

PRINCIPLE 5 C IN THE PRACTICE OF PEER TO PEER LENDING (P2P) FINANCIAL TECHNOLOGY IN THE PERSPECTIVE OF BUSINESS ETHICS AND ISLAMIC JUSTICE

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Abstract

Non-bank financial service actors in the era of the COVID-19 pandemic made a breakthrough by creating fintech (Financial technology) through the development of Peer Peer Lending (P2P) or online loans. The purpose of this study is to analyze the implementation of 5C principles in the practice of peer-to-peer lending Fintech based on a review of Islamic business ethics. The method used in this research is a normative juridical approach with a descriptive research approach. The data that has been obtained will be arranged systematically for further qualitative analysis. This study concludes that principles and business ethics must be considered with the concept of "The Five C's Principle of Credit Analysis" in either conventional or sharia systems. In the case of customers who choose a sharia online loan system, they must also pay attention to the ethical aspects of financial business in Islam, which is something that must be considered considering that in Islam, ethical issues are related to the determination of economic policies that will affect the halalness of service and the agreement of the parties.

Keywords: Business Ethics; Credit Analysis; Five C's Principle; Loans; Fintech.

1. INTRODUCTION

Along with the progress of the times, technology has changed human lifestyles. Almost all sectors of human life present technology to facilitate human needs; even technology has been included in economic activity on a local, regional, and global scale. To meet today's financial requirements, the Government seeks to grow the investment climate by facilitating all investments and licensing. This, of course, has positive and negative impacts, as is the case with the online lending business, which is overgrowing today.¹ The existence of an online loan model has attracted the public's attention to make loans because of the conveniences offered. Many motivations were born from this online loan act, but the fact is that online loans have left a legal problem with many

¹ Hartanto, Aris Sudarmono. 2020, Omnibus Law Between Justice and Benefits, the 6th Proceeding International Conference and Call Paper Sultan Agung Islamic University. Pg. 10. Dalam Samsul Bahri, Hartanto, 2021, Peminjaman Dana Secara Online Ditinjau Dari Perspektif Perlindungan Konsumen, Jurnal Yuridis, Vol. 8 No. 1, Juni, Pg. 167

victims. Borrowing and borrowing as part of a civil relationship practice can turn to criminal cases and even position customers as mistreated parties.

The urge for financial needs, especially during the COVID-19 pandemic and post-community economic instability, has motivated potential customers to make loans that will provide convenience and certainty in disbursement. And the online loan offer is quite promising in terms of comfort and confidence. From the perspective of business actors in the financial sector, they perceive the community's needs as a market share that will provide benefits for financial service companies. Still, on the other hand, the impact of implementing online loans is also quite disturbing to the public with the many terror calls, SMS, or WhatsApp against parties who are not interested. With the parties (debtors and creditors).

The orientation of financial services in both conventional and sharia systems covered by non-bank financial institutions is essential for profits. However, concerning the lending and borrowing aspect, some things become principles to be considered as a principal criterion which in the study of contract law is known as the principle of "The Five C's Principle of Credit Analysis" and, of course, must uphold the values and principles of Islamic economics, considering that the majority of customers are Muslims. The regulations in question will automatically affect the rules for customers.

The rules of Islamic law related to economic actors have provided rules or mechanisms that can also function as a solution to every legal problem for humans. Islamic teachings, especially in economic studies, have business ethics that will answer the online loan phenomenon. Talking about the need to fulfill financial needs in Islam, Islamic rules regulate the ethics of the economic system. Exploring Islam holistically will give birth to ethical considerations in economic activities.

One of the areas of ethics determined by the shari'ah is categorizing economic actions into lawful and forbidden aspects. This shari'ah provision may be seen as a theoretical formulation that mixes the economic realm and the legal (religious) realm to be considered unanalytical or unscientific. But Islamic Economics can't escape from this problem because ethical issues are closely related to determining economic policies aimed at the community (especially the Muslim community).²

The method in this study uses a normative juridical approach. The research specification in this study used by the researcher is descriptive research. As stated by Soekanto, descriptive analysis is one of the studies that provide data as accurately as possible about humans, their conditions, or symptoms. The purpose of this research is to describe an object systematically.³

The data sources that the researcher uses in this study include: a) Primary legal materials, legal materials that have a binding nature such as applicable laws and regulations and are related to the problems in this research; b) Secondary Legal Materials, which provide information related to previous legal materials, namely primary legal

² Arif Hoetoro, 2007, *Ekonomi Islam Pengantar Analisis Kesejarahan Dan Metodologi*, Badan Penerbit Fakultas Ekonomi Universitas Brawijaya (BPFE Unibraw) Bayumedia Publishing, Malang, Pg.210

³ Soerjono Soekanto, 1998, *Pengantar Penelitian Hukum*, UI Press, Jakarta.

materials; 3) Tertiary legal materials, namely complementary legal materials to provide a deeper description and information related to primary legal materials and secondary legal materials.

The technique that researchers use for research data collection is to combine several data collection techniques such as library research and interviews to collect and compile data related to the problems being studied to provide more comprehensive and valid data in this study. Following the approach method used, the data obtained for the writing of this research will then be analyzed using qualitative normative analysis in the sense that the data that has been accepted will be arranged systematically for further qualitative analysis.

2. RESULTS AND DISCUSSIONS

Technology as a Transaction Means

Community activities can be carried out more easily through various technological and internet innovations, one of which is in terms of muamalah (actions carried out by someone or several people in meeting their individual needs).⁴ In the realm of muamalah, sharia law provides opportunities for humans to develop it, which is sourced from Islamic law principles.

In its development, it is possible to explore the form of muamalah following the times, thus giving birth to a record of developing sharia economic principles following the emotional story of human life. However, Islam has provided signs in muamalah as a mechanism in carrying out its muamalah relationship, which is known as the principles of economic transactions in Islam, while economics is something related to the ideals and human efforts to achieve prosperity, namely to get satisfaction in fulfilling all their needs.⁵

Monotonous attitudes in muamalah worship will not bring changes for the better.⁶ And the development of technology has led to innovations in terms of transactions in the business world. One of them is an innovation that makes it easier for people to get debt loans, namely Online Loans. Online loans are money lending facilities by financial service providers that operate online. These online loan service providers are commonly known as fintech (Financial technology). In practice, online loans provide direct, liquid, and unsecured guarantees for people who need cash without having to provide time, complete the requirements for applying for loans, the process is fast and liquid guarantees, all of these conditions are facilitated by the presence of technology and carried out without face to face.

⁴ Nasrun Haroen, 2007, *Fiqh Muamalah*, Gaya Media Pratama, Jakarta, Pg. vii

⁵ Dhody Ananta RW, Cucu Solihah, 2019, *Akad Pembiayaan Murabahah di Bank syariah dalam bentuk rukun akta otentik implementasi rukun, syarat dan prinsip syariah*, Inteligensia, Malang, Pg.29

⁶ Mhd Yadhya Harahap, Ramadhan Syahmedi Siregar, Ammar Zaki Siregar, Implementasi Wakaf Uang dalam Pengelolaan Halalmart Majelis Ulama Indonesia Provinsi Sumatera Utara Perspektif UU No.41 Tahun 2004 Tentang Wakaf Uang, Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam, Vol 9 No. 02 2021, Pg. 235

The loan provider is a non-bank financial service provider that operates online with the help of information technology. With innovations such as this online loan, people no longer need to go to the bank and apply directly to get a loan. The future of conventional banks with fintech is that the two industries can collaborate, grow together, and advance the Indonesian economy.⁷ The economy in Indonesia is also getting better after this fintech. The OJK (Financial Services Authority) also oversees the running of the business so that no consumers feel disadvantaged and fintech continues to provide services following existing regulations.⁸

All the requirements and procedures that initially had to be done face-to-face are no longer needed. Credit applicants can submit terms online. Creditworthiness interviews are conducted over the phone. Access the fintech website, financial transactions such as loans to fund transfers can be done anywhere. In addition, the loan disbursement process and the repayment process with the installment system are carried out via transfer via ATM or bank, so it does not take time. With this convenience and efficiency, it is hoped that it will become a public financial solution.⁹

The development of the concept of borrowing and borrowing with an online system is a representation of the freedom of contract, which is part of one form of law that plays a fundamental and essential role in people's lives which is also part of the contract law regulated in Book III of the Civil Code concerning Engagements which have the open nature of the system, meaning that the direction of the agreement/agreement gives the legal subject the broadest possible freedom to enter into an agreement containing anything, as long as it does not violate the laws on public order and morality.¹⁰

The main principle of granting credit is the principle of trust, which means that the credit lender believes that the honor to be disbursed will be returned according to the agreement, while for the borrower customer is the recipient of the trust so that there is an obligation to pay the principal and interest according to the agreed term. In granting credit, the parties must also consider several things related to good faith and the principle of prudence.

A digital platform that brokers a meeting between lenders or investors who want significant returns and those who need loans. The system developed through Peer Peer Lending (P2P), often called online lending, is organized by technology-based lending and borrowing services providers. P2P Financial Technology (Fintech) has replaced the current bank as a place for people to borrow and save money. P2P Lending which is an explanation of lending and borrowing services with money objects directly using

⁷ N. Kholis "Perbankan dalam era baru digital", dalam Edi Supriyanto dan Nur Ismawati, *Sistem Informasi Fintech Pinjaman Online Berbasis Web*, Jurnal Sistem Informasi, Teknologi Informasi dan Komputer, Vol. 9 No. 2, 2018, Pg. 101.

⁸ Anggraini Dila Pitaloka, *Pertanggungjawaban Pidana Pelaku Pinjaman Online yang Berimplikasi Tindak Pidana*, Jurist-Diction Vol. 3 No. 5, 2020, Pg. 1599

⁹ Edi Supriyanto dan Nur Ismawati, *Sistem Informasi Fintech Pinjaman Online Berbasis Web*, Jurnal Sistem Informasi, Teknologi Informasi dan Komputer, Vol. 9 No. 2, 2018, Pg. 101

¹⁰ Subekti, 1998, *Pokok-Pokok Hukum Perdata*, PT Intermasa, Jakarta, Pg.118.

information technology between lenders and borrowers, or also called online cooperation funding.¹¹

The precautionary principle is used for both parties to reduce risks that will arise in the future. The realization and implementation of the precautionary principle for financial technology are reflected in the criteria called “The Five C’s Principle of Credit Analysis.”¹² The explanation of the analysis with 5C is as follows:

1. Character, which means the character, nature, habit of the debtor (the debtor), is very influential in providing credit. Creditors can examine whether the prospective debtor is included in the List of Disgraced Persons (DOT) or not. For this reason, creditors can also investigate their biodata and information from their business environment. The business environment can be obtained from suppliers and customers from debtors. In addition, information can also be obtained from Central Bank information. Still, the general public cannot accept the data readily because the data can only be accessed by employees in the credit sector using passwords and computers connected online with the Central Bank. So that in addition to checking the formal documents accompanying the credit, it is also necessary to know the track record of various credit applications that can be used as a reference by credit analysis;
2. Capacity is related to the ability of a debtor to repay a loan. To measure it, the creditor can examine the power of the debtor in the fields of management, finance, marketing, and others;
3. Capital, seeing the amount of capital owned by the debtor or seeing how much money the debtor has invested in his business, the creditor assesses the debtor’s money. The more money invested, the debtor will be seen as more severe in running his business;
4. Collateral, the collateral used in case the debtor cannot repay the loan. Usually, the collateral value is higher than the loan amount. Banks must be good at assessing or assessing the assets owned by prospective debtors to be used as collateral. So that creditors do not get losses due to debtors who cannot return the funds. Usually, the value of the guarantee or collateral is greater than the debt or credit provided by the debtor;
5. Condition of Economic, viewed from the economic conditions around the residence of the prospective debtor, must also be considered to consider the economic conditions that will occur in the future. Economic conditions that need to be considered include the problem of people’s purchasing power, market size, competition, technological developments, raw materials, capital markets, and so on.¹³

Customers using financial technology must use the precautionary principle because illegal fintech Peer-To-Peer Lending (P2PL) actors try to deceive the public, one of which is done by resembling a company platform name or company logo that has been registered

¹¹ Windy Sonya Novita, Moch. Najib Imanullah, Aspek Hukum Peer To Peer Lending, Jurnal Privat Law Vol. VIII No. 1 Januari-Juni 2020, Pg 152

¹² Sentosa Sembiring, *Arti Penting Jaminan Dalam Pemberian Kredit Dalam Transaksi Bisnis Perbankan*, Gloria Juris, Vol. 7, No. 1, Januari-April 2007, Pg 25.

¹³ *Ibid*, Pg. 26.

or licensed at the Financial Services Authority. (OJK). Before transacting, the public must be careful and ensure that they choose a Peer-To-Peer Lending (P2PL) fintech company registered or licensed at the Financial Services Authority (OJK). Certified is on the Financial Services Authority (OJK) website and is continuously updated. In addition, the public is also cautious about fintech peer-to-peer lending (P2PL) or fintech lending companies that are not registered or licensed at the Financial Services Authority (OJK).

Transacting with Peer-To-Peer Lending (P2PL) fintech that is not registered or licensed with the Financial Services Authority (OJK) carries a very high risk. Financial Services Authority Regulation Number 77 /POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, but not all online loan companies are registered with the financial services authority, so currently, there are legal and illegal or unregistered service providers.¹⁴

The trend of online lending has also attracted the attention of the Government, where OJK has taken action by blocking as many as 803 P2P Lending service providers who are suspected to be illegal and have the potential to harm consumers because operating without obtaining official permission from the unregistered authority is classified as unlawful.¹⁵ The Financial Services Authority emphasized that financial technology implemented information technology-based lending and borrowing agreements. Where the Operator is required to apply the basic principles of User protection, namely: Transparency; Fair treatment; Reliability; Data confidentiality and security; and User dispute resolution at a simple, fast and affordable cost.¹⁶

Based on the general mechanism of how online loans work, it can be concluded as a transaction of providing individual loans to other individuals using technology media. Technological facilities are only a meeting medium between lenders and borrowers.¹⁷ The Peer Peer Lending (P2P) phenomenon is a relatively new thing in the discourse of muamalah system renewal thinking. The development of the muamalah system gives birth to innovations that are expected to bring change for the better.

Engagement in a credit agreement is a legal relationship between two people or two parties. One party has the right to demand something from the other party, while the other party must fulfill the claim. Credit interest must be based on standardization of interest determination with other financial service institutions.¹⁸ Minister of Finance Regulation Number 30/PMK.010/2010 concerning the Application of Know Your Customer Principles for Non-Bank Financial Institutions stipulates that non-bank financial institutions know their customers well. The principle of knowing customers

¹⁴ Rhodes Ober Adi Guna Pardosi; Yuliana Primawardani, *Perlindungan Hak Pengguna Layanan Pinjaman Online Dalam Perspektif Hak Asasi Manusia (Protection of the Rights of Online Loan Customers from a Human Rights Perspective)*, Jurnal HAM Vol. 11, No. 3, Desember 2020, Pg.365

¹⁵ Sugeng, Annisa Fitria. *Aspek Hukum Digital Lending Di Indonesia*, Jurnal Legislasi Indonesia, Vol. 17 No. 4-Desember 2020, Pg. 446

¹⁶ *Ibid*, Pg 56.

¹⁷ Erwandi Tarmizi, 2012, *Harta Haram Muamalat Kontemporer* Berkat Mulia Insani, Pg. 88

¹⁸ Putra dan Budiana, *Perjanjian Kredit Melalui Financial Teknologi Dalam Lalu Lintas Hukum Bisnis*, Jurnal Analisa Hukum, Vol.2 No.1,2019, Pg.80.

is reflected in applying the 5C principle. 5C credit analysis, when involved in financial technology transactions, will certainly minimize the occurrence of problems when there is a default on bad loans.

