



**TECHNIUM**  
**SOCIAL SCIENCES JOURNAL**

**Vol. 29, 2022**

**A new decade  
for social changes**

[www.techniumscience.com](http://www.techniumscience.com)

ISSN 2668-7798



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## ***Ius Constituendum* foreign fintech investment (post/after) employment law to accelerate Indonesian economic development**

**Saparyanto, Moch. Najib Imanullah**

Universitas Sebelas Maret, Indonesia

[sapar.yanto96@gmail.com](mailto:sapar.yanto96@gmail.com), [imanullahnajib@yahoo.com](mailto:imanullahnajib@yahoo.com)

**Abstract.** Investment is an activity to utilize funds owned by investing in productive projects/joint ventures, either directly or indirectly, with the hope that apart from obtaining initial capital in the future, of course, the owner of the capital will also benefit from the investment concerned. Financial Technology (FinTech) is an alternative solution to meet the public's needs for financial services. This study aimed to explore positive laws governing fintech-based foreign investment, in order to develop futuristic and doelmatigheid law. To achieve this goal, normative legal research is carried out, that makes the system of norms and legal rules as the center of study related to legal events. The data used in the study was secondary data, consisted of primary legal materials containing statutory regulations, and secondary legal materials that were the result of relevant legal research (journals), books, and scientific works on the internet. Literature study was used as a technique in obtaining data, which was then processed by descriptive analysis methods to get conclusions. The results of the study showed that the current fintech regulation in Indonesia is not ideal because there are several legal voids, among which there are no laws and regulations governing business which are the legal protection for the Financial Services Authority (OJK) Regulations and BI Regulations as the implementers. Furthermore, the role of OJK in conducting supervision has not been maximized and there are no firm, clear and comprehensive rules regarding this fintech. Especially about fintech that has foreign capital in it. In addition, the community's legal culture/culture is not familiar yet with fintech-based foreign investment. For this reason, it is recommended to reconstruct the regulation, it is very necessary to increase the public's understanding of fintech-based foreign investment.

**Keywords.** financial technology; foreign investment; ius constituendum; economy; job copyright law

### **Introduction**

Investment is an activity that utilizes existing funds by investing them in productive businesses/projects directly or indirectly[1]. The goal is to get a return on initial capital, the owner of the capital also generates a number of benefits from the investment[2]. Investment is all investment activities sourced from domestic investors and foreign investors to run business in the territory of the Republic of Indonesia.[3]. Investment is part of economic activity[4] Investment is defined as an investment activity carried out by investors, both foreign investors and domestic investors in various business fields that are open for investment, the aim

is to get a profit.[5]. Investment consists of two types, namely domestic investment and foreign investment[6]. Foreign investment source of financing comes from foreign financing[7]. Meanwhile, domestic investment is financed from domestic financing. Investment is used for the development of a business that is open to investment and the goal is to make a profit[8].

Based on the history, the existence of foreign investment in Indonesia is not a new thing, because foreign capital has been presented in Indonesia since ancient time[9]. The purpose of foreign investment in ancient times was only for the benefit of the colonialists not intended for the welfare of the Indonesian nation, therefore, the existence of foreign investment in ancient time was different from independence.[9], because foreign investment is currently intended for the progress and welfare of the Indonesian nation and state. Investment is part of the implementation of the national economy that encourages national economic growth, creates jobs, encourages sustainable economic development, increases national capacity and technology, and improves the national economy. The realization of common interests in a competitive economic system in certain sectors as an effort to advance development[10].

Investments that are channeled properly will add economic value through economic growth[11]. The development of globalization has made Indonesia a target country and opened up employment opportunities in the country, which can increase the income of the population, which has an impact on Indonesia's welfare in terms of gross domestic product (GDP).[12]. Furthermore, in the current digital era, the rapid development of science and technology has influenced human behavior pattern in accessing various information and electronic service functions.[13]. Lifestyle changes in all fields including society, culture, and economy. The development of information technology was first marked by the development of internet technology.[14]. The existence of this internet technology provides various kinds of sophistication in all areas of human life, facilitating all forms of business and human activities.[15].

The 2008 global financial crisis has shaken public confidence in the formal financial system. The case urges the authorities to respond by strengthening the regulatory system of financial institutions. In this case, the combination of the two creates a large funding gap. With these conditions, a financial technology company (FinTech) was born as an alternative solution to meet the public's need for financial services.[16]. In addition, this financial technology consists of companies that use technology to increase the efficiency of the financial system and provide financial services. Fintech is defined as technological innovation in financial services that through creative ideas and technological innovation can create business models, applications, processes or products that have a significant impact on the provision of financial services. Remittance, finance, intermediary and investment[16].

*Fintech* is a combination of financial services and technology that transforms an ordinary business into a modern business[17]. Fintech is a new form of applying information technology to finance, first introduced in the UK in 2005 by Zopa, a financial institution that operates money lending services[18]. Then, in 2008, the Bitcoin software developed by Satoshi Nakamoto introduced a new financial model. From a historical perspective, the core concept of developing financial technology is inseparable from the peer-to-peer (P2P) concept previously used by Napster to share music software and Bitcoin in 1999. Developed by Satoshi Nakamoto in 2008[19].

