

# INDONESIA FINANCIAL TECHNOLOGY REGULATION FROM THE PERSPECTIVE OF LEGAL PROTECTION

## REGULAMENTO DA TECNOLOGIA FINANCEIRA DA INDONÉSIA SOB A PERSPECTIVA DA PROTEÇÃO LEGAL

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**Abstract:** In the last three years, many companies have used technology. The financial technology industry is developing based on public trust. People use the financial technology industry as a means of investing. Legal facts state that there are limited regulations governing the financial technology industry, and empirical facts show that the community receives many losses. This paper aims to find answers to whether financial technology regulation in Indonesia can provide legal protection for the community. This research is normative. The study results indicate that the existing rules have many weaknesses in normalising legal protection for the community. It takes goodwill from law enforcers to realise not only the values of legal certainty but also the values of practicality and justice.

**Keywords:** Law. Medical Error. Hospital. Liability.

**Resumo:** Nos últimos três anos, muitas empresas usaram a tecnologia. A indústria de tecnologia financeira está se desenvolvendo com base na confiança do público. As pessoas usam o setor de tecnologia financeira como meio de investimento. Os fatos jurídicos afirmam que existem regulamentos limitados que regem o setor de tecnologia financeira, e os fatos empíricos mostram que a comunidade recebe muitas perdas. Este artigo tem como objetivo encontrar respostas para saber se a regulamentação da tecnologia financeira na Indonésia pode fornecer proteção legal para a comunidade. Esta pesquisa é normativa. Os resultados do estudo indicam que as regras existentes têm muitas deficiências na normalização da proteção legal para a comunidade. É preciso boa vontade dos aplicadores da lei para realizar não apenas os valores da segurança jurídica, mas também os valores da praticidade e da justiça.

**Palavras-chave:** Direito. Erro Médico. Hospital. Responsabilidade.

## 1. Introduction

Information technology is a hallmark of today's modern era. Information technology has the meaning of a technology related to processing data into information and the process of distributing data/information within the boundaries of space and time (R, Eko Indrajit, 2000). Alvin Toffler, a futurologist born in the United States in 1926, predicted the main characteristics of civilisation in 3 stages. These characteristics can be seen and proven, in fact, at this time. Society is divided into three waves. The first wave is in the range from 8000 BC to around 1700. The second wave is in the field from 1700 to 1970.

The third wave occurs in the range of 1970 and so on is a third wave situation. The first wave was marked by agrarian civilisation and the use of renewable energy. The emergence of the industrial revolution marked the second wave. The presence of information technology characterises the third wave. This civilisation is characterised by advances in communication and information technology (data processing). This situation shows the transformation of society from an industrial society to an information society. There is a speed of information flow that cannot be limited. There are so many flows of information that it has both good and bad effects. The good influence of the vital data flow is the more useful human life. The harmful impact of advances in information technology is the use of information technology for activities that are detrimental to society. The influence of information technology is mainly found in the economic field, especially in the financial sector. The term that often appears is financial technology. The definition of financial technology is an innovation in the financial services industry that utilises technology. Fintech products are usually in the form of a system built to carry out specific financial transaction mechanisms. (OJK, 2022). Examples of information technology in practice include online investment, peer-to-peer lending, online banking mechanisms, market places. Financial technology positively affects the speed of movement of economic activity.

On the other hand, many uses of financial technology are detrimental to Indonesia's people. This can be proven by the cases of illegal commodity futures trading platforms (liputan6.com, 2022), Binomo cases (Sindonews.com, 2022), and online borrowing and borrowing cases (bbc.com, 2022). Various issues regarding the vital flow of information technology in economic activity resulted in losses for the community. The losses experienced are not only in the form of money but also losses from the psychological aspect. State intervention in the form of regulation must be carried out. The role of the State through these regulations is the embodiment of the objectives of the Law. Law that has the Value of legal certainty

(Santoso, H. 2021), justice and expediency, as stated by Gustaf Radbruch (Borowski, Martin, 2021). Based on this, the legal issue proposed is whether financial technology regulation in Indonesia can provide legal protection for the community? This paper aims to find answers to whether financial technology regulation in Indonesia can give legal protection to the community.

## **2. Research Methods**

This research is normative juridical (Andika PP and Mohamad Z, 2019), namely analysis that uses secondary data; primary data is not used in this study. The research approach used is a regulatory approach and a conceptual approach. This study uses secondary data. What is meant by Secondary data) consists of primary and secondary legal materials ((Lego Karjoko et al., 2020). The steps in conducting data analysis are that data are collected, separated, presented, and analysed. The analysis technique is the qualitative analysis technique (Mustapha, Z et al. 1, 2021) Deductive reasoning method is used in concluding.

## **3. Results and Discussion**

There are types of economic activities that use information technology as a medium in their legal relationship. Examples of economic activities that use information technology include information technology-based lending and borrowing/fintech lending/peer-to-peer lending/online lending, Binary Options and crypto-asset trading,

Information technology-based money lending(financial technology) provides financial services to bring lenders/lenders with loan recipients/borrowers to enter into lending and borrowing agreements in rupiah currency directly through an electronic system. Fintech lending is also known as Technology-Based Borrowing and Borrowing Services. Trade with the Binary Options platform. A binary option meant by an option is a way to participate in financial services trading without owning a real portfolio asset (derivative transaction), namely by guessing the price changes of a portfolio asset. Binomo is a trading platform that can make money by increasing or decreasing foreign exchange (forex) exchange rates, stock prices, cryptocurrencies, and commodities. Binomo is a platform for binary options trading (binary options trading). In Binary Options, traders are asked to predict or guess the price of an instrument will increase or decrease within a certain period. No assets are traded on binary options. Crypto Asset Investment. Crypto assets are commodities that can be changed in Indonesia. Government

determines the List of Crypto Assets that can be traded. Indonesia. Commodity Futures Trading Supervisory Agency Regulation Number 7 of 2020. The Financial Services Authority prohibits Financial Services Institutions from using, marketing, or facilitating crypto assets. It is because crypto assets are not products of financial service institutions. Crypto assets are also not allowed as a means of payment because they are against the Indonesian Currency Act.

There are negative consequences to the development of economic activity using the information technology media, so the intervention of the State is needed in providing legal protection to the community. Several examples of how Law is required to regulate economic activity. Those statements as suggested by Punj A (Punj, A., 2018) and Hardy, T., & McCrystal, S (Hardy, T., & McCrystal, S., 2022).

The Concept of how understanding from the economic aspect will help the accuracy of decisions in the field of Law was also put forward by Sophie Stoyan (Stoyan, Sophie, 2020). As Adam Smith said, the Law is closely related to economics (Paul G. Mahoney, 2017). Economic activity, the main activity supporting human life, actually creates injustice for some people. Communities that experience injustice or losses from economic activities need the role of the State. The State's role is to protect the community. As John Locke said that humans from birth have the right to get protection (Bailey J., Thorseth M, 2017), then it is the obligation of the State through institutions to be able to provide legal protection to the community.

The existing regulations regulate several matters in the relationship between economic actors who use information technology. Regulations related to financial technology take the form of laws, government regulations and regulations issued by Bank Indonesia and the Financial Services Authority. In this paper, discussed and analyzed are the regulations issued by the Financial Services Authority and Bank Indonesia. Regulations issued by the Financial Services Authority include the Regulation of the Financial Services Authority of the Republic of Indonesia Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services. Financial Services Authority Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector. Financial Services Authority Regulation Number 16/POJK.04/2021 concerning Amendments to Financial Services Authority Regulation Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services. Financial Services Authority Regulation Number 6/POJK.07/2022 Concerning Consumer and Public Protection in the Financial Services Sector. Financial Services Authority Regulation Number 12/POJK.03/2021 concerning Commercial Banks. Financial Services Authority Regulation Number 13/POJK.03/2021 concerning

Implementation of Commercial Bank Products. Financial Services Authority Regulation Number 12/POJK.03/2018 concerning Implementation of Digital Banking Services by Commercial Banks Financial Services Authority Regulation Number 21/POJK.04/2021 concerning Marketing Partners, Securities Brokers. Regulations issued by Bank Indonesia include Bank Indonesia Regulation Number 14/23/PBI/2012 concerning Fund Transfers. Bank Indonesia Regulation Number 19/8/PBI/2017 concerning National Payment Gates. Bank Indonesia Regulation Number 19/10/PBI/ 2017 concerning Implementation of Anti-Money Laundering and Prevention of Terrorism Financing for Non-Bank Payment System Service Providers and Non-Bank Foreign Exchange Business Activity Operators. Bank Indonesia Regulation Number 18/9/PBI/2016 concerning Regulation and Supervision of the Payment System and Management of Rupiah Currency. Bank Indonesia Regulation Number 22/23/PBI/2020 concerning Payment Systems. Bank Indonesia Regulation Number 23/6/PBI/2021 concerning Payment Service Providers. Bank Indonesia Regulation Number 23/7/2021 concerning Payment System Infrastructure Providers. Bank Indonesia Regulation Number 22/20/PBI/2020 concerning Bank Indonesia Consumer Protection.

Regulation of Financial Technologies in the perspective of Gustaf Radbruch's thinking can be studied that Law is considered valid if it fulfils or contains these three values in the Law. The Value of justice in Law is related to philosophical aspects, which can be interpreted as the desired Value in the legislation. Gustaf Radbruch's ConceptConcept is an opinion of Immanuel Kant's argument. Immanuel Kant said that life consists of two fields: the field of facts (das Sein) and the area of ought (das sollen). Gustaf Radbruch argues that the cultural element is a field that can link the location of facts and the supposed part (Adjie Samekto, 2015). This opinion is supported by another argument, which says that culture is considered an embodiment of values in the realm of facts. Culture is regarded as an element that can connect the domain of facts and the supposed retreat.

Thus further, Gustav Radbruch argues that culture is an element that can connect aspects of facts and details that should be because culture is the embodiment of components of values that exist in what should be in the realm of points in the form of human behaviour and regulations. It becomes clear that culture is the link between what should be and what is in the domain of fact. The existing laws or rules embody and implement community values, including the importance of justice. Thus the existing Law is a law which is the embodiment of the matter of justice. Based on this, when the Law is implemented, its implementation must not conflict with the ValueValue of justice embodied in it. Based on this thought, the Law, both in its making

and in its execution, must be able to realise values, especially the importance of justice. It means that the Law is the embodiment of the values of goodness in society.

As a consequence, abstract values of justice will be realised by legal norms. The Value of legal certainty is related to the juridical aspect of the Law. Legal certainty has two meanings (Peter Mahmud, 2015). First, legal certainty implies the existence of general rules, which will make individuals know whether an act may or may not be done. Second, legal certainty guarantees legal security owned by individuals who have arbitrary actions from the government. It is due to the existence of general rules that serve as guidelines for the government regarding what can be done to individuals. This second understanding can be studied by two parties, namely the individual party and the government party, making general rules a standard guideline. It is also said that legal certainty is related to articles in Law and consistency between the decisions of one judge and the decisions of other judges. It can also be added that legal certainty is the consistency of the implementation of the provisions of the contents of the laws and regulations, either through judges' decisions or the consistency of actions taken with existing rules. Legal certainty can also be interpreted if there are new regulations, then the new regulations should not cause problems because they conflict with previous rules and are still in effect. The Value of legal certainty must exist as one of the values in Law. James R Maxineir (James R Maxineir, 2010) emphasised the conditions for legal certainty: First, the Law and decisions related to the Law must be determined by the community. It means that if there is a regulation, the decision to issue the ordinance is approved by the people or parties who are given the authority to represent it. Second, court decisions must be binding.

