lending are inadequate, so OJK, as an institution authorized to supervise financial institutions, including online loans, cannot carry out supervision and enforcement optimally. This paper aims to determine the role of OJK in foreign investment in illegal fintech in Indonesia. This writing uses normative juridical research methods where the author will use regulations and legal systems related to the role of OJK in foreign investment in the field of illegal Fintech in Indonesia. OJK has the function of organizing a system of regulation and supervision of all activities in the financial services sector in Indonesia, and has a limited role in foreign investment in the field of illegal P2P lending. Because illegal P2P Lending is considered not the domain of OJK's authority because there is no registered mark and permission from OJK, it is necessary to play a role with other government agencies that are members of SWI to make efforts to stop illegal P2P fintech, which will later be followed up based on the authority of SWI members. OJK can only carry out preventive efforts in the form of socialization accompanied by education and coordinate efforts between institutions in order to accelerate the process of handlers who are members of SWI.

Keywords: Fintech, P2P Lending, OJK

1. INTRODUCTION

Indonesia is the fourth most populous country in the world. With such a large population, Indonesia can provide adequate labor for industry. In addition to human resources, Indonesia also has rich natural resources and making Indonesia one of the countries that are in great demand in investment activities. In general, investment can be interpreted as investment activities carried out by investors with the aim of obtaining profits in the future.

The Investment Coordinating Board (BKPM) considers the digital economy one of the most promising foreign investments for the Indonesian economy in the future. This is marked by the increasingly rapid flow of foreign capital into Indonesia to develop businesses in the digital financial services sector. This digital financial service is known as financial *technology* or referred to as fintech. Fintechs have the flexibility that traditional banking and conventional finance service providers don't. Fintech combines technology with financial services with the aim of helping users gain easy access to financial services such as banking, money transfers, loans, general payments, money investment, and others. Thus fintech creates new and constantly changing market behaviors that encourage traditional systems to adapt. One of the fintech fields that foreign investors and domestic investors most target is



the type of *fintech Peer to Peer* (P2P) *Lending* that provides money loan services. In Indonesia, P2P *lending* is often called online loans (pinjol). With the large interest of investors to invest in this fintech field and the large interest of borrowers to make loans, many companies provide P2P services. This lending is illegal. It is called illegal because it is not registered and does not have permission by OJK.

This illegal fintech P2P Lending has disturbed the community a lot, where the billing system and interest charged to customers who are in arrears with payment bills are very high. It is also very unfortunate when the regulations governing Fintech peer to peer lending are inadequate so that OJK as an institution authorized to supervise financial institutions which including online loans in conducting supervision and enforcement cannot be carried out optimally. So it becomes interesting for the author to find out how OJK's role in foreign investment in the illegal fintech sector.

2. LITERATURE REVIEW

A. Investasi

Basically, the terms investment and investment have the same meaning. The difference between the community is that investment must be more widely used in the business world or daily business activities, while in the law usually use the term investment.

According to Abdul Halim, investment is the placement of a number of funds at this time in the hope of obtaining profits in the future. While according to Eduardus Tandelilin, Investment is a commitment to a number of funds or other resources carried out at this time, with the aim of obtaining a number of benefits in the future. Investors buy a certain number of shares today hoping to profit from an increase in the share price or some future dividend, in return for the time and risk associated with the investment.

As explained in Article 1 point 1 of Law No. 25 of 2007 concerning Capital Investment (Law No. 25/2007), Capital investment is all forms of investment activities, both by domestic investors and foreign investors to do business in the territory of the Republic of Indonesia. Through the understanding of Law No. 25/2007, it can be seen that there is no difference between foreign investors and domestic investors in terms of investment.

Based on some of the above understandings, investment is an investment activity or placement of funds carried out by investors/investors both domestically and abroad in doing a business that aims to make a profit in the future.

B. Finance Technology (Fintech)

In realizing the creation of services to the community using computers is familiar. Computers already have an important role in the financial field (financial). The term Fintech or financial technology is a merger of financial management using technology systems. Fintech has become a public concern because this service provides many service features in facilitating from the financial side such as being used in cooperative financial institutions, banking and insurance.

As described by the *National Digital Research Centre* (NDRC), *Financial Technology* (Fintech) is a term used to refer to an innovation in the field of *financial* services, the term comes from The words "financial" and "technology" refer to *financial* innovation with a touch of modern technology.

Article 1 point 3 of the Financial Services Authority Regulation No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services (POJK 77/POJK.01/2016) states that money lending and borrowing services are based on Information Technology (*Fintech*) is the provision of financial services to bring together lenders and loan recipients in order to make loan and loan agreements in the Rupiah currency directly through an electronic system using the internet network.

Based on some of the above understandings, fintech is a financial service that brings together lenders with loan recipients using an electronic system.

Here are some types of FinTech that are developing and providing financial solutions for the people of Indonesia:

1. Crowdfunding



Crowdfunding or fundraising is currently one of the popular Fin tech models in various countries including Indonesia. With this technology, people can raise funds or donate to an initiative or social program they care about. An example is fundraising to build the R80 aircraft designed by BJ Habibie. The KitaBisa.com is one example of a Fintech *start-up* with a *crowdfunding* model that is currently popular.

2. *Microfinancing*

Microfinancing is a Fintech service that provides financial services for the lower middle class to help in their daily lives and finances. Because people from this economic group mostly do not have access to banking institutions, they have difficulty obtaining business capital to develop their businesses or livelihoods. Microfinancing can bridge these problems by directly channeling business capital from lenders to prospective borrowers. Business systems are designed so that returns are competitive for lenders, but still attainable for borrowers. One of the startups engaged in microfinancing is Amarnya which connects micro-entrepreneurs in rural areas with investors online.

3. *Peer to Peer Lending Service (P2P lending)*

P2P *Lending* is a Fintech service used for lending money. P2P *lending* helps people who need financial access to meet their needs. By using this service, consumers can borrow money more easily to meet various needs of life without having to go through a convoluted process that is often encountered in conventional banks. One example of FinTech engaged in lending money is AwanTunai, a startup that provides digital installment facilities.

4. *Market Comparison/ Market Aggregator*

With this FinTech, fintech users can compare financial products from financial service providers from insurance, KTA, KPR. In addition, Fintech jenis can also function as a financial planner, especially in making decisions related to suitable investment instruments. With the help of this FinTech, users will get several investment options for future needs. Examples of *market comparison/market aggregators* are cekaja.com, Cermati, Lifepal, BandingAja.

5. Digital Payment System

This FinTech is engaged in providing services in the form of payment of all bills such as credit & postpaid, credit cards, or PLN electricity tokens. One example of FinTech engaged in this digital payment system is Payfazz which is agency-based to help the public, especially those who do not have access to banks, to Make payments on various bills every month.

C. Financial Services Authority (OJK)

Article 1 point 1 of Law No. 21 of 2011 concerning the Financial Services Authority (Law No. 21/2011) states that OJK is an independent institution and free from interference from other parties, which has the functions, duties, and authorities of regulation, supervision, examination, and investigation as referred to in this Law

The purpose of establishing OJK explained in Article 4 of Law No.21/2011 is so that all activities in the financial services sector can be carried out regularly, fairly, transparently, and accountably and are able to Realizing a financial system that grows sustainably and stably, and is able to protect the interests of consumers and the public.

The establishment of OJK is expected to support the interests of the financial services sector as a whole so as to increase economic competitiveness. In addition, OJK must also be able to maintain national interests, including human resources, management, control, and ownership in the financial services sector while considering the positive aspects of globalization. OJK is established and based on the principles of good governance, which include independence, accountability, accountability, transparency, and *fairness*.

Article 5 of Law No. 21/2011 explains that OJK has a function to be able to organize an integrated regulatory and supervisory system for all activities in the financial services sector.

The task of OJK as stated in Article 6 of Law No.21/2011 is to regulate and supervise to:

1. Financial services activities in the Banking sector
2. Financial services activities in the Capital Market sector



3. Financial services activities in the Insurance sector, Pension Funds, Financing Institutions, and Other Financial Service Institutions

The authorities possessed by OJK are as follows:

1. Special Related to Supervision and Regulation of Bank Financial Service Institutions which includes:
 - Licensing for bank establishment, opening of bank offices, articles of association, work plans, ownership, management and human resources, bank mergers, consolidations and acquisitions, and revocation of bank business licenses;
 - The bank's business activities, including sources of funds, provision of funds, hybridized products, and activities in the field of services;
 - Regulation and supervision regarding bank health which includes: liquidity, profitability, solvency, asset quality, minimum capital adequacy ratio, maximum lending limit, loan to deposit ratio and bank reserves; bank statements related to the health and performance of the bank; debtor information system; *credit testing*; and bank accounting standards;
 - Regulation and supervision regarding prudential aspects of banks, including: risk management; bank governance; Know Your Customer and Anti-Money Laundering principles; and prevention of terrorism financing and banking crime; as well as bank checks.
2. Related to the Regulation of Financial Service Institutions (Banks and Non-Banks) include:
 - Establish OJK regulations and decisions;
 - Establish regulations regarding supervision in the financial services sector;
 - Establish policies regarding the implementation of OJK duties;
 - Establish regulations regarding procedures for issuing written orders to Financial Service Institutions and certain parties;
 - Establish regulations regarding procedures for determining statute managers in financial service institutions;
 - Establish organizational structure and infrastructure, and manage, maintain, and administer wealth and liabilities;
 - Establish regulations regarding procedures for imposing sanctions in accordance with the provisions of laws and regulations in the financial services sector.
3. Related to supervision of financial service institutions (banks and non-banks) include:
 - Establish operational policies for supervision of financial services activities;
 - Supervise the implementation of supervisory duties carried out by the Chief Executive;
 - Supervise, inspect, investigate, protect consumers and other actions against financial service institutions, actors, and/or support financial services activities as referred to in laws and regulations in the financial services sector;
 - Provide written orders to financial service institutions and/or certain parties;
 - Appoint a statute manager;
 - Establish the use of statute managers;
 - Establish administrative sanctions against parties who violate laws and regulations in the financial services sector;
 - Grant and/or revoke: business licenses, individual licenses, effective registration statements, registered certificates, approval to carry out business activities, ratification, approval or determination of dissolution and other determinations.

3. METHOD

In this writing, the writer will use the juridical-normative research method or library law research. Normative juridical (library research) is a document study that is reviewed based on the main law and reviews several theoretical matters relating to regulations and the legal system relating to the issues to be discussed. The main law in this writing is the regulation of dispute resolution regulated in Law no. 25 of 2007 concerning Investment, Law no. 21 of 2011 concerning the Financial Services Authority,



and Financial Services Authority Regulation no. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services with due observance of other regulations related to OJK's Role in Foreign Investment in the Field of Illegal Financial Technology in Indonesia. As for this writing, the writer will use secondary data including books, journals, theses and other media that can be accessed via the internet.

4. RESULT AND DISCUSSION

As explained earlier, investment is an investment activity or placement of funds carried out by investors/investors both domestically and abroad in doing a business that aims to make a profit in the future. Here the author will explain one type of investment, namely financial investment in Fintech.

Fintech simply refers to the use of technology to provide financial services that encompasses almost all technological developments in the field of financial services, including bookkeeping, automated teller machines (ATMs), *electronic data capture* (EDC), and digital banking mobile applications. But today the term fintech in society refers to start-up companies and new technologies that have begun to provide financial products and services to business people and consumers.

So this paper will refer to financial investment in fintech in start-up companies or companies that use computer technology to provide services. In Indonesia, Fintech began to be present in 2006, but the presence of fintech is not immediately growing rapidly as it is now. In 2015, precisely in September an organization that regulates fintech was formed called the Indonesian fintech association (Aftech). With the presence of Aftech, fintech is growing and more easily accepted and widespread in Indonesia.

One of the fintech fields that foreign investors and domestic investors most target is the type of *fintech Peer to Peer (P2P) Lending*. The growth of fintech P2P *lending* is currently growing rapidly and is easily accessible to people who are still difficult to get loan funds and for MSME players who need capital for business development. Not only MSME businessmen, there are also fintech P2P *lending* that provides access to loans for those who need funds for education and health care with their respective standards, ranging from loan creditworthiness, loan nominal and tenor, interest rates, to security levels

According to OJK regulation No.77/POJK.01/2016, *fintech lending/P2P Lending* is a lending and *borrowing* service in rupiah currency directly between creditors/*lenders* (lenders) and debtors/borrowers (borrowers) based on information technology. In Indonesia, P2P *lending* is often called online loans (pinjol). However, with the ease of online lending and borrowing services, it even provides opportunities for "illegal fintech" to carry out actions that harm the community, such as Charge high interest on borrowers. To find out the difference between illegal fintech and registered/licensed fintech, OJK compiles these differences in a table as follows:

Table 1. the Difference Between Illegal Fintech And Registered/Licensed Fintech

	Illegal Fintech Lending	Fintech Lending Registered/ Licensed
1. Regulator/Supervisory	There is no specific regulator tasked with overseeing the activities of illegal Fintech Lending Organizers	Fintech Lending providers that are registered/licensed at OJK are under OJK supervision so that they are very concerned about consumer protection aspects
2. Interest and Penalties	Illegal Fintech Lending Organizers Will Have Huge and Non-Transparent Fees and Fines	Fintech Lending that is registered/licensed by OJK is required to provide information disclosure regarding interest, and the maximum penalty that can be imposed on Users. AFPI sets a maximum loan fee of 0.8% per day and the total of all fees including penalties is 100% of the principal value of the loan

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| 3. Regulatory Compliance | Illegal Fintech Lending organizers carry out activities without complying with regulations, both POJK and other applicable laws and regulations | Fintech Lending providers who are registered/licensed by OJK are required to comply with regulations, both POJK, and applicable laws and regulations |
| 4. Management | There is no standard of experience that must be met by Illegal Fintech Lending Operators. | Directors and Commissioners of Fintech Lending Providers who are registered/licensed by OJK are clear people and must have at least 1 year of experience in the Financial Services Industry, at the managerial level |
| 5. How to Be Billed | Illegal Fintech Lending organizers collect in abusive ways, tend to be threatening, inhumane, and contrary to the law | Collectors at Fintech Lending who are registered/licensed by OJK are required to follow the certification of collectors carried out by AFPI |
| 6. Association | Illegal Fintech Lending Organizers have no association or cannot be members of AFPI | Fintech Lending providers who are registered/licensed at OJK must be members of the appointed association, namely the Indonesian Joint Funding Fintech Association (AFPI). |
| 7. Office location/Domicile | The location of illegal Fintech Lending offices is unclear/covered up and may be located abroad to evade law enforcement | The location of the Fintech Lending Organizer office that is registered/licensed by OJK is clear, surveyed by OJK, and can be easily found on Google |
| 8. Status | Illegal Fintech Lending organizers are certainly illegal, and are targeted by the Investment Alert Task Force (SWI) together with Kominfo, Google Indonesia, and the National Police Cybercrime Directorate. | Fintech Lending providers that are registered/licensed by OJK have legal status in accordance with POJK 77/POJK.01/201 |
| 9. Terms of borrowing and borrowing | Loans to illegal Fintech Lending Providers tend to be very easy, without asking the Organizer's loan needs | Fintech Lending that is registered/licensed by OJK needs to know the purpose of the loan and requires documents to do credit scoring |
| 10. Consumer complaints | Illegal Fintech Lending does not respond well to User complaints | Fintech Lending providers that are registered/licensed by OJK provide User complaint facilities and are required to follow up on complaints and report no further to OJK. In addition, Users can also submit complaints through AFPI, and OJK. In addition, in the event of a dispute, the User can also be facilitated by |

11. Manager Competence	Illegal Fintech Lending providers do not require any training/certification	OJK or Alternative Dispute Resolution Institutions Directors, Commissioners and Shareholders of Fintech Lending Providers who are registered/licensed by OJK are required to follow the certification held by AFPI to equalize understanding in managing the Fintech Lending business
12. Access to Personal Data	Illegal Fintech Lending applications will ask for access to all individuals in the User's cellphone which is then misused to make billing.	Fintech Lending that is registered/licensed by OJK is only allowed to access Camera, Microphone, and Location (CEMILAN) on the User's mobile phone
13. Risks for Lenders	Lenders at illegal Fintech Lending Providers have a very high risk, especially the risk of misuse of funds, inappropriate loan repayments, and/or potentially shadow banking and ponzi scheme practices	At Fintech Lending Providers that are registered/licensed by OJK, fund traffic is carried out through the banking system and all economic benefits and fees charged to Lenders are clearly stated In agreement
14. National Security	Illegal Fintech Lending providers do not comply with the rules of placing user data in Indonesia and do not have a Disaster Recovery Center in the event of disruption to electronic systems.	Fintech Lending providers that are registered/licensed by OJK are required to place Data Centers and Disaster Recovery Centers in the territory of the Republic of Indonesia

Based on the latest data found by the author, in 2021, the Investment Alert Task Force (SWI) found that illegal borrowing in Indonesia was allegedly supported by 34% of foreign funds originating from abroad. This was found based on data from the Ministry of Communication and Information received by SWI. That the illegal loan uses servers originating from abroad with a percentage of 22% Indonesian servers, 4.4% unknown because they use social media in carrying out their activities, and the remaining 3.4% from outside Indonesia. The outside servers come from Singapore, India and China. In addition, allegations of funds originating from abroad were revealed by the police when explaining the arrest of illegal borrowers.

Then what is the role of OJK as an institution that has the function of organizing a regulatory and supervision system for all activities in the financial services sector in Indonesia in P2P lending that allegedly gets foreign investment? In addition to the authority contained in Law No.21/2011, OJK is also given authority based on Law No.25/2007 related to registration and licensing as stipulated in Article 25 paragraph (4) of Law No.25 /2007 which states that the investment company that will carry out business activities must obtain a license in accordance with the provisions of laws and regulations from the authorized agency, unless otherwise specified in law.