Historically, the core concept of FinTech development has been inseparable from the peer-to-peer (P2P) concept that Napster used to share music in 1999[19]. In Indonesia, FinTech was first recognized in September 2015 since the establishment of the Indonesian FinTech Association[20]. This association aims to provide a trusted and reliable business partner to build

the FinTech ecosystem in Indonesia. FinTech Indonesia began to grow rapidly and became famous from 2016 to 2017. The pioneer in Indonesia's FinTech development is GoJek (an Indonesian technology company that provides motorcycle taxi transportation), which was founded in 2010 and gained fame four to five years after GoJek was founded. With the establishment of GoJek, many other companies have adopted FinTech as their corporate foundation, and like many countries in the world, FinTech has become a common concern in Indonesia. Fintech companies are also increasing every year, and the number is increasing compared to the previous year. This will provide a new law that will enable governments and stakeholders, particularly financial institutions and legislators, to provide a foundation for fintech companies to do business in various banking sectors, taking into account the protection of customers and the country itself. The types of FinTech in Indonesia are crowdfunding, microfinance, digital payment systems, e-aggregators, and P2P lending[21].

Information technology-based lending and borrowing services are further regulated in the Financial Services Authority Regulation Number 77 of 2016 on information technology-based lending and borrowing services. Information Technology-Based Lending and Borrowing Services is provided by Indonesian legal entities that provide, manage, and provide information technology-based lending and borrowing services[22].

Fintech also refers to Bank Indonesia Regulation Number 18/40/PBI/2016 concerning Implementation of Payment Transaction Processing, Bank Indonesia Circular Letter Number 18/22/DKSP on Implementation of Digital Financial Services and Bank Indonesia Regulation Number 18/17/PBI concerning Electronic Money. Fintech, of course, must fulfill the general provisions regarding the agreement contained in Article 1313 and Article 1338 of the Civil Code, as well as the legal requirements in Article 1320. The parties can enter into an agreement using the principle of freedom of contract, meaning that the law of the agreement provides the widest possible freedom. The extent to which the parties enter into an agreement containing anything, provided that or as long as the agreement does not violate the law, public order and morality. Bank Indonesia Circular Letter Number 18/22/DKSP regarding the Implementation of Digital Financial Services and Bank Indonesia Regulation Number 18/17/PBI on Electronic Money. Fintech, of course, must fulfill the general provisions regarding the agreement contained in Article 1313 and Article 1338 of the Civil Code, as well as the legal requirements in Article 1320. The parties can enter into an agreement using the principle of freedom of contract, meaning that the law of the agreement provides the widest possible freedom. the extent to which the parties enter into an agreement containing anything, provided that or as long as the agreement does not violate the law, public order and morality. Bank Indonesia Circular Letter Number 18/22/DKSP regarding the Implementation of Digital Financial Services and Bank Indonesia Regulation Number 18/17/PBI on Electronic Money. Fintech, of course, must fulfill the general provisions regarding the agreement contained in Article 1313 and Article 1338 of the Civil Code, as well as the legal requirements in Article 1320. The parties can enter into an agreement using the principle of freedom of contract, meaning that the law of the agreement provides the widest possible freedom. the extent to which the parties enter into an agreement containing anything, provided that or as long as the agreement does not violate the law, public order and morality.[23].

Regulation and supervision are very important for the sustainability of Fintech in Indonesia. Because the implementation of Fintech development contains potential risks related to consumer protection, financial system stability, payment systems, and economic stability, due to legitimacy in running a business.[24]. The purpose of OJK regulation and supervision is to mitigate these risks and support sustainable and stable economic growth.

Supervision of this fintech must receive serious attention, especially with regard to products and legal protection, because the financial services offered by this fintech are online-based and there is no clarity regarding who is related to the parties who enter into cooperation agreements through fintech.[25]. In addition, the position of the organizer in fintech is unclear because it is only a liaison that brings together the parties concerned, while the agreement clause remains in the agreement of both parties whose material and formal requirements have been determined by laws and regulations.[26]. Based on this background, the problem statement is the ideal setting for foreign investment in Financial Technology in the economic system in Indonesia after the issuance of Law Number 11 of 2020 on Job Creation so that the arrangement can provide benefits (doelmatigheid)

### **Research method**

The type of research used in this research was normative research, which made the system of norms and legal rules as the center of study related to legal events. The data used in the research was secondary data, consisting of primary legal materials containing statutory regulations, and secondary legal materials resulting from relevant legal research (journals), books, and scientific works on the internet. Literature study was used as a technique in obtaining data, which was then processed by descriptive analysis method to get conclusions.[27].

### **Discussion**

The ideal arrangement for foreign investment in Financial Technology in the economic system in Indonesia after the issuance of Law Number 11 of 2020 concerning Job Creation.

The ideal arrangement is to make a law on business in Indonesia, so that this law will become the legal protection for business activities specifically for businesses that use technology, such as fintech. Thus, the existence of this legal protection becomes the basis for fintech's special business activities to make derivative regulations.

