

# The Maslahah Principle against Sharia Financial Technology in Indonesia

Fiska Silvia Raden Roro, Abd Shomad

*Faculty of Law, Universitas Airlangga, Surabaya, East Java, Indonesia*

**Keywords:** Maslahah Principle, Sharia, Financial Technology.

**Abstract:** The principle of *maslahah* is applied particularly in cases that have not been regulated by the Qur'an, the Sunnah (the teachings and practices by Prophet Muhammad), or *qiyas* (analogy method in Islamic jurisprudence). *Maslahah* is the concept in shari'ah (Islamic divine law) regarded as a basis of law. It forms a part of extended methodological principles of Islamic jurisprudence (*usul fiqh*). The application of the concept has increasingly become important since contemporary legal issues have arisen in the modern times. Sharia financial technology is one of the new legal issue in recent years. By focusing on profit-loss sharing principles Islamic financing has the potential to prompt more financing by small and medium sized enterprises (SMEs) to start their businesses. The adoption of sharia financial technology (hereinafter referred to as fintech) is in line with government initiatives working to address barriers to SME growth, such as limited access to financing or lack of sufficient collateral for loans. The government believes Islamic finance will bring many benefits for both Muslims and non-Muslims due to it aims. There are several challenges and risks in the sharia financial technology industry. The legal problem in this article is that all fintech in Indonesia has only one door to entry, namely by registration through only one platform fintech transaction: lending service based on information technology. It has been enacted by the Financial Services Authority regulation (POJK) No. 77/POJK.01/2016. Vice versa, in Islamic law perspective, *al-qardh* (lending) is not categorized as a business transaction. Taking a profit in lending transactions is prohibited (*haram*). In fact, until June 10, 2018, the number of fintech listed on the the Financial Services Authority consisted of 63 conventional fintech and 1 sharia fintech (in the near future there will be four financial technology companies-based lendings that run the principles of sharia in the process of filing a registered permit). This fact means that sharia fintech companies candidate are inevitably forced have to register with the Financial Services Authority as lending service platforms. This article will analyze this legal problem under the *maslahah* principle. This principle indicates prohibition or permission of a thing or a deed according to necessity and particular circumstances, on the basis of whether it serves the public interest of the Muslim community (*ummah*). The concept is acknowledged and employed to varying degrees depending on the jurists and schools of Islamic jurisprudence.

## 1 INTRODUCTION

Since February 24, 2016, the government has launched "Indonesia: The Digital Energy of Asia," therefore, the government has set a number of policies, among others, targeting the growth of the technopreneur sector with a target of reaching e-commerce transactions of 130 billion USD by 2020. A strategic plan is to focus on SMEs and engage them in national economic development as well as facilitating access to funding for the digitization of SMEs and pioneering companies through People's Business Loans. This program has been supported by the Financial Services Authority/Otoritas Jasa

Keuangan (hereinafter referred to as OJK) with the issuance of OJK Regulation (hereinafter referred to as POJK) No. 77 /POJK.01/2016 regarding Lending Service based on the Information Technology at December 28, 2016.

Financial Technology is present for providing ease of financial services to consumers or society without the worry of the fintech system organized by fintech actors. Every officially registered fintech actor will be arranged by related institutions such as the Ministry of Communication and Information Technology (Kemenkominfo), OJK and Central Bank of Indonesia (hereinafter referred to as BI). OJK has done the testing against fintech actors using

a regulatory sandbox method which is contained in the PBI (BI), PADG (Rules of Governor Board Members) and POJK (Regulation Financial Services Authority) regarding fintech, as well as technically reinforced by regulation which made Kemenkominfo in the Law of Electronic Information Technology. On the platform of "peer-to-peer lending" here, the customer is lent money as a reward for interest payment and capital repayment from time to time. Peer-to-peer lending rules are expected to increase the confidence of investors through lending service based on fintech with the aim of assisting the proprietors of SMEs to gain funding to expand their business. The information technology based on lending service, which is better known as financial technology (hereinafter referred to as fintech) is one alternative platform of investment based on digital technology that can be used as loans to SMEs. Based on Article 1 point 3 of POJK No. 77 /POJK.01/2016, the information technology based on lending service is the implementation of financial services to arrange a meeting among lenders with the recipient of the loan in order to construct a lending agreement in rupiah currency directly through electronic systems by using the Internet network. This platform is generally to support the development of microcredit or SMEs in capital and investment. The method of the information technology based on lending service is expected to be a solution for SMEs and new start-up businesses. The concept related to lending based fintech, or debt based on fintech is this term commonly called a peer to peer lending scheme or person to person<sup>1</sup>. The activities of lending and borrowing service providers act as intermediary institutions. The disadvantage is that the lending based fintech system is considered to lack legal protection because there is no requirement for collateral as in banking<sup>2</sup>.