The three contents of the Law must regulate a certain thing. It can be interpreted that the provisions in the Law should not cause debate. Fourth, there are restrictions on the retroactive validity of a law. This opinion shows that the criticism is directed at legal positivism. Legal positivism only prioritises legal certainty and cannot be justified. Gustaf Radbruch said that the Law must contain three values. There is the Value of justice, The Value of confidence and the Benefit value. The Value of justice is one of the values in the Law. To be called Law, the Law must also contain the Value of justice. It implies that positive Law does not only require the Value of legal certainty.

Problematic Legal protection for people using financial technology. Legal protection guarantees the implementation of rights and obligations (Jimly Asshiddiqie and M. Ali Safa'at, 2006). According to Philipus H Jhon (Philipus H. John, 2010), types of legal protection can be



divided into Preventive Legal Protection and Repressive Legal Protection. Preventive legal protection is a legal protection that is given by filing an objection or opinion before a government decision gets a definitive form. Repressive legal protection is legal protection aimed at resolving disputes. It can be studied that the division of the types of legal protection based on the terminology before and after a statutory regulation has superior legal force. Concerning protection for the public as users of financial technology, the types of legal protection for users of financial technology can be divided based on that division. Legal protection before the community suffers a loss and legal protection after a loss occurs. Legal protection before the community suffers a loss is often referred to as preventive or implicit legal protection. It is often also called indirect legal protection for people entrusted with financial technology as a medium for economic activity. Society should be given legal protection. It means that the public, as users of financial technology, must be given legal protection against the negative consequences of using financial technology. The State must provide legal protection for the community through regulations regulating how financial institutions or financial technology providers carry out their business activities. Based on the first category of legal protection, in Indonesia, some arrangements protect the community before a conflict occurs. In the Concept of implicit legal protection, the State establishes regulations through various institutions related to financial technology activities. Among other things, these regulations are issued in the form of laws and other regulations. Regulations in the form of laws, namely Law No. 11 of 2008 as amended by Law No. 19 of 2019 concerning the Law on Information and Electronic Transactions. Government Regulation No. 80 of 2019 also covers Trading through Electronic Systems (PMSE). Other regulations are issued by Bank Indonesia and the Financial Services Authority. Regulations related to financial technology take the form of laws, government regulations and regulations issued by Bank Indonesia and the Financial Services Authority. In this paper, discussed and analyzed are the regulations issued by the Financial Services Authority and Bank Indonesia. Regulations issued by the Financial Services Authority include the Regulation of the Financial Services Authority of the Republic of Indonesia Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services. Financial Services Authority Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector. Financial Services Authority Regulation Number 16/POJK.04/2021 concerning Amendments to Financial Services Authority Regulation Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services. Financial Services Authority Regulation Number 6/POJK.07/2022 Concerning Consumer and Public

Protection in the Financial Services Sector. Financial Services Authority Regulation Number 12/POJK.03/2021 concerning Commercial Banks. Financial Services Authority Regulation Number 13/POJK.03/2021 concerning Implementation of Commercial Bank Products. Financial Services Authority Regulation Number 12/POJK.03/2018 concerning Implementation of Digital Banking Services by Commercial Banks Financial Services Authority Regulation Number 21/POJK.04/2021 concerning Marketing Partners, Securities Brokers. Regulations issued by Bank Indonesia include Bank Indonesia Regulation Number 14/23/PBI/2012 concerning Fund Transfers. Bank Indonesia Regulation Number 19/8/PBI/2017 concerning National Payment Gates. Bank Indonesia Regulation Number 19/10/PBI/ 2017 concerning Implementation of Anti-Money Laundering and Prevention of Terrorism Financing for Non-Bank Payment System Service Providers and Non-Bank Foreign Exchange Business Activity Operators. Bank Indonesia Regulation Number 18/9/PBI/2016 concerning Regulation and Supervision of the Payment System and Management of Rupiah Currency. Bank Indonesia Regulation Number 22/23/PBI/2020 concerning Payment Systems. Bank Indonesia Regulation Number 23/6/PBI/2021 concerning Payment Service Providers. Bank Indonesia Regulation Number 23/7/2021 concerning Payment System Infrastructure Providers. Bank Indonesia Regulation Number 22/20/PBI/2020 concerning Bank Indonesia Consumer Protection.