### **The rule of law is the basis for regulating and supervising Fintech businesses in Indonesia.**

This section aims to lay the groundwork for understanding fintech that requires ideal regulations, controls, and mechanisms, especially after Law Number 11 of 2020 concerning job creation was promulgated in 2020, and it should be understood that Article 1 Paragraph (3) of the Law The Constitution of the Republic of Indonesia states that "Indonesia is a state of law".[28]. In this modern era, the rule of law is a very relevant and ideal concept if the entire series of state activities is based on a clear and firm legal mechanism.[29].

Law is a regulation made by the Government (Legislative and Executive) and/or custom that applies to all people in society, embodied in laws and regulations to regulate the social life of a community as a guide.[30]. Law does not exist in an empty state and deals with the abstract, but law deals with a dynamic society.[31]. Laws are formed by several non-legal factors, such as economic, racial, gender, or political interests by relying on interactions and negotiations between various community groups, as is the case with laws regarding fintech which were formed due to economic factors, namely the need for easy and fast financial services. so that it requires a sense of security for the ease and speed of these financial services, a law regarding fintech is formed[32].

The theory used to analyze the regulation and supervision of Fintech is the legal system theory of Lawrence M. Friedman. The legal system has three elements: structure, content, and legal culture.[33].

Departing from Jimly Asshiddiqie's view[34], The correlation between the concept of the rule of law and the legal system proposed by Lawrence M. Friedman is very relevant, because the rule of law requires a legal system to achieve the goal of the rule of law. To achieve the goal of the rule of law in Indonesia, which is to protect the bloodshed of all Indonesian people and all of Indonesia, written and unwritten rules, both substantive law and formal law, are needed. The existence of a legal system, a law enforcement system, and the need for a legal culture with an emphasis on culture in general, customs, opinions, actions and ways of thinking that guide the social strength of the community.

### **Fintech Business Regulation and Supervision in Indonesia**

The first fintech regulation in Indonesia was in 2016, this rule was ratified by the OJK. OJK issues regulations based on Law Number 21 of 2011 concerning the Financial Services Authority, which states that Article 5 “OJK implements an integrated regulatory and supervisory system for all activities of the Financial Services Authority. This article stipulates that OJK regulates and supervises all activities of the financial services sector, including fintech. OJK is an independent government institution with the authority to regulate and supervise financial service institutions so that it plays a role in the development of fintech.[35]. Then in 2018 OJK re-issued regulations, namely the Financial Services Authority Regulation of the Republic of Indonesia Number 13 /POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector. This regulation was formed with the aim of implementing Digital Financial Innovation in a responsible manner, and also regulates the types of fintech into seven types, namely; Transaction Settlement, Capital Raising, Investment Management, Fundraising and Distribution, Insurance, Market Support, other digital financial support, and other financial service activities.[36]

Classified according to the legality of their form and operations, in Indonesia there are two groups: legal fintech, which means registered and supervised by the Financial Services Authority, and illegal fintech, which means there is only a fintech business model. fintech is not registered and not regulated by the Financial Services Authority. This is in accordance with what was reported by the Main Investigator of the OJK Strategic Policy Department[37], in the work entitled “Introduction to fintech”, fintech in Indonesia is divided into two categories, namely financial service fintech, such as banking, capital market, or non-banking financial industry. This type of fintech is subject to banking, capital market, or non-banking financial industry (IKNB) laws and regulations. B) Fintech 3.0 is a fintech developed by a start-up. The description of the development of this type of fintech shows that fintech from 2016 to 2018 has developed a lot. The more advanced the development of technology and the wider use of technology in people's lives, the government needs to be active in making, adjusting, and supervising the implementation of applicable regulations. However, the development of these types of fintech is not matched by the development of regulations regarding these types of fintech. These types of fintech need to be specifically regulated based on their types.

The implementation of OJK's supervision of fintech has not been able to run optimally because the supervision is only carried out at the pre-operational stage of the business due to regulatory obstacles and supervisory infrastructure. Therefore, it is necessary to conduct intensive studies and discussions between OJK and related parties in order to optimize OJK supervision of fintech companies in Indonesia.[38].

### **Conclusion**

From this explanation, it can be concluded that the current fintech regulation in Indonesia is not ideal because there are several legal vacancies, including there are no laws and regulations governing business which are the legal umbrella for the Financial Services Authority Regulation and Bank Indonesia Regulation as the implementer. Furthermore, the role of the OJK in conducting supervision has not been maximized and there is no firm, clear and comprehensive rules regarding this fintech, especially regarding fintech that has foreign capital in it.

### **Suggestion**

1. From the recommendations of the study that have been described, it can be suggested that there is a need for laws and regulations that regulate business activities so that they can become a legal protection for the regulations of the financial services authority and Bank Indonesia as the implementer of these regulations.
2. It is necessary to conduct a comprehensive study involving stakeholders, namely the Government, POJK and or related parties (Business Associations) to regulate regulations regarding this fintech, especially regarding fintech in which there are foreign investors.

### **Acknowledgment**

Appreciation to the Financial Services Authority (OJK) for contributing to this research study.

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