According to OJK in its press release, illegal P2P Lending is not the domain of OJK's authority because there is no registered mark and permission from OJK. If a registered and licensed P2P Lending fintech commits a violation, OJK can only take action against the fintech. Therefore, to deal with the problem of illegal fintech, OJK and the Criminal Investigation Agency of the Indonesian National Police (Bareskrim Polri) who are members of the Task Force for Handling Alleged Unlawful Acts in

the Field of Investment Management or the Investment Alert Task Force (SWI) agreed to: Take firm action against illegal investment actors and illegal fintech. SWI encourages legal proceedings against illegal fintech actors who commit unethical billing in the form of terror, intimidation, or other unpleasant acts. In order to take action against illegal fintech P2P lending, SWI asks the public to report the entity to the Indonesian National Police if criminal elements are found.

The handling that SWI can do is as follows:

1. Investigation of cases of suspected illegal investment
2. Case analysis of suspected illegal investments
3. Stop/hinder the rise of illegal investment cases
4. Conduct joint examinations/clarifications on suspected illegal investment activities, in accordance with their respective duties and authorities.
5. Blocking illegal investment sites
6. Prepare follow-up recommendations for handling suspected illegal investments
7. Submit information reports of suspected illegal investments to the authorities.

Therefore, in carrying out its duties, follow-up handling will be carried out based on the authority of each SWI member consisting of: OJK, Bank Indonesia, Ministry of Trade, Ministry of Communication and Information, Ministry of Home Affairs, Ministry of Cooperatives and SMEs, Ministry of Religious Affairs, Ministry of Education, Ministry of Investment, Center for Financial Transaction Reporting and Analysis, Indonesian Prosecutor's Office and Indonesian Police. From 2017 to early 2022 SWI has stopped 165 illegal pawnshops, 1093 illegal investments and 3,784 illegal online loans.

In the event of allegations of foreign investment in illegal P2P lending by SWI, it was found that it was very easy to access the illegal P2P lending, simply by typing on the google search engine or it could be opened on the Play Store and App Store applications from various platforms. For example, Cinta Rupiah and Duit Loan operated by developer Li Chen from China. But unfortunately, the OJK cannot further investigate the profile of the illegal Fintech organizer. The OJK can only issue a summons for illegal fintechs not registered to register first.

Although OJK's role in this case is very limited, on August 20, 2021, OJK together with Bank Indonesia, the National Police, the Ministry of Communication and Information, and the Ministry of Cooperatives and SMEs have made a joint commitment statement that Aimed at increasing concrete actions from each ministry and institution in eradicating illegal online lending in accordance with their authority to protect the public. This shared commitment includes:

1. Prevention

Joint precautions include:

- strengthening financial literacy and conducting active and comprehensive communication programs to increase public awareness of illegal loan offers;
- strengthening public education programs to increase prudence in borrowing and safeguarding personal data;
- Strengthening cooperation between authorities and application developers to prevent the spread of illegal loans through applications and mobile phone service providers to disseminate public awareness information on illegal loan offers; and
- prohibit banks, nonbank payment service providers, aggregators, and cooperatives from cooperating or facilitating illegal online loans, and must comply with *Know Your Customer* principles accordingly with applicable laws and regulations

2. Handling public complaints

Actions for handling community complaints are carried out by opening access to public complaints and following up on community complaints in accordance with the authority of each Ministry/Institution and/or reporting to the National Police of the Republic of Indonesia for legal proceedings.

3. Law enforcement



Law enforcement actions include carrying out legal proceedings against illegal borrowers per the authority of each Ministry/Institution and conducting international cooperation in the context of eradicating illegal cross-border loan operations.

The OJK itself has two strategies or preventive steps to fight illegal investment offers that have harmed and disturbed the community, namely as follows:

1. Conducting socialization and education to the public about the characteristics of fundraising activities and illegal investment management Knowledge sharing with law enforcement and regulators in Repressive areas
2. Assist in coordinating efforts between relevant agencies to accelerate the handling process through the cooperation framework of the Task Force for Handling Alleged Unlawful Acts in the Field of Fund Collection and Investment Management, better known as the Investment Alert Task Force.

5. CONCLUSION

Through the description above, the author concludes that OJK as an institution that has the function of organizing a regulatory and supervisory system for all activities in the financial services sector in Indonesia has a very limited role in foreign investment in the field of illegal fintech P2P lending. Because illegal P2P Lending is considered not to be the domain of OJK's authority because there is no registered mark and permission from OJK, it is necessary to play a role with other government agencies that join SWI to make efforts to stop illegal P2P fintech which will later be followed up based on the authority of SWI members. All that OJK can do is preventive efforts in the form of socialization accompanied by education and coordinating efforts between institutions in order to speed up the process of handling those who are members of the SWI.

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