Bank Indonesia and the Financial Services Authority are two institutions directly related to this financial technology's use. Bank Indonesia is the monetary authority in the field of payment systems in Indonesia. Based on this, companies related to financial technology in their business activities must comply with the provisions stipulated by Bank Indonesia. The Financial Services Authority is an Authority that has the authority to regulate and supervise financial institutions in Indonesia. The Financial Services Authority has the authority to regulate and supervise micro-prudential for banking institutions. The authority to regulate and supervise macroprudential for banking institutions is under the authority of Bank Indonesia. As a juridical consequence, the Financial Services Authority has the authority to regulate the business activities of financial institutions related to financial technology. Financial institutions under the Financial Services Authority must comply with existing regulations if they carry out business activities related to financial technology. Regulations issued by Bank Indonesia as the payment system authority and the Financial Services Authority as the authority for financial institutions are a form of implicit legal protection. for financial technology providers and institutions, using financial technology is very important in realizing preventive legal protection. Explicit legal protection is a form of legal protection after a conflict occurs. It is often referred to as explicit



legal protection, indirect legal protection or repressive legal protection. There are situations where financial technology used as a medium for business activities is used by parties with bad intentions, resulting in losses for the community. This explicit protection refers to the efforts the community can make as users in the event of a loss. Settlement of disputes between the community and financial institutions after this conflict can be resolved through non-litigation and litigation mechanisms. In the non-litigation settlement mechanism, the Financial Services Authority provides a mechanism for resolving disputes between the public and financial institutions. The basis for the settlement is Financial Services Authority Regulation Number 6/POJK.07/2022 Concerning Consumer and Public Protection in the Financial Services Sector. The regulation stipulates a policy on dispute resolution mechanisms in the financial services sector through 2 (two) stages, namely: the first stage through the Internal Dispute Resolution (IDR) and the second stage through the External Dispute Resolution (EDR). Other regulations are also related to explicit legal protection, namely Financial Services Authority Regulation Number 6/POJK.07/2022 Concerning Consumer and Public Protection in the Financial Services Sector. The regulation of disputes in other financial services sectors is also regulated in the Regulation of the Financial Services Authority of the Republic of Indonesia Number 61/POJK.07/2020 concerning Alternative Institutions for Settlement of Financial Services Sector Disputes. If the dispute resolution at the LJK does not reach an agreement, the consumer can settle the dispute out of court or through the court. Out-of-court dispute resolution is carried out through the Alternative Dispute Resolution Institution . Explicit legal protection other than non-litigation is through the litigation mechanism. The litigation mechanism implies that acts committed by parties with bad intentions often cannot be qualified and resolved by non-litigation. The problem with legal protection is that, in practice, conflicts between the community and financial institutions that use financial technology face the problem of the weak position of the community from a civil perspective. It is because crimes related to financial technology occur, and not all of them can be qualified in the elements of achievement in the Civil Code. Another reason is the lack of technical knowledge and so on. On the other hand, the community experienced material and non-material losses. Although the form of explicit legal protection in resolving conflicts between the community and financial institutions has many weaknesses. Therefore the role of law enforcement in implementing the rules in the Criminal Code is a step that must be taken if civil efforts hinder the goal of realising the value of justice and benefits in addition to the Value of legal certainty, as stated by Gustaf Radbruch.

#### **4. Conclusion**

In Indonesia, there are regulations governing financial technology. These regulations are in the form of laws and regulations issued by Bank Indonesia as the payment system authority, as well as by the Financial Services Authority, which has the task and authority to regulate financial institutions in Indonesia. The entire regulation regarding financial technology manifests both preventive and repressive legal protection. The legal problem is that in society, there are limited formalities required by civil law, making it challenging to achieve legal goals to realize the Value of justice, benefit and legal certainty.

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