The application of the 5C principle in providing credit is an indicator of the good faith of both parties. This good faith is one of the essential things in business ethics. Business ethics can be seen from two sides: first, the social aspect so that everyone can compete in the market, second: the moral element in the context of a free market, business ethics is very much needed as a guarantee so that competition runs well according to morals. In general, moral demands can be formulated in positive and negative ways. Positively this competition must run fairly and negatively in competition people must not harm others.¹⁹

In practice, financial technology in providing credit is not based on the principle of prudence and good faith, which is reflected in the 5C direction. The risk of default is very vulnerable. The emergence of bankruptcies in the form of late payments or inability to pay coupled with high interest so that it multiplies causes creditors, in this case, financial technology, to collect in ways against the law. For example, you call everyone in the contact number, criticize, insult, spread photos searching for people, spread immoral images, etc.

Community participation using financial technology services must be more careful in conducting lending activities by avoiding fintech that is not registered with the OJK. The public must also check and re-check before making online loans, and appeal to the people using financial technology services to borrow from Fintech Peer-To-Peer Lending registered with the OJK, borrow according to their needs and abilities, borrow for productive interests, and understand the benefits. Fees, interest, terms, penalties, and risks before deciding to make a loan to Fintech Peer-To-Peer Lending.

Of course, the principles of Islamic economics can be used to assess whether this Peer Peer Lending (P2P) innovation is an alternative for the community to meet their financial needs or will it lead to ongoing misery and poverty? As a reasonable initial assumption, we consider the following theory: "Realistically, lending transactions do not include capital development efforts." For the Muslim community, it must be understood that business relations developed in Islam are required to be guided by the teachings of the Shari'a, not only based on considerations of various interests but also shrouded in the light of love and politeness."²⁰

Islamic Law Peer to Peer Lending

The way P2P Lending transactions work, the contract used is the Qardh contract (borrowing and borrowing money), accompanied by an increase in interest and a late fee. This is a form of jahiliyyah usury employing online technology. In the rules of fiqh, it is stated that: "Every loan that benefits the lender is usury." The law that bank

¹⁹ Es. Mahmoedin, 1994, *Etika Bisnis Perbankan*, Pustaka Sinar Harapan, Jakarta, Pg. 33.

²⁰ Abdullah Al Mushlih, Shalah Ash-Shawi, 2004, *Fikih Ekonomi Ekuangan Islam*, Darul Haq, Jakarta, Pg. 259

interest equals usury is the decision of all world fatwa institutions. Thus the additional loan is usury. It can be said that the legal basis is *Ijma*.

In 1965 at the 2nd Islamic Conference in Cairo, which 150 scholars from 35 Islamic countries attended, it was decided, "Bank interest in all its forms is an increasing loan. The law is haram because it includes usury. There is no difference between consumptive or productive loans. Riba is forbidden, whether the percentage is large or small, and the loan agreement that is accompanied by interest is also prohibited".²¹

In 1985, *Majma Al Fiqh Al Islami* (Fiqh division of the OIC) held a congress attended by scholars representing OIC member countries deciding, "Any increase in debt repayment, or interest, or fines due to late repayment of debts, as well as interest set by the percentage. since the beginning of the transaction, this is usury which is forbidden by Islamic law." In 1986, *Al Majma Al Fiqh Al Islami* (the jurisprudence division of *Rabithah Alam Islami*) issued a fatwa, "All forms of interest on loans are usury and illicit assets".

Online Loans According to Islamic View

The concept of sharia economics in it accumulates values, principles, theories, and sharia economic principles, which in the end, will be applied to various forms of Islamic religious-based financial institutions that are subject to the values and spirit of justice.²² In economic life, Allah SWT has set certain limits on human behavior to benefit one individual without compromising the rights of other individuals.²³ Islamic economics is a system that harmonizes individual benefits and public benefits.²⁴

Islamic religious teachings regulate debt or loans. According to Islamic law, online loans will be considered valid if the pillars and conditions are met. The conditions and pillars that must be fulfilled in debts are as follows: a) *Sighat* or consent and *Kabul*; b) Contracts from both parties who make transactions that give debt and debtors. As for the conditions for the debtor is *baligh* (mature), reasonable, and able to distinguish between good and evil.

Akad is the most critical component when transacting. In the case of *muamalah* activities, it is essential to clarify the contract used when carrying out an agreement or a contract.²⁵ Islamic law of engagement is a relationship between humans, two or more people based on a set of Islamic legal rules that are spiritual-humanist, sourced from valid year's texts, regarding something material in the form of assets or valuable objects, the object of which is the engagement is legalized by *syar'i*.²⁶

²¹ Sulaiman Al Asyqar, *Qodhaya Fiqhiyyah Muashirah dalam* Abdullah Al Mushlih, Shalah Ash-Shawi, *Ibid*.

²² Atang Abd Hakim, 2011, *Fiqih Perbankan Syariah Transformasi Fiqh Muamalah Ke Dalam Peraturan Perundang-Undangan*, Refika Aditama, Bandung, Pg.40

²³ Mustafa Edwin Nasution, dkk.2007, *Pengenalan Eksklusif Ekonomi Islam*, kencana, Jakarta, Pg.3

²⁴ Ahmad Izzan Dan Syahri Tanjung,2007, *Referensi Ekonomi Syariah : Ayat-Ayat Al Qur'an Yang Berdimensi Ekonomi*, Rosdakarya, Bandung, Pg.33

²⁵ Mhd Yadh Harahap , *Op Cit*,Pg. 228

²⁶ Juaya S.praja, 2012, *Ekonomi Syariah*, Pustaka Pelita, Bandung, Pg.81

Assets that are owed are subject to the following conditions: a) Assets owed are in the form of assets available to them, meaning that assets that are of the same type do not differ much from each other, resulting in differences in value; b) Assets owed are in the form of tangible objects; c) The assets owed are clear, the amount can be known, and the nature is known.

Legal Terms of Online Loans According to Islamic Shari'a

In addition to having to fulfill the pillars and conditions, some prohibitions are not allowed in online loan contracts, namely:

1. Riba or addition is given in the exchange of usury goods (riba fadhl) or an agreed addition to the principal debt in exchange for absolute deferral of payment (riba nasi'ah);
2. Gharar or the existence of uncertainty in a contract, both regarding the quality or quantity of the object of the contract as well as regarding its delivery;
3. Maysir or any contract made with unclear objectives and inaccurate calculations, speculations, or luck that can benefit one party;
4. Tadlis or actions to hide the defects of the object of the contract;
5. Dharar or actions that can cause harm or can harm other parties.

Opinions of Scholars About the existence of an Online Loan System

The Indonesian Ulema Council (MUI) stipulates that sharia online loan providers are allowed to charge fees (ujrah/fee) based on the ijarah principle for the provision of information technology-based financing service infrastructure and systems. Suppose the information on financing or services offered through electronic media or disclosed in electronic documents is different from reality. In that case, the aggrieved party has the right not to proceed with the transaction. However, it should be borne in mind that Islamic law also teaches that if people can afford not to borrow, then there should be "no need to make a loan" unless it is in a very urgent situation where it is necessary to make a loan. And if in a state of urgency, then the loan must be used as well as possible and required to pay it off when the time has expired from the initial contract between the two parties.

3. CONCLUSION

In practice, Fintech provides credit not based on prudence and good faith, which is reflected in the 5C direction, so the risk of default is very vulnerable. The emergence of bankruptcy in the form of late payments or inability to pay coupled with high interest so that it multiplies causes creditors to collect in ways that are against the law. The application of the 5C principle in providing credit is an indicator of the good faith of both parties. This good faith is one of the essential things in business ethics. Business ethics can be seen from two sides: first, the social aspect so that everyone can compete

in the market; second: the moral element in the context of a free market, business ethics is very much needed as a guarantee so that competition runs well according to morals.

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