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MANAGING THE RISK FOR FINTECH LENDING AMID THE GLOBAL PANDEMIC CORONA VIRUS

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Abstract

The coronavirus (covid-19) is impacting all sectors across the world. Moreover, the covid-19 pandemic will accelerate change in the world economy. That brings both opportunity and danger, says Henry Curr in *The Economist*. In dealing with global disaster which impacts to the finance and economy world, such as the pandemic of covid-19, fintech lending offers the fastest and the most easy lending service for people in the whole business world nowadays. However, the easy process can cause various problems such as late payment and default in payment. Fintech will suffer from those risks and it can jeopardise the business. Moreover, most of the platforms do not ask for collateral as a requirement. So, in this article, the authors will discuss how fintech should manage their risks in lending using statute and conceptual approach. The results show that fintech should adopt the 5Cs credit analysis (character, capital, capacity, collateral, condition) as a way to minimise their risks. The Financial Services Authority (OJK) has not regulated risk management for fintech. Thus, fintech should follow the existing model from banking institution to manage their risks.

Keywords: Risk Management, fintech lending, pandemic.

Abstrak

Virus corona (covid-19) berdampak pada semua sektor di seluruh dunia. Apalagi, pandemi covid-19 akan mempercepat perubahan ekonomi dunia. Itu membawa peluang dan bahaya, kata Henry Curr dalam *The Economist*. Dalam menghadapi bencana global yang berdampak pada dunia keuangan dan ekonomi, seperti pandemi covid-19, fintech lending menawarkan layanan pinjaman tercepat dan termudah bagi masyarakat di seluruh dunia bisnis saat ini. Namun, proses yang mudah dapat menimbulkan berbagai masalah seperti keterlambatan pembayaran dan default dalam pembayaran. Fintech akan menderita dari risiko tersebut dan dapat membahayakan bisnis. Selain itu, sebagian besar platform tidak meminta agunan sebagai persyaratan. Maka, dalam artikel ini, penulis akan membahas bagaimana fintech harus mengelola risikonya dalam pemberian pinjaman menggunakan pendekatan undang-undang dan konseptual. Hasilnya menunjukkan bahwa fintech harus mengadopsi analisis kredit 5C (karakter, modal, kapasitas, agunan, kondisi) sebagai cara untuk meminimalkan risiko mereka. Otoritas Jasa Keuangan (OJK) belum mengatur manajemen risiko fintech. Oleh karena itu, fintech harus mengikuti model yang ada dari lembaga perbankan untuk mengelola risikonya.

Kata Kunci: Manajemen Risiko, fintech lending, pandemi.

I. INTRODUCTION

The COVID-19 pandemic may boost the Peer to Peer (P2P) business, but on another hand the pandemic doubles the risk of P2P lending operation. China, which is leading the world on P2P, has introduced Interim Measures on Administration of the Business Activities of Peer-to-Peer Lending Information Intermediaries after tantamount of frauds and reports by P2P consumers. The regulation shifted the nature of P2P lending platform from pooling capital to strictly as information intermediaries for lenders and borrowers.¹ Meanwhile, The Indonesian Fintech Lenders Association (AFPI) has pledged to create a task force to help peer-to-peer (P2P) fintech firms stem the rise of bad loans caused by the COVID-19 crisis. AFPI chair Adrian Gunadi said that the task force would help companies improve the 90-day success loan settlement rate (TKB90) and reduce the bad loan rate by improving their risk management. AFPI will explore strategies to improve loan collection and to collaborate with credit insurance companies and other supporting third parties.²

The Information Technology Based Lending and Borrowing Services or Fintech Lending is one of the innovations in the financial services sector with the use of technology that enables lenders and loan recipients to conduct borrowing and lending transactions without having to meet in person. The lending and borrowing transaction mechanism is carried out through a system that has been provided by the Fintech Lending Provider, both through the application and the website page.³ In this present era, it is not easy to imagine a world without the internet or mobile devices. They have become core elements of our lifestyle and have brought a high degree of disruption to virtually every area of business. The financial services (FS) industry is no exception; the digital revolution is transforming the way customers access financial products and services. Although the sector has experienced a degree of change in past years, but the constant penetration of technology-driven applications in nearly each and every segment of FS is something new.⁴ It was also stated by Miriam Segal that P2P lending offers several potential benefits and drawbacks to both borrowers and lenders. On the plus side, P2P loans can serve credit needs in markets where financial institutions would not traditionally lend.⁵

As of October 14th, 2019 there were 155 licensed fintech lending companies registered with the Financial Services Authority (OJK). Fintech lending offers fast funding, (mostly) without collateral with easier terms / processes because it can be done remotely using a smartphone.⁶ Of the 155 licensed fintech lending companies registered with the Financial Services Authority (OJK), there is an organizer that connects lenders with loan recipients called Peer-to-Peer Lending (P2P), for example Danamart, Akseleran, Amarta and Prosperitree, however, there are organizers who

¹ Hiding in plain sight the pandemic doubles the risk of P2P lending Operation <<https://www.thejakartapost.com>> accessed on 14th November 2020.

² Fintech association to establish to establish task force as bad loans <<https://www.thejakartapost.com/news/2020/10/01>> accessed on 14th November 2020.

³ FAQ Terkait Layanan Pinjam-Meminjam Uang Berbasis Teknologi Informasi <<https://www.ojk.go.id/>> accessed on 23th October 2020.

⁴ Hassnain Ali, *et.al*, "Fintech and its Potential Impact on Islamic Banking and Finance Industry; A Case Study of Brunei Darussalam and Malaysia", *International Journal of Islamic Economic and Finance*, Vol. 2, No.1, Juli 2019, 73-108: 72

⁵ Miriam Segal, "Peer-to Peer Lending; A Financing Alternative for Small Business", Office of Advocacy Issue Brief Number 10, September 9,2015, www.sba.gov/advocacy/issue-briefs.p.3

⁶ *Ibid*

only provide loans to loan recipients, for example FinPlus and Duha Syariah providers who only distribute loans. In addition, there are 155 fintech lending companies offering loans without requiring collateral in lending, for example Amarnya, Koinworks, Quick Wallet, Cash Clouds, Cash Wagon, Fast Credit, Credit, Kredivo, Esta Kapital, Tunasaku, Edufund, but there are organizers that require collateral for financing such as the example in Danamart and Aktivaku for collateral in the form of assets. KreditPro guarantees invoices, People's Capital that asks for collateral invoices or receivables financing and Acceleration more than 98% of the loan portfolio with collateral and only 2% that there is no collateral.

The conveniences offered in fintech lending, on the other hand, pose risks that must be faced by the organizer, lender or loan recipient. The risks include operational risk and credit risk. Credit risk and operational risk in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology Based Lending and Borrowing Services (POJK 77/2016) is not interpreted. When referring to the meaning of risk in banks, namely the Financial Services Authority Regulation Number 18/POJK.03/2016 concerning Application of Risk Management for Commercial Banks (POJK 18/2016) is the potential loss due to a particular event. While credit risk is the risk due to failure of other parties to meet obligations to the Bank, including credit risk due to debtor failure, credit concentration risk, counterparty credit risk, and settlement risk. Operational risk is defined as the risk due to inadequate and/or malfunctioning of internal processes, human error, system failure, and/or external events that affect the Bank's operations.

The banking dictionary states that credit risk is a risk that arises in the event that the debtor fails to meet the obligation to pay the principal or interest installments as agreed in the credit agreement, in addition to interest rate risk, credit risk is one of the main risks in the implementation of bank credit (credit risk). Therefore, the organizer must carry out credit risk mitigation considering the impact caused is the loss suffered by the organizer and lender because they do not get a return from the funding that has been done. Based on the description above, what is analyzed in this article is credit risk mitigation in fintech lending.

II. RESEARCH MATERIALS AND METHOD

This paper is a legal research that uses a statute approach, and a conceptual approach. The sources of law in this paper come from laws and regulations, especially those relating to the risk management in fintech lending, as well as the literature related to the legal issues raised. Analysis is carried out qualitatively.

III. RESULT AND DISCUSSION

3.1. Credit Risk in Fintech Lending Activities

Before discussing credit risk of technology-based money lending service, first will be discussed the legal relations of the parties to the *information technology-based money lending service* transactions. In *Information Technology-Based Money Lending Services*, there are 3 (three) parties, namely the Provider or The Organizer, the Lender and the Recipient of the loan. The three parties are framed in 2 (two) agreements, namely the agreement between the organizer and the lender and the agreement between the lender and the loan recipient. The organizer as the party that connects the lender and the loan recipient so that the organizer gets a commission as referred to in Article 19 paragraph (2) of POJK 77/2016. When referring to the draft standard

agreement of the loan agreement, the parties are between the loan recipient and the Accelerator as a facility agent for and on behalf of the lenders based on a special power of attorney, it is clear that the relationship between the organizer and the lender is an agreement to grant a power of attorney as regulated in Article 1792 Indonesian Civil Code (*Burgerlijk Wetboek voor Indonesie*, hereinafter referred to as BW) : "The granting of power/ authority is an agreement containing the granting of power/ authority to other people who receive it to carry out something on behalf of the person who gives power". The person who will be making decisions on your behalf usually us power of attorney.

The agreement that frames the legal relationship between the lender and the loan recipient is a loan agreement as stipulated in Article 1754 BW that the Borrowing and Loan agreement is an agreement, which determines the first party to surrender a number of items that can be used up to the second party on condition that the second party will return similar goods to the first party in the same quantity and condition. Article 1765 BW states that for lending money or goods that are used up, it is permissible to make a condition that the loan will be paid interest. Therefore, if the borrower does not carry out the achievement as agreed, that is, to return the loan principal and the interest at a predetermined time, it is said that the borrower has defaulted.⁷

The relationships between loan giver (funder) and the service provider will be expressed in an electronic document. Afterwards, the agreement between loan giver and receiver mentioned in the agreement of loan giving. This agreement is mentioned in an electronic document. The service provider must provide information access to the loan receiver about the loan position that has been received. But the access of information not including information about the identity of the loan giver. It means the service provider is not informing about the loan giver identity. These thing becomes out of place because the loan giving agreement between the loan giver and the loan receiver is mentioning about the Identity of all parties so that the loan receiver understanding the identity of loan giver. The infelicity of that provision can also be found in an agreement between the service provider and loan giver that is the service provider obliged to provide information access to the loan giver about their funding usage. Information access not included in information related to the identity of a loan receiver. The information of the usage of the funding at least mention as follows:

- a. The amount of the funding being lent to the loan receiver
- b. The objective of the funding usage by the loan receiver
- c. The interest rate scale
- d. The loan time period

Even though service provider is not informing the identity of the loan receiver, but when the agreement of loan giving is taking place between the loan giver and the loan receiver then the loan giver understand the identity of the loan receiver.⁸

⁷ Trisadini Prasastinah Usanti, *et.al.*, *Dispute Settlement Method for Lending in Supply Chain Financial Technology in Indonesia*, International Journal Supply Chain Management, Vol.9, No.3, June 2020, 438, 435-443

⁸ Trisadini Prasastinah Usanti dan Fiska Silvia Raden Roro, *Legal Protection of the Contracting Parties in The Peer to Peer Lending Based on Financial Technology (P2P Lending Fintech) in Indonesia*, International Conference on Law, Governance and Globalization 2017 (ICLGG 2017), Advances in Social Science, Education and Humanities Research (ASSEHR), Atlantis Press, Vol. 131,282-295:285

Credit risk in fintech lending is the risk of a lender's failure to meet its obligations to the lender, in which case the lender has been exposed to the lender. According to the Subcommittee, the breach does not meet the obligations agreed upon in the alliance. It does not fulfill the obligations of the debtor for two possible reasons:⁹

- a. Because of the debtor's mistake, whether due to will or negligence,
- b. Due to circumstances of force (force majeure) beyond the ability of the debtor so that the debtor is innocent.

According to Wirjono Prodjodikoro, default means the absence of an achievement, and achievement in the contract law means something that must be carried out as the contents of an agreement. Default can be in three forms, i.e.:¹⁰

- a. The authorities have never fulfilled the promise
- b. The authorities are late in executing it
- c. The authorities do it, but not in the best way.

According to Setiawan, there are 4 (four) conditions which are said to be default, that is:¹¹

- a. Debtors do not fulfill any achievements
- b. The debtor fulfills the achievements not as promised
- c. Debtors late to fulfill achievements
- d. Debtors do what is not allowed in the agreement.

According to M. Isnaeni that the defaults is as a legal institution, what is meant is there is no provision in *Burgerlijk Wetboek* that regulates specifically and explicitly as does the equivalent achievement. As a result, the term default can only be assessed from the meaning of vague provisions. The default amount is equal to the achievement score but in the form of reversal of the achievement score, namely: not fulfilling the achievement at all, fulfilling the achievement but being late or fulfilling the achievement but not as it should.¹² When the term of the loan has ended (the due date of the lending) and the borrower does not fulfill its achievements, the organizer in this case carries out a warning as in Article 1238 *Burgerlijk Wetboek* that: Debtor is declared defaulted on a warrant, or with similar deed, or based on the strength of the engagement itself, that is if this engagement results the debtor must be considered negligent with the allotted time. Known as the subpoena that thrives in the world of doctrine and jurisprudence with the main meaning that the subpoena is a warning letter or reprimand from the creditor addressed to the debtor to fulfill the achievement as agreed upon with legal consequences when the warrant is ignored, the debtor can be stated in default. Then the borrower must bear the risk of paying compensation, costs and interest based on Article 1236 *Burgerlijk Wetboek*. That based on Article 1266 BW and 1267 BW when the debtor defaults, the creditor can demand fulfillment of the agreement, cancellation of the agreement and compensation. However, jurisprudence is recognized that if the debtor defaults, the creditor can sue.¹³ fulfillment of the agreement; fulfillment of the compensation dissertation agreement; compensation; cancellation of the agreement; cancellation of the agreement accompanied by

⁹ Subekti, *Pokok-Pokok Hukum Perdata*. (Jakarta: Intermasa.2003), p. 150

¹⁰ Wiryono Prodjodikoro. *Azas-azas Hukum Perjanjian*. (Bandung: Sumur,1979), p.44

¹¹ Setiawan. *Pokok-Pokok Hukum Perikatan*. (Bandung: Binacipta.1979), p.18.

¹² M.Isnaeni. *Selintas Pintar Hukum Perikatan (Bagian Umum)*. (Surabaya:Revka Petra Media,2017), p.207

¹³ Leonora Bakarbesy dan Ghansham Anand, *Hukum Perikatan*, (Sidoarjo: Zifatama Jawara,2018),p.65

compensation. Then the organizer in this case is reasonable if asking for the fulfillment of the achievements of the borrower as agreed in the electronic document.

Every business that is run always faces risks, including fintech lending activities. There are several possibilities that are done by the recipient of the loan, which is not fulfilling its obligations such as interest and installment payments or the loan recipient is late in fulfilling his obligations or the loan recipient performs legal actions that are not allowed in the agreement. The agreement as outlined in the electronic document includes, among others, provisions concerning the rights and obligations of the parties, the loan amount, loan interest rates and provisions on fines.

An example in Prosperitree which is P2P does not require collateral, it is stated that if the loan recipient is unable to return the loan on or before the due date then a late daily fine of 1% of the loan, 7% penalty and management fee of 1% of the loan. As an example:

Loans totaling: 1,000,000 late 2 days, then a total fine of: Rp. 1,000,000 x 1% x 2 days = Rp. 20,000

Penalty of 7% of the loan must also be paid and management fee of 1% so that the total payment that must be made by the borrower when 2 days late is: Rp. 1,000,000 + Rp. 20,000 + Rp.70,000 (penalty) + Rp.10,000 = Rp.1,100,000 If the delay is longer then the obligation that must be paid by the borrower will also increase.

Another example is Taralite which is not a P2P and does not require collateral in lending, stating that if the installment payment is past due date, an additional fee of 0.1% per day will be charged. For example, if the monthly installments are Rp. 300,000, if you are late for 10 days, the additional costs will be charged as follows: Rp. 300,000 x 1% x 10 days = Rp. 30,000.

Another example, namely Danamart which is a P2P requires a material guarantee. Simulation when applying for a loan on an invoice financing product, the credit scoring system will determine the loan interest rate. Danamart will ask the borrower to fill in the data so that information from prospective borrowers can be obtained. The questions asked are as follows:¹⁴

¹⁴ Pinjaman Danamart, <<http://danamart.id>> accessed on 3rd October 2020

How long does it take to borrow a loan?	6 months	>3 months	<=3 months	6 months	<=3 months	<=3 months
What are your client/buyer company/agency categories?	Multinational Companies	Public company	BUMN	Company conglomerate	Foreign companies	BUMN
How long has your business been running?	4 years	1 year	>5 years	2 years	>5 years	>5 years
Does your company have more than 1 director?	No	Yes	Yes	No	Yes	No
Does your company have more than 1 commissioner?	No	Yes	Yes	No	Yes	No
What is your last level of education?	Bachelor	Doctoral	Master	Academy	Master	Master
Do you have a collectibility above 1?	yes	No	No	Yes	No	Yes
Are you waiting for litigation?	No	No	No	Yes	Yes	Yes
What is your business turnover per year?	>Rp.1.5 M s/d Rp.2 M	>Rp.500.000 s/d Rp.1 M	> 2 M	<500.000.000	>2 M	>2 M
Did your company's income statement last year suffer losses?	Yes	No	Yes	No	No	No
Is your company's cash flow positive?	No	Yes	No	Yes	Yes	Yes
How many employees are in your company?	>50- 100 people	5-20 people	>100 people	>20-50 people	>20-50 people	>100 people
Is the legality of your company valid and complete?	Yes	Yes	Yes	Yes	No	Yes
Does your company have a guarantee?	No	Yes	Yes	Yes	Yes	Yes
Property of Warranty?	-	Personal director	Company	Personal Director	Company	Perusahaan
Kind of Warranty?	-	Machine tools	Land and buildings	Vehicle	Land and buildings	Land and buildings
Borrower score	2.36	3.27	4.07	2	3.67	3.4
Interest rate	E-2 : fee 4,5 % and interest rate 23 %	D-1 : fee 4 % and interest rate 19.50 %	B-4, fee Rp.3.0 % and interest rate 16 %	E-4 : fee 4,5 % and interest rate 24 %	C-2 : fee 3.5 % and interest rate 17.50 %	C-4: fee 3.5% interest rate 18.50 %

Table 1.
Determination of Fee and Interest Rate

Based on the simulation above, it shows that the loan interest is determined:

- a. Credit ratings include A to G
- b. Sub Sub ratings include 1 to 4

From the answers to the questions above, it will determine what credit ratings and sub-ratings are included in the simulation above. Components that determine that interest in credit will be high or not determined several things, namely the term of the loan,

whether it is in court or not and the existence of material guarantees. So if the time period is 3 months, not in court proceedings and the collateral is land and building then it is included in the loan score of 4.07 so that the interest is 16%. However, if the time is 6 months, it is in the process of court and there is no material guarantee, then it is included in the loan score of 2.36 so that the interest is 23%. From the simulation results above shows that the existence of material guarantees in the form of fixed assets such as land and buildings greatly affect the interest rates set.

This is not much different from the Acceleration that the Acceleration rating starts from A ++ to E, but only A ++ to C is approved, with the following details:¹⁵

Rating	Interest Rate	Collateral
A++	11.75 %	Yes
A+	12.25 %	Yes
A	12.75 %	Yes
A-	13.25 %	Yes
B++	15.75%	Yes
B+	16.75 %	Yes/No
B	17.75 %	Yes/No
B-	19.00 %	Yes/No
C++	24 %	Yes/No
C+	27 %	Yes/No
C	30 %	Yes/No

Tabel 2
Tabel of Interest Rate Related to Collatel

According to Tabel 2, it is clearly that A ++ ratings have the lowest risk of inflation at the lowest interest rates. Whereas for rating C there is a high risk so the interest rate is also higher.

A provider that does not require collateral for a loan will assume greater credit risk than the provider, which requires a material guarantee. In the agreement as outlined in the electronic documents it is indeed possible to pledge the object of collateral provided by the recipient of the loan as collateral for payment of obligations. However, Article 20 POJK 77/2016 is given an additional word "if any". This is understandable in the spirit of the issuance of POJK 77/2016 that fintech lending is expected to meet cash needs quickly, easily, and efficiently, as well as increase competitiveness. In addition, fintech lending is expected to be one of the solutions to help micro, small and medium scale businesses (MSMEs) in obtaining access to funding will not be achieved because of the constraints of the object of collateral.

On one hand it provides a solution especially for MSMEs to finance by not requiring a collateral object but, on the other hand there are possible credit risks that may arise. In the absence, the object of collateral in fintech lending activities, the position of the lender is very risky because it is only a concurrent creditor that is only guaranteed by general collateral as stipulated in Article 1131 BW. The collateral provided by Article 1131 BW is general in the sense that the collateral puts all debtor's assets and the collateral is given to all parties domiciled as creditors. The position of

¹⁵ Penilaian Risiko <<https://www.akseleran.co.id>> accessed on 5th October 2020

the creditor with a general guarantee is only in the position of concurrent creditors, which means that he has the same position as other concurrent creditors. There is no priority on the debtor's assets prioritizing repayment, even though some of them have older bills. They share ponds according to the balance of their bills, as regulated in Article 1132 BW. The general guarantee provided by law through Article 1131 BW is less pleasing to economic actors because it is less effective in preventing risks that arise. Creditors compete with one another for payment from the auction results, meaning that their position is not prioritized in the settlement¹⁶

As such, the position of the lender is very risky due to the lack of material security while the lender has a debt arising from the fintech lending agreement so there is a need for legal protection for the lender to maintain the credibility of the lender involved in fintech lending activities. Although FinTech Lending brings convenience, quickness, and efficiency in lending services, any possible risks such as delayed payment and debtors' default should be taken into account as well (Investree:2018). As long as it is not due to system failure, the administrator of fintech lending service has nothing to do with those risks. Hence, it belongs to the creditors. The risk becomes much higher without any specific collateral to be agreed to such as individual or material collateral.¹⁷

3.2. Effort to Minimize Credit Risk performed by The Organizer

In every lending or loan cannot be separated from the possibility of credit risk arising. Therefore, efforts are needed to minimize the credit risk. In the banking law, it is explicitly stated that credit provided by banks carries risk so to reduce credit risk the bank must conduct a careful assessment of character, capacity, capital, collateral and condition of economy. This is known as credit analysis of 5'C. Credit analysis is a preventive effort undertaken by banks based on the procedure of granting credit owned by banks as mandated by the explanation of Article 8 of the Banking Law. The main purpose of credit analysis is to assess the confidence in the ability and ability of prospective borrowers to repay their obligations in accordance with a credit agreement that has been mutually agreed upon. The credit analysis instrument known as 5 'C is as follows:¹⁸

a. Character

The assessment of character aims to determine the honesty and good faith of the prospective debtor and be taken into consideration to determine the size of the credit risk. To determine the character of the prospective debtor especially if the debtor first applies for credit is not easy. To find out a person's character can be seen from the characteristics of that person such as whether the prospective debtor is a drinker, a gambler, a fraud or other bad character by conducting an investigation or looking for various information about the character of the prospective debtor. Analysis of the character of the prospective debtor is very important even though from the results of other aspects are good but the aspect of

¹⁶ Trisadini Prasastinah Usanti dan Leonora Bakarbesy *Hukum Jaminan*. (Surabaya: Revka Petra Media, 2014), p.14

¹⁷ Lerong Lu. "Promoting SME Finance in the Context of the Fintech Revolution: A Case Study of the UK's Practice and Regulation". *Banking and Finance Law Review*. Vol. 33, No.3,2018, 318-343.

¹⁸ Trisadini Prasastinah Usanti dan Nurwahjuni, *Pengelolaan Risiko Kredit Dalam Praktik Perbankan*, (Surabaya: Revka Petra Media,2017), p.31

the character of the debtor candidate is bad, the possibility of the emergence of problem loans and even bad loans is very large.

b. Capital

If a prospective debtor is to apply for bank credit, he must have capital, for example a debtor candidate to apply for a motor vehicle loan, the applicant must have his own capital as a down payment. If the prospective debtor is an entrepreneur, the bank must analyze deeply and thoroughly from the financial statements of the prospective debtor company to measure the level of liquidity and solvency ratio of the company. The greater the capital owned by the company, then shows the ability to fulfill its obligations.

c. Capacity

The bank must analyze the ability of the prospective debtor to repay the debt. For example, a prospective debtor is a civil servant / private employee, then the salary slip in question will be asked, from the salary slip the ability of the prospective debtor can be known. If the prospective debtor is an entrepreneur, the bank must analyze the expertise of the prospective debtor in managing his business so that the bank believes that the credit to be disbursed can be managed appropriately.

d. Collateral

In general, economic and legal requirements fulfilled by credit guarantees that the guarantee has economic value and can be traded easily on the market, free from disputes with third parties, have a greater value than the amount of credit granted. The condition and location of the collateral object is quite strategic, physically the collateral object is not fast damaged or other causes that will reduce its economic value. Priority belongs to prospective debtor customers, if it is owned by a third party, ownership and binding must be ensured. Having valid proof of ownership and the object of guarantee is free not being under a bond to another party. Credit guarantees that have perfect juridical value will be better than guarantees with high economic value but do not meet adequate legal requirements. Therefore, such collateral would be difficult to burden with collateral institutions and it would be difficult to execute.

e. Condition of economy

Besides analyzing the aspects as described above, the bank also analyzes the current and future economic conditions in accordance with the business managed by the prospective debtor. For example analyzing the market conditions at home and abroad whether it can affect the business managed by prospective debtors which in turn can affect the ability of prospective debtors in fulfilling their achievements.

In banking practice, healthy credit activities are not enough 5 C but 6 C, namely constraints. Constraint is defined as the limitations or obstacles that do not allow a person to do business in a place. For example, credit application after analysis of 5 C is possible to be financed, but the business of raising pigs is in an area with a Muslim population, so the business should not be financed unless it is suggested to move the business location.¹⁹

In addition to the 5 C principle in banking practice it is also known as 5 P and 3 R.²⁰

¹⁹ Teguh Pudjo Muljono. *Manajemen Perkreditan Bagi Bank Komersil*. (Yogyakarta: BPFE,2001),p.18

²⁰ Rudyanti Dorotea Tobing. *Hukum Perjanjian Kredit*. (Yogyakarta: Laksbang Grafika,2014), p.185-186

- a. The parties, carried out the classification of debtor candidates divided into several groups based on character, capacity and capital;
- b. The purpose means an analysis of the intended use of credit that has been submitted by the prospective debtor;
- c. Payment means the source of payment from debtor candidates;
- d. Profitability, which is an assessment of the ability of a potential debtor to obtain profits in his business;
- e. Protection is an analysis of the means of protection of creditors.

3 R' Principle, including:

- a. Return is an assessment of the results to be achieved by the borrowing company after obtaining credit;
- b. Repayment is taking into account the ability of the schedule and the period of credit payment by the debtor but the company is still running;
- c. Risk bearing ability is the magnitude of the debtor company's ability to avoid risk and whether the debtor company's risk is large or small.

Based on **Weerasooriya** that there are 3 basic principles in deciding lending namely:²¹

- a. Safety of loan

This principle requires that a loan is granted to only that borrower who is considered safe. A safe borrower is one who is of good character, is financially sound and has the ability and willingness to repay the loan. Lending institutions therefore often require a back up for the loan in the form of collateral security. The collateral serves as a safety valve or insurance against unforeseen development.

- b. Suitability of loan purpose

A loan can be given for any valid purpose. A valid purpose is one that is legal and conforms to lending policy of the bank. A bank cannot lend for an activity that is not legal. Suitability of purpose is also important for the safety of the loan. If loan is granted for an illegal purpose, then the lender may not be able to recover the money because the case may not stand in any court of law.

- c. Profitability

Financial institution in the business of lending to earn profits. Lenders will compare the cost and benefit of a loan before granting it. Interest on loans and advances is a major source of income for any bank. Lending institutions must carefully weigh the risks and returns from a possible loan. This raises the issue of appropriate pricing of loans, as well as that of minimising loan costs.

Before a bank distributes credit, it must conduct a credit analysis. This is a manifestation of the precautionary principle. In addition, in order to maintain the trust of fund deposit customers who have entrusted their funds to the bank. Credit analysis as an effort to avoid the things that are not desirable in the future that will potentially result in the emergence of problem loans.

In fintech lending based on POJK 77/2016 and Circular of Indonesia Financial Services Authority Number 18/SEOJK.02/2017 regarding Governance and Management of Information Technology Risks in Information Technology-Based Money Lending Services (SEOJK 18/2017) there are no rules as stipulated in the

²¹ Millind Sathye .*Credit Analysis and Lending Management*. (Australia: John Wiley & Sons, 2013), p.5

Banking Act concerning 5'C credit analysis obligations. In fintech lending done with a credit scoring system, as the example in Acceleration focuses on 3 things:²²

1. Finance

Acceleration validates the financial aspects by cross checking with the borrower's current account or a history of sales transactions on the online platform where the prospective borrower is selling. After the financial conditions are validated, the Accelerator analyzes the borrower's financial capability, such as but not limited to the ability to pay debts, equity ratio, and the ratio of borrower's assets and liabilities.

2. Collateral

The type of collateral provided is also a factor considered in the risk assessment and determination of loan interest. Collateral can be in the form of invoices from Invoice / PO / SPK / Contract, in the form of trade inventory, equipment, as well as land and buildings.

3. Credit Behaviour

In collaboration with Pefindo's credit bureau, Akseleran conducts quantitative and qualitative analysis in the form of checking the borrower's track record and credit behavior. The accelerator also considers the level of education and business experience of the borrower or work.

In addition, for borrowers there are several things that must be considered:²³

- a. It must be ensured to borrow from the registered / licensed operator of OJK. Check the legality of the organizer through the OJK website (www.ojk.go.id).
- b. Loans for productive needs are not consumptive and do not exceed 30% of income so as not to burden. Consider other obligations or installments that must be paid.
- c. Pay off obligations on time to avoid fines that are inflated.
- d. Do not dig holes close the hole, i.e. pay the loan with a new loan to avoid being in debt.
- e. Know the interest and loan fines. The borrower must first study the interest and penalties offered by the organizer.
- f. Understand contractual agreements. Borrowers must read carefully the agreements given and ask questions when unclear. This is so as not to cause disputes in the future.

Borrowing costs (interest) at Fintech Lending when compared to loan interest elsewhere (can be higher or lower). The agreement at Fintech Lending is a civil agreement between the lender and the recipient of the loan. If you do not agree with the amount of interest (loan costs), you should not make a transaction. However, if it has been agreed then there is an obligation from each party. The Indonesian Joint Funding Fintech Association (*AFPI*) has regulated in the *AFPI* code of conduct that the total loan costs do not exceed flat interest rates of 0.8% per day. Also there is a provision that the total amount of fees, fees for all expenses, and all other fees is a maximum of 100% of the principal value of the loan. For example, if you borrow IDR 1 million, the maximum amount returned is IDR 2 million.

Based on the results of research conducted by Yaqiong Pan and Qiong Liu that (1) Term of loan, credit rating, annual income and line recycling rate belong to

²² Penilaian Risiko <<https://www.akseleran.co.id>>. accessed on 5th October 2020.

²³ FAQ Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi <<https://www.ojk.go.id/id>> accessed on 5th October 2020.

protective factor, which have a negative impact on the default risk of P2P. It shows that the possibility of loan default can be reduced with the extension of loan term, the improvement of credit rating, the increase of annual income and line recycling rate. (2) Rate of loan, debt-to-income ratio and number of bad public records are risk factors, which have a positive impact on the default risk of P2P. It indicates that with the increase of borrowing rate, debt-to-income ratio and the number of bad public records, the possibility of loan default will be increased. (3) There is no significant relationship between five variables including amount of loan, monthly payment, years of working, house-ownership and number of arrears exceeding 30 days in the past 2 years and the probability of loan default.²⁴

OJK Financial Services Authority (*OJK*) in collaboration with the Indonesian Joint Funding Fintech Association (*AFPI*) created the Fintech Lending Data Center (*Pusdafil*). This data center will contain information related to prospective borrowers who are indicated to commit fraud, late paying loans, and borrowing from more than one fintech lending company. There are three main things in the risk management of lending that can be supported by *Pusdafil*. **First**, an indication of fraud or fraud. The intended fraud is that the loan transaction has not yet taken place. However, there was an attempt to apply for a loan using the National Identity Card (*KTP*) number which proved to be not registered at the Directorate General of Population and Civil Registration of the Ministry of Home Affairs of the Republic of Indonesia. Through *Pusdafil*, the organizer of fintech lending can check whether the prospective borrower has ever committed fraud or not. Potential borrowers who are indicated fraud will not be given loans. "How do we gather information from all platforms to avoid people trying to lie and attempt fraud, because fraud is a relatively high problem," said *AFPI* Deputy Chairperson Sunu Widyatmoko. **Second**, the borrower's black list. This list includes people who have not paid their loans for more than 90 days. Even so, borrowers can get out of the list if they pay off their debts. If the borrower does not want to pay off the debt, in the future, *AFPI* will make this borrower in the black list unable to access loans from other financial institutions that are still under the supervision of the FSA. This is done as a deterrent effect so that the borrower cannot apply for a motorcycle loan in finance, can not take a mortgage at the bank. **Third**, the concern is borrowers who borrow from more than one fintech lending company. The data will be a consideration for a company to pass the loan for that person. Borrowers who borrow more than one fintech lending company can increase the risk of lending. The presence of this *Pusdafil* can reduce the risk of lending because of fraud and default. Every person in the category of fraud or blacklist will be shared into a particular information system using the blockchain. The working system of this *Pusdafil* is that *OJK* will withdraw all data related to transactions from all registered fintech providers. Then, *OJK* will process the data and inform *AFPI* through an information system container²⁵

Article 51 POJK 77/2016 states that further provisions concerning the procedure for granting loans are regulated in the *OJK* Circular. However, until the end of 2019 there has been no SEOJK that regulates the procedures for granting loans. SEOJK 18/2017 does not regulate the procedures for granting loans. It is expected that the

²⁴ Yaqiong Pan and Qiong Liu, " *Research on The Default Risk Evaluation of Borrowers from Online Peer-to-Peer Lending Based on Survival Analysis*", International Conference on Economic Management and Cultural Industry (ICEMCI 2019) Advances in Economics, Business and Management Research, Vol. 109, 487-490:490

²⁵ Kurangi Risiko Pinjaman <<https://keuangan.kontan.co.id>> accessed on 5th October 2020.

SEOJK on procedures for granting loans will contain about mitigating credit risk that must be carried out by the organizer in fintech lending activities as has been done by banks in minimizing credit risk.

IV. CONCLUSION

In fintech lending activities on the one hand it provides convenience, speed, practicality in lending and borrowing, but on the other hand there is no denying credit risk in it, namely the existence of late payments and even defaults by loan recipients. The credit risk will be borne by the organizer and the lender. This risk is even higher if in fintech lending there is no material guarantee. Whereas most of the fintech lending providers do not require material guarantees in lending. Therefore, there is a need for credit risk management as has been done by banks in minimizing credit risk with a credit analysis of 5 C (character, capital, capacity, collateral, condition). Risk management conducted by banks can be used as a model for fintech lending in minimizing credit risk, although to date the fintech lending provider has used a credit scoring system in determining loans and interest rates.

V. ADVICES

In dealing with global finance and economic disaster due to pandemic, P2P companies need to evaluate the stability of the company's position, especially in capital-security to withstand a higher default ratio. In this case, the P2P company also pays attention to the political economy policies in each country and it is necessary to establish a reserve fund for protection. The task force of AFPI needs to be optimized, supported and facilitated by the government. The task force has been running well, until in the early of September 2020, The Indonesian Joint Funding Association (AFPI) which noted that loans worth IDR 300 billion have been restructured due to the impact of Covid-19.²⁶ For this reason, one form of mitigating the risk of default is by restructuring loan recipients or small and medium enterprises (SMEs) affected by Covid.

REFERENCE

Book

- Bakarbesy, Leonora dan Ghansham Anand, *Hukum Perikatan*, Sidoarjo: Zifatama Jawara, 2018.
- M. Isnaeni. *Selintas Pintas Hukum Perikatan (Bagian Umum)*. Surabaya: Revka Petra Media, 2017.
- Millind Sathye. *Credit Analysis and Lending Management*. Australia: John Wiley & Sons, 2013.
- Muljono. Teguh Pudjo, *Manajemen Perkreditan Bagi Bank Komersil*. Yogyakarta: BPFE, 2001.
- Prodjodikoro, Wiryono *Azas-azas Hukum Perjanjian*. Bandung: Sumur, 1979.
- Setiawan. *Pokok-Pokok Hukum Perikatan*. Bandung: Binacipta, 1979.

²⁶ Restrukturisasi Pinjaman P2P Lending <<https://keuangan.kontan.co.id/news>> accessed on 5th November 2020.

Subekti, Pokok-Pokok Hukum Perdata. Jakarta: Intermedia.2003.

Tobing, Rudyanti Dorotea, Hukum Perjanjian Kredit. Yogyakarta: Laksbang Grafika, 2014.

Usanti, Trisadini Prasastinah dan Nurwahjuni, Pengelolaan Risiko Kredit Dalam Praktik Perbankan, Surabaya: Revka Petra Media,2017.

Usanti, Trisadini Prasastinah dan Leonora Bakarbessy *Hukum Jaminan*. Surabaya: Revka Petra Media, 2014.

Journal

Ali, Hassnian, *et.al.*,” *Fintech and its Potential Impact on Islamic Banking and Finance Industry; A Case Study of Brunei Darussalam and Malaysia*”, *International Journal of Islamic Economic and Finance*, Vol. 2, No.1, Juli 2019 ,73-108: 72.

Lu, Lerong. “*Promoting SME Finance in the Context of the Fintech Revolution: A Case Study of the UK's Practice and Regulation*”. *Banking and Finance Law Review*. Vol. 33, No.3,2018, 318-343.

Pan, Yaqiong and Qiong Liu, “*Research on The Default Risk Evaluation of Borrowers from Online Peer-to-Peer Lending Based on Survival Analysis*”, *International Conference on Economic Management and Cultural Industry (ICEMCI 2019) Advances in Economics, Business and Management Research*, Atlantis Press, Vol. 109, 487-490:490.

Segal, Miriam, “*Peer-to Peer Lending; A Financing Alternative for Small Business*”, Office of Advocacy Issue Brief Number 10, September 9, 2015, www.sba.gov/advocacy/issue-briefs.

Usanti, Trisadini Prasastinah and Fiska Silvia Raden Roro, “*Legal Protection of the Contracting Parties in The Peer to Peer Lending Based on Financial Technology (P2P Lending Fintech) in Indonesia*”, *International Conference on Law, Governance and Globalization 2017 (ICLGG 2017)*, *Advances in Social Science, Education and Humanities Research (ASSEHR)*, Atlantis Press, Vol. 131,282-295.

Usanti, Trisadini Prasastinah, *et. al.*, “*Dispute Settlement Method for Lending in Supply Chain Financial Technology in Indonesia*”, *International Journal Supply Chain Management*, Vol.9, No.3, June 2020, 435-443:438.

Internet

Hiding in plain sight the pandemic doubles the risk of P2P lending Operation <<https://www.thejakartapost.com>> accessed on 14th November 2020.

Fintech association to establish to establish task force as bad loans <<https://www.thejakartapost.com/news/2020/10/01>> accessed on 14th November 2020.

FAQ Terkait Layanan Pinjam-Meminjam Uang Berbasis Teknologi Informasi <<https://www.ojk.go.id/>> accessed on 23th October 2020.

Penilaian Risiko <<https://www.akseleran.co.id>>. accessed on 5th October 2020

FAQ Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi <<https://www.ojk.go.id/id>> accessed on 5th October 2020.

Kurangi Risiko Pinjaman <<https://keuangan.kontan.co.id>> accessed on 5th October 2020.

Restrukturisasi Pinjaman P2P Lending <<https://keuangan.kontan.co.id/news>> accessed on 5th November 2020.

Pinjaman Danamart, <<http://danamart.id>> accessed on 3rd October 2020

Penilaian Risiko <<https://www.akseleran.co.id>> accessed on 5th October 2020

Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology Based Lending and Borrowing Services.

Financial Services Authority Regulation Number 18/POJK.03/2016 concerning Application of Risk Management for Commercial Banks.