IN-DEPTH

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Fintech Law

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In-Depth: Fintech Law (formerly The Financial Technology Law Review) provides a global overview of the fast-evolving fintech sector. It covers the most salient points of law and practice in each jurisdiction, including key licensing and other regulatory requirements, common business models and digital markets, intellectual property, data protection and much more.

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Indonesia

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Summary

Introduction

In Indonesia, the key regulatory and supervisory bodies are the Financial Services Authority (OJK) and the Central Bank of Indonesia (BI); both play pivotal roles as the primary regulatory bodies in fintech. Regulations governing fintech are administered in an ad-hoc manner. This implies that the businesses within the fintech industry are subject to individual regulation, depending on their specific business activities and the designated regulatory authority overseeing the particular fintech business sector. However, certain segments, such as decentralised finance (DeFi) remain unregulated.

Looking ahead to 2025, OJK is set to supervise and regulate cryptoassets, which is currently overseen by the Commodity Futures Trading Regulatory Agency (Bappebti).

To stay informed about fintech developments, the official website of OJK is open to the public where it also provides information on the list of companies that have obtained the recordation or registration letters from the OJK, which is compulsory to operate fintech business models such as, among others, credit scoring, aggregator, E-KYC and insurance technology under the supervision of the Digital Financial Innovation Department of OJK. In addition, the Indonesia Fintech Association (AFTECH) provides complete information and the latest updates on fintech development in Indonesia through its website.

Despite the fintech industry having substantial growth potential, it has not been granted tax incentives such as tax holidays or tax allowances from the government.

Fintech in Indonesia has a long history and a lot of room to grow, especially with today's digital advances. This growth is important for the fintech sector itself and for attracting new investments. When it comes to how welcoming Indonesia is to fintech businesses, we believe it can be favourable to business entities as long as they remain compliant with the existing regulations. It is imperative for fintech companies to adhere to the established rules and not exploit legal gaps (related to emerging fintech business models) as loopholes for engaging in illegal activities.

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Year in review

The enactment of the Law Number 4 of 2023 regarding Financial Sector Development and Reinforcement (commonly known as P2SK Law) signifies a significant shift in Indonesia's fintech landscape, particularly with the introduction of the OJK's Financial Sector Technological Innovation Compartment. This law mandates the transfer of supervision and management authority of cryptoassets and digital financial assets from Bappebti under the Ministry of Trade (MOT) to OJK.

In the peer-to-peer lending (P2P Lending) sector, it has been more than a year since the issuance of OJK Regulation Number 10 of 2022 regarding Information Technology Based Collective Financing Services (OJK Reg 10/2022) that steps up the supervision, quality control and fairness of P2P Lending business. Based on OJK P2P Lending Roadmap 2023–2028, OJK recently announced its intention to lift the moratorium on accepting licence applications from P2P Lending providers that provide productive loans or financing to small and medium enterprises (SMEs).

In the digital payment sector, BI has established crucial cooperation with central banks of Association of Southeast Asian Nations (ASEAN) countries, allowing Indonesians to use domestic e-money instruments for international digital transactions.

Lastly, the P2SK Law sets out an important provision that will impact Indonesia's fintech sector amid an ongoing 'funding winter'. The new law stipulates that OJK and BI become the parties legally permitted to petition for bankruptcy or suspension of debt payment obligations in relation to entities or companies under their supervision, namely P2P Lending operators and payment services providers, respectively.

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Regulation

i Licensing and marketing

In Indonesia, the operations of fintech businessess are mainly regulated by two governmental authorities, the BI and OJK. The BI is authorised to supervise and issue a payment service fintech business licence (such as e-wallet; remittance, etc.), while the other remaining fintech business licences are issued by OJK. This OJK authority includes the supervision of digital financial innovation (DFI Business), which as of now consists of:

1. Aggregator;
2. Financial Planner;
3. Reg Tech E-Sign;
4. ICS;
5. InsurTech;
6. E-KYC;
7. Online Distress Solution;
8. Financing Agent;
9. Insurance Hub;
10. Funding Agent;
11. Transaction Authentication;
12. Tax and Accounting;
13. Reg Tech PEP; and
14. Wealth Tech.

Based on OJK Regulation Number 13/POJK.02.2018 regarding Digital Financial Innovation in the Financial Services Sector (OJK Reg 13/2018), the DFI Business shall be participated in a regulatory sandbox and recorded in the OJK.

Fintech companies are not required to obtain a standardised licence; rather, they can secure specific permissions tailored to their operational activities, facilitating innovation and expansion within a formal regulatory framework. For example, P2P Lending platforms require approval from the OJK, while payment service providers must obtain licences from the BI. These licences typically entail meeting certain criteria related to capital requirements, corporate governance, information technology, data protection, risk management and consumer protection aspects.

Marketing activities are permissible for fintech businesses that have obtained the mandatory licences, and the marketing activities align with the licences granted. Violation against conducting a fintech business without the mandatory licence may be subject to the criminal sanction of a prison sentence of at least five years and a maximum of 10 years, as well as a fine of at least 1 billion rupiahs and a maximum of 1 trillion rupiahs.[2]

For the establishment and operation of a robo-advisory company, an 'investment adviser' licence is required based on OJK Reg 3/POJK.04/2021 regarding Organisation of Capital Market Activity. This indicates that OJK does not prohibit robo-advisory activities if they have such licences and comply with OJK regulations on investment advisory business activities.

Furthermore, in 2021, robo-advisers were initially categorised within the DFI Business clusters, but they have since been removed from the current DFI Business clusters. Nevertheless, with the enactment of the P2SK Law, robo-advisory activities are now recognised as part of Financial Sector Technological Innovation, specifically for investment management. Consequently, robo-advisory activities should also adhere to the regulatory provisions regarding Financial Sector Technological Innovation.

Credit information activities in Indonesia are directly overseen by OJK, known as SLIK OJK. Customers or debtors (individuals or legal entities) can access their credit information online, by filling in personal information and details. This provision is regulated based on OJK Regulation 8/POJK.03/2017 regarding Reporting and Request for Debtor Information through SLIK OJK and its amendment.

Meanwhile for the credit information services provided by private entities, they may refer to (1) Credit Information Management Agency (LPIP) regulated under OJK Reg 5 of 2022 regarding LPIP; and (2) innovative credit scoring that is included as DFI Business, regulated under OJK Reg 13/2018.

ii Cross-border issues

When considering the entry of foreign financial services institutions into Indonesia's fintech market, two critical factors must be carefully considered. First, to legally conduct operations in Indonesia, the establishment of an entity in Indonesia is imperative. Second, it is essential to ascertain whether the planned product has been regulated in Indonesia. Fintech activities licensed in a foreign jurisdiction cannot be passported into Indonesia without the establishment of an Indonesia entity and must obtain the necessary licences from OJK or BI.

In addition, a foreign fintech business intending to market their products in Indonesia shall also establish a local entity and obtain licences. Failure to do so may lead to classification as illegal fintech.

BI Regulation Number 17/3/PBI/2015 regarding the Obligation to use Rupiah Currency in Republic of Indonesia Territory, stipulates that all transactions within Indonesian territory must be conducted using the rupiah currency. However, exceptions may apply in specific instances, such as (1) certain transactions in the context of implementing the state revenue and expenditure budget; (2) receiving or giving grants from or abroad; (3) international trading; (4) foreign currency deposits at banks; or (5) international financing.

Meanwhile, the limitations of foreign ownership on certain business can be found in President Regulation 49 of 2021 regarding the Investment Business Fields, as well as each specific regulation itself.

Digital identity and onboarding

In Indonesia, digital identity primarily revolves around electronic certificates, as regulated in the Law Number 11 of 2008 regarding Electronic Information and Transaction and its amendments (EIT Law), the Government Regulation Number 71 of 2019 regarding The Organisation of Electronic System and Transaction (GR 71/2019) and Minister of Communication and Informatics (MOCI) Regulation Number 11 of 2022 regarding Governance of the Organisation of Electronic Certification (MOCI Reg 11/2022).

Based on Article 1, Point 9 of the EIT Law, an electronic certificate is a digital document containing a digital signature and identity that shows the legal subject status of the parties in an electronic transaction that is issued by an Electronic Certification Provider.

The Electronic Certification Provider is a trusted legal entity, responsible to provide and audit electronic certificates. Essentially, an Electronic Certification Provider operating in Indonesia must be an Indonesian legal entity and domiciled in Indonesia. However, this requirement is exempted for the organisation of services using an Electronic Certificate, which has yet to be made available in Indonesia. Based on MOCI Reg. 11/2022, an Electronic Certification Provider consists of an Indonesian Electronic Certification Provider and a Foreign Electronic Certification Provider.

As for the use of an Electronic Certificate for electronic transaction, MOCI Reg 11/2022 regulates that the implementation of electronic transaction is mandatory to use Electronic Certificates issued by an Indonesian Electronic Certification Provider. There are no limitations on the type of electronic transactions in which the electronic certificate may be used.

The onboarding process of financial service providers would adhere to the OJK Regulation Number 8 of 2023 regarding Implementation of Anti-Money Laundering, Counter-Terrorist Financing, and Counter-Proliferation Financing of Weapons of Mass Destruction Program in the Financial Services Sector (OJK Reg 8/2023). With regard to the onboarding process, OJK Reg 8/2023 regulates that in initiating business relations with a prospective customer, it is mandatory for a financial services provider to conduct identification and verification.

Further, the verification may be conducted through: (1) face-to-face meeting in person; (2) face-to-face meeting via electronic means; or (3) indirectly via electronic means. Based on the aforementioned, it can be inferred that through the implementation points (2) and (3), the onboarding process of clients may be carried out in a fully digitised manner, as long

as certain requirements are to be fulfilled by the financial services provider, such as the software and hardware used, as well as the utilisation of residency data.

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Digital markets, payment services and funding

The regulations governing digital marketplaces in Indonesia are primarily focused on two categories of regulated digital assets: digital gold and cryptoassets. Digital gold is regulated under Bappebti Regulation Number 4 of 2019 concerning Technical Provisions on the Implementation of Digital Gold Physical Market in Futures Exchange and its amendment.

Cryptoassets are regulated under Bappebti Regulation Number 8 of 2021 regarding Guidelines for Organising Physical Market Trading in Cryptoassets on the Futures

Exchange and its amendment (Bappebti Reg 8/2021). Regulatory authority over the said assets is expected to shift from Bappebti to OJK in 2025, leading to the issuance of new OJK regulations regarding crypto and digital asset marketplaces in the foreseeable future.

Collective investment schemes, known as Collective Investment Contracts (CIC), are regulated under OJK Regulation Number 23/POJK.04/2016 regarding Mutual Funds in the Form of Collective Investment Contracts, and its amendments. However, fintech schemes such as P2P Lending operate under separate regulations.

Equity crowdfunding involves issuers directly selling shares to investors through an open electronic system network. The regulatory framework for equity crowdfunding is outlined in OJK Regulation Number 57/POJK.04/2020 regarding Securities Offerings Through Information Technology-Based Crowdfunding Services, and its amendment. In this matter, an equity crowdfunding must obtain a licence from OJK prior to conducting business activities. The most important provisions regarding equity crowdfunding in this regulation are: (1) foreign ownership is restricted to a maximum of 49 per cent; and (2) the minimum paid-up capital is 2.5 billion rupiahs for local companies or 10 billion rupiahs for foreign investment companies.

Crowdlending refers to P2P Lending in Indonesia, regulated under OJK Reg 10/2022. This regulation introduces comprehensive and stricter provisions for existing licensed P2P Lending providers to comply with, especially concerning operation, management, capitalisation, corporate governance and consumer protection. Additionally, OJK Reg 10/2022 officially defines P2P Lending as Other Financial Service Entities, restricting operation to legal entities in the form of a limited liability company that is eligible to operate the P2P Lending platform.

The following are several key provisions under the OJK Reg 10/2022:

1. Capital Requirement: 25 billion rupiahs that must be met on the date of establishment;[3]
2. Maximum Foreign Ownership: 85 per cent;[4]
3. Lock-Up Period for Change of Shareholding Composition: three years as of the date of issuance of a P2P Lending licence; and
4. Maximum Funding: for each borrower on each P2P Lending platform, 2 billion rupiahs;[5]

Under OJK Reg 10/2022, the P2P Lending company is prohibited from:

1. conducting other business activities;
2. acting as funders or fund recipients;
3. representing funders to conduct funding or provide automatic funding feature;
4. providing access to board of management, and employees and their affiliations to act as funders;
5. providing access to board of management, and shareholders and their affiliations to act as fund recipients;
6. providing guarantees in all forms for the fulfilment of obligations of other parties;

7. issuing debt securities;
8. having loans;
9. providing recommendations to users;
10. publishing any fictitious or misleading information;
11. conducting services offering either directly or indirectly to users or the public through personal communication facilities without approval;
12. imposing fees to users or the public for complaint services; or
13. taking actions that cause or force other financial services institutions under the OJK supervision to violate or evade provisions of laws and regulations.

Until to date, the prevailing regulations do not specifically address invoice trading in Indonesia (including the trading loan from P2P Lending in secondary markets).

BI oversees the payment services models and market conduct, including the licensing process of the following three payment services categories, which are based on the activities that may be conducted by the Payment Service Provider (PSP):[6]

1. Category 1: (1) administration of source of fund; (2) provision of source of fund information; (3) payment initiation or acquiring services; and (4) remittance services;
2. Category 2: (1) provision of source of fund information and (2) payment initiation or acquiring services; and
3. Category 3: (1) remittance services or (2) other activities determined by BI.

It is crucial for investors or companies that aim to apply for a PSP licence to comply with key compulsory aspects and requirements stipulated by BI consisting of: (1) institutional; (2) capital and financial; (3) risk management; and (4) information system capability.

BI Regulation Number 23/6/PBI/2021 concerning Payment Service Providers requires that at least 51 per cent of shares with voting rights must at least be owned by a domestic party, which can either be an Indonesian individual or an Indonesian legal entity.

Open banking is a service that enables the secure sharing of banking and other financial data with third-party banks, services and financial applications. With the issuance of BI Board of Governors Regulation No. 23/15/PADG/2021, which introduced the National Standard for Open Application Programming Interface (API) Payment, or commonly known as the SNAP policy, it establishes a standardised method for Open API Payments, with the goal of guaranteeing its smooth and efficient functioning.

Crypto-based assets are regulated in several Bappebti Regulations (including Bappebti Reg 8/2021). To reiterate, this is because of the transfer of authority from Bappebti to OJK in 2025, leading to the issuance of new OJK regulations regarding this matter in the foreseeable future.

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Cryptocurrencies, initial coin offerings (ICO) and security tokens

Under the current regulatory framework, there is no specific regulation solely dedicated to blockchain technology. However, the term 'blockchain' is referenced in several prevailing regulations. For instance, the Bappebti Reg 8/2021 briefly mentioned 'blockchain' in provisions regarding the storage of the cryptoassets, although no other further provisions details are provided. Furthermore, the MOCI Regulation Number 3 of 2021 (MOCI Reg 3/2021), introduces a business classification code for blockchain activities, categorised under the Indonesian Standard Business Field Classification Number 62014 (Activity of Blockchain Technology Development). In this case, such business activity is under the purview of the MOCI.

In relation to cryptoassets, since 2018, based on the Letter from the Coordinating Minister of the Economy Number S-302/M.EKON/09/2018 regarding Follow-up to the Implementation of the Coordination Meeting on Crypto Asset Regulation as a Commodity Traded on the Futures Exchange, it has remained prohibited to be a payment instrument and it is only allowed to be a commodity to be traded through the futures exchange. This condition is further regulated in the MOT Regulation Number 99 of 2018 regarding General Policies on the Organisation of Crypto Asset Futures Trading, which stipulates that 'cryptoasset' is determined as a commodity that may become a Futures Contract Subject, which may be traded in the Futures Exchange.

The above is also in line with the Law Number 7 of 2011 concerning Currency, which states that the currency of the Republic of Indonesia shall be rupiah. Further, the BI Reg 23/6 has also ascertained that payment service providers are prohibited from using virtual currency in any payment transaction processing. In this case, virtual currency is specified as Bitcoin, Dash, Dogecoin, Litecoin, Peercoin, Primecoin, Ripple and Ven.

Based on the Law Number 8 of 1995 concerning Capital Law and its amendment, securities are marketable securities or investment contracts in both conventional and digital forms or other forms according to technological developments that give the holder the right to receive economic benefits directly or indirectly from the issuer or from certain parties based on agreements, and any derivative of securities, which can be transferred or traded in the Capital Market.

However, despite the board definition of securities, the current regulations in Indonesia restrict cryptoassets to being traded solely as commodities and there has yet to be any regulations qualifying tokens as securities. Thus, tokens do not currently meet the qualification to be considered as securities.

Under the prevailing laws and regulations, there are no specific rules applicable to security tokens.

Under the prevailing laws and regulations, there are no specific provisions that regulate the linkage of tokens and their underlying assets, as well as any regulations governing the issuance of shares or bonds in the form of tokens.

In Indonesia, while cryptocurrencies are prohibited for use as payment instruments, regulations regarding money laundering rules applicable to cryptoassets are in place.

Bappebti Reg 8/2021 has mandated Prospective Crypto Asset Physical Trader or the Crypto Asset Physical Trader to conduct the principle of know your customer through the implementation of customer due diligence (CDD) or enhanced due diligence (EDD). The Bappebti Reg 8/2021 has regulated a specific mechanism for CDD or EDD in the context of cryptoassets' customers onboarding. Additionally, the Bappebti Reg 8/2021 refers to other Bappebti regulations concerning anti-money laundering and counter financing terrorism and proliferation of weapons of mass destruction. These regulations provide comprehensive guidelines on the implementation of anti-money laundering and counter financing terrorism and proliferation of weapons of mass destruction.

With regard to cryptoassets, the Ministry of Finance has issued the Minister of Finance Regulation Number 68/PMK.03/2022 of 2022 regarding Value Added Tax and Income Tax for the Crypto Asset Trading Transaction (MOF Reg 68/2022). Based on Article 2 of the MOF Reg 68/2022, value added tax (VAT) shall be applied for the delivery of: (1) cryptoassets by the cryptoasset seller; (2) provision of electronic facilities used for cryptoasset trading transactions by trading organisers through electronic systems; or (3) verification services for cryptoasset transactions or management services for cryptoasset mining pool groups by cryptoasset miners. As for the VAT rate, it depends on the cryptoasset transaction conducted.

Besides VAT, for every income obtained by the cryptoasset seller, trading organisers through electronic system, or the cryptoasset miner related to the cryptoassets shall be subject to income tax. In this regard, the rate of the income tax varies between the above tax subjects.

Considering that tokens are classified as cryptoassets under the Bappebti Reg 8/2021, it is reasonable to interpret that the provisions in the Bappebti Reg 8/2021 should also apply to tokens. In this regard, based on Article 25 (6) of the Bappebti Reg 8/2021, one of the requirements to be a cryptoassets customer is to have: an Indonesian citizen identity card or passport, an identity card issued by the origin country, as well as a stay permit in Indonesia. Referring to this requirement, it can be inferred that tokens could potentially be offered to foreign citizens residing in Indonesia, given that they meet the eligibility criteria to be a cryptoasset customer.

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Under the prevailing laws and regulations, there are no specific rules applicable to security tokens.

Under the prevailing laws and regulations, there are no specific provisions that regulate the linkage of tokens and their underlying assets, as well as any regulations governing the issuance of shares or bonds in the form of tokens.

In Indonesia, while cryptocurrencies are prohibited for use as payment instruments, regulations regarding money laundering rules applicable to cryptoassets are in place. Bappebti Reg 8/2021 has mandated Prospective Crypto Asset Physical Trader or the Crypto Asset Physical Trader to conduct the principle of know your customer through the implementation of customer due diligence (CDD) or enhanced due diligence (EDD). The Bappebti Reg 8/2021 has regulated a specific mechanism for CDD or EDD in the context of cryptoassets' customers onboarding. Additionally, the Bappebti Reg 8/2021 refers to other Bappebti regulations concerning anti-money laundering and counter financing terrorism and proliferation of weapons of mass destruction. These regulations provide comprehensive guidelines on the implementation of anti-money laundering and counter financing terrorism and proliferation of weapons of mass destruction.

With regard to cryptoassets, the Ministry of Finance has issued the Minister of Finance Regulation Number 68/PMK.03/2022 of 2022 regarding Value Added Tax and Income Tax for the Crypto Asset Trading Transaction (MOF Reg 68/2022). Based on Article 2 of the MOF Reg 68/2022, value added tax (VAT) shall be applied for the delivery of: (1) cryptoassets by the cryptoasset seller; (2) provision of electronic facilities used for cryptoasset trading transactions by trading organisers through electronic systems; or (3) verification services for cryptoasset transactions or management services for cryptoasset mining pool groups by cryptoasset miners. As for the VAT rate, it depends on the cryptoasset transaction conducted.

Besides VAT, for every income obtained by the cryptoasset seller, trading organisers through electronic system, or the cryptoasset miner related to the cryptoassets shall be

subject to income tax. In this regard, the rate of the income tax varies between the above tax subjects.

Considering that tokens are classified as cryptoassets under the Bappebti Reg 8/2021, it is reasonable to interpret that the provisions in the Bappebti Reg 8/2021 should also apply to tokens. In this regard, based on Article 25 (6) of the Bappebti Reg 8/2021, one of the requirements to be a cryptoassets customer is to have: an Indonesian citizen identity card or passport, an identity card issued by the origin country, as well as a stay permit in Indonesia. Referring to this requirement, it can be inferred that tokens could potentially be offered to foreign citizens residing in Indonesia, given that they meet the eligibility criteria to be a cryptoasset customer.

Other new business models

In MOCI Reg 3/2021, a smart contract is included as one of the activities that may be conducted by business entities engaged in the business activity of blockchain technology development. MOCI Reg 3/2021 stipulates that a smart contract is defined as an agreement between two parties in the form of computer code running in a blockchain network stored in a public network and may not be changed.

Further, there is no special legal framework applicable to smart contracts; however, to implement the smart contract, the business entities engaged in the business activity of blockchain technology development must first obtain the applicable business licence. In this regard, the implementation of a smart contract would be under the purview of the MOCI.

As for whether there would be a correction mechanism for the implementation of the smart contract, there is currently no specific regulation addressing this aspect.

Robo-trading activities are regulated under Bappebti Regulation Number 12 of 2022 regarding the Organisation of Deliveries of Information Technology-Based Advice in the Form of Expert Advisor in the Commodity Futures Trading Sector. Pursuant to this regulation, robo-trading activities can only be carried out if the entities involved obtain the Bappebti licence and fulfil certain requirements stipulated under that regulation.

Under the P2SK Law, the use of artificial intelligence for financial products is classified as one of Financial Sector Technological Innovation, specifically in the market support cluster. However, further provisions regarding the Financial Sector Technological Innovation have yet to be enacted. Thus, as of now there has yet to be any special rules applicable to the use of artificial intelligence in financial products. Regardless, in December 2023, the OJK has published a Guide to Responsible and Trustworthy Artificial Intelligence Code of Ethics in the Financial Technology Industry. While this document might not be legally binding, it may be the reference for the use of artificial intelligence in financial products.

Financial Services Aggregator is one of the DFI Business models and clusters under OJK's supervision. It is a web-based platform or application-based platform designed to assist customers in obtaining and filtering information about financial products. It offers features enabling users to search, compare and choose a variety of financial services products listed on the platform from different financial services providers such as banks, finance and P2P Lending companies that partner with the operators.

This platform covers a wide range of financial products, including credit cards, short-term and micro-consumptive loans, housing, automotive finance, productive loans, education loans, bank savings and insurance products. Some Aggregator operators apply innovative features that allow prospective customers to use financial products such as loans directly through the Aggregator platform via API integration or connection between the operators and the financial services companies as partners.

The regulatory framework for Aggregator business activities is still evolving, primarily classified within a regulatory sandbox as per POJK 13/2018, without detailed regulations from OJK. Most Aggregator operators remain in this sandbox phase, awaiting official licensing from OJK. Despite this, the Aggregator shall comply with the Law Number 27 of 2022 regarding personal data protection (the PDP Law).

Earned wage access (EWA) is an emerging employee benefit that provides workers with on-demand access to wages they have earned but have not yet been paid. While work is performed in real-time, wages are typically paid on a predetermined schedule, either weekly, biweekly or monthly, that align with the payday date set out in the relevant employment contract and based on the fixed payroll schedule. EWA bridges this gap by allowing employees to access their earned pay before the traditional, scheduled payday whenever they need it, in exchange for a small fee such as a 'service fee', 'platform fee' or 'administration fee'.

Under OJK Reg 10/2022, use of the term 'economic benefit',[7] which is broad in nature and includes, without limitation, interest and profit sharing opens a possible interpretation of 'economic benefit' to have the service fee, platform fee, administrative fee or similar terms used by EWA providers to generate revenue.

Despite the absence of regulation or guidelines for EWA, it is common for the providers of EWA to extend its solution to the employees of the partnering companies (EWA customers) via mobile applications involving API integration in the implementation. The use of mobile applications in the EWA business process classifies the providers as private electronic system providers, which are required to register their electronic systems with the MOCI through the Online Single Submission (OSS) system.[8]

Indonesia has yet to acknowledge and thus govern DeFi and decentralised autonomous organisations (DAOs).

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Intellectual property and data protection

Based on all prevailing laws and regulations pertaining to intellectual property rights, the primary form of protection relevant to fintech is patent. However, certain requirements must be met for patent eligibility. Based on Article 3 (1) of Law Number 13 of 2016 concerning patent and its amendment, patent is only granted for inventions that are novel, contain an inventive step, and may be applied in industry. In this case, inventions are exempted for rules and methods for conducting business activities, as well as rules and methods that contain only computer programs. Accordingly, fintech business models would not be eligible for patent protection. However, for the related software, should the computer program contain characters (instructions) which have technical effects and functions to produce solutions to problems, whether tangible or intangible, it would constitute an invention that may be patented.

Regarding the invention of a software or a business model by an employee or a contractor, should such software be eligible to be patented, the patent holder for the invention would be the party who provides the work, unless agreed otherwise. Regardless, the actual inventor would be entitled to receive a reward based on an agreement between the employer and the inventor, by taking into account the economic benefits obtained. In that agreement, it is mandatory to contain the method of calculating and determining the amount of the reward.

Under the current regulatory framework regarding data protection, the applicable rules include the PDP Law, EIT Law, GR 71/2019, and MOCI Regulation Number 20 of 2016 regarding Protection of Data in Electronic System.

As for the digital profiling, Article 10 of the PDP Law regulates that the data subject would be entitled to submit an objection to decision-making actions based solely on automatic processing, including profiling, which results in legal consequences or significantly impacts the data subject. Besides the data subject's right, for such profiling, the Personal Data Controller would be obligated to conduct an impact assessment on personal data protection. Further regulations pertaining to the exercise of the right to object and the assessment obligation would be regulated in the government regulation, which has yet to be enacted.

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Outlook and conclusions

The government of Indonesia strives to prove its commitment to support and empower Indonesia's fintech sector by issuing the P2SK Law. This landmark legislation establishes a dedicated compartment within OJK, exclusively and entirely dedicated to supervising and regulate fintech, cryptoassets and digital financial assets.

In the future, this new compartment is expected to provide regulatory clarity and certainty by formulating and issuing implementing regulations on Financial Sector Technological Innovation, especially those that set out practical and comprehensive guidance on the licensing process, as well as governance, risk and compliance (GRC) aspects of the business, which is paramount not only to legitimise various new fintech business models from local operators or international investors seeking to obtain the relevant licences to operate in Indonesia, but also to balance innovation and consumer protection while fostering sustainable business growth for both existing and new players.

Looking ahead, 2024 will be a year that encourages strategic collaboration, innovation and consolidation to strive and thrive in an increasingly competitive market. Purpose-driven innovation will be more important than ever, enabling fintech operators to be meticulous and effective in managing priorities, expenses, initiatives and resources with clarity to carve a path to profitability while forging ecosystem partnerships with local conventional financial services such as banks becomes a necessity to capture tangible opportunities for growth and efficient revenue generation.

Amid the ensuing global economic uncertainty, Indonesia has shown quite a positive performance, recording 5.05 per cent growth in 2023, as per data reported by BPS-Statistics Indonesia. The nation's economic growth remains resilient, and inflation is

on a declining trend, with private consumption anticipated to be the primary driver of growth in 2024.

In light of the above, the authors are optimistic that investor sentiment remains encouragingly bullish for Indonesia's fintech industry and that the country will remain an attractive market in the Asia-Pacific region for the global expansion of foreign investors, especially into the P2P Lending sector and the payment services industry, among other prospective fintech domains.

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Endnotes

1. Dewi Sekar Arum and Chandra Kusuma are partners and Ronald Nataniel and Ninda Maghfira are associates at ARMA Law. Back to section

2. Article 304 of Law No. 4 of 2023. Back to section

3 Article 4 (1) of OJK Reg 10/2022. Back to section

4 Article 3 (4) of OJK Reg 10/2022. Back to section

5 Article 26 (3) of OJK Reg 10/2022. Back to section

6 Article 12 of BI Regulation Number 23/6/PBI/2021 of 2021 concerning Payment Service Providers. Back to section

7 Article 29 (1) of OJK Reg 10/2022. Back to section

8 Article 2 of MOCI Reg 5/2020. Back to section

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