The fintech company makes products divided into categories, such as e-money, loan-based crowd funding or lending, pledge, payment, reward and donation-based crowd funding, financial planning, capital market, Internet banking, and comparison of financial services products. However, OJK still builds regulation only limited to a "lending service-based fintech" scheme which is similar to "peer-to-peer lending"/"loan-based crowd funding" (hereinafter referred to as P2P lending).

Currently OJK only uses P2P lending service regulation on fintech. In the other words, OJK provides regulation in order to register, to manage, to monitor or to control the fintech model with a P2P lending system only, whereas there are many kinds of platform of fintech type. P2P type is faux pas par

excellence in fintech in perspective of economic liberalism and capitalism due to it being the most popular in public demand and more profitable or low in risk. This type of fintech has a function as an intermediary for those who want to lend money and those who need to borrow money. The fintech model brings economic and social impacts globally in financing and lending matters<sup>3</sup>. This platform is easier than a bank mechanism/procedure for the person or community to apply lending/financing, as a bank mechanism is more complicated and difficult for the community, especially for the startup business/SMEs.

Moreover, the OJK regulation is still applicable to the common fintech, not for sharia fintech. This is a major obstacle to sharia fintech related to registration, regulation and supervision considering sharia fintech is highly demanded by the Muslim majority of Indonesia. Recorded shariah bank financing and sharia business unit amounted to Rp 282.1 trillion as per February 2018. OJK records the value fell 1.3% compared to year-end (year-to-date/ytd) of Rp 285.7 trillion. Fintech has disbursed loans of Rp 4.47 trillion as of March 2018. In total, the financing of the Islamic finance industry is much higher than fintech. However, loan growth is much faster for fintech, i.e. 74.6% ytd<sup>4</sup>.

This article will analyze several rules in sharia financial technology by *maslahah* principle. This principle indicates prohibition or permission of a thing or a deed according to necessity and particular circumstances, on the basis of whether it serves the public interest of the Muslim community (*ummah*). The concept is acknowledged and employed to varying degrees depending on the jurists and schools of Islamic jurisprudence (*mazhab*).

## 2 MATERIALS AND METHODS

The material on the main issues of this paper is an analysis of the application of *maslahah* principle in shariah financial technology in Indonesia. The deductive method is applied by outlining the rule of Lending Based Financial Technology Service Number 77/POJK.01/2016, which is associated with the facts and *maslahah* principle. This paper uses a conceptual approach. This approach is intended to obtain a comprehensive review of sharia law in analyzing the financial technology service in Indonesia under *maslahah* principle in order to empower SMEs.

### 3 DISCUSSION

#### 3.1 The Utility of Fintech

Digital technology as disruptive innovation has penetrated many aspects of life. The digital revolution takes place in all business sectors, including the financial sector. The existence of fintech then crushed the conventional finance industry and revolutionized the workings of traditional financial institutions. An innovation successfully transforms an existing system or market, introducing practicality, accessibility, convenience, and economical cost, known as disruptive innovation. Initially, this term was first made by Clayton M. Christensen and Joseph Bower in 1995. "Disruptive Technologies: Catching the Wave", Harvard Business Review (1995). Fintech is a logical consequence of this disruption. Fintech brings a new platform of capital and investment, it is a more practical, quick and easy mode for consumers to access products and different types of financial services.

Fintech has several important roles in the developing of entrepreneurship and financing and it has contributed to the economic growth through the creation of new and increasing flows of credit to SMEs and other users in the real economy. Several benefits of fintech include: it has strong ties to innovation and breakthroughs, provides cheaper access to capital, it helps fill the gap left by the banks, it offers convenience, and geographical boundaries are removed 5.

The standard in measuring utility principles is "the greatest happiness for the greatest numbers". This standard was born out of the will of economic liberalism (*laissez faire*) by Jeremy Bentham. Bentham believed that when individuals who make up society are happy and rejoicing, then the whole country will enjoy happiness and prosperity. Bentham argued that the main duty of government is to increase the happiness of society by developing the pleasures that can be enjoyed by society, in addition to creating security and reducing misery<sup>6</sup>.

Khan, in Hasan, argued that the concept of utility involves value judgment; it regards desires as the best criterion for the formation of preferences, and does not distinguish them from needs. In Islamic economics *maslahah* is a more objective concept for analyzing the behavior of economic agents<sup>7</sup>.

Benefits are clearly seen from a peer-to-peer lending scheme. The benefits of peer-to-peer lending initially are to combat capital problems. By this scheme, the current capital problem is no longer a big problem, because websites that provide solutions for

loans have started to appear. A person or SME entrepreneur can more easily borrow money from P2P lending-based fintech websites. The P2P lending-based fintech website gets the capital from investors from the whole world without any partition of each state and its regulations.

These days, all of the economic trend is Islamizing the existing platform, so it very often encounters difficulties in the application of principles and their application in the viewpoint of Islamic law. For every product or service, which arises from economic liberalism and capitalism, due to demand of the Muslim community, all of the products and services are labeled as *shariah*/Islamic products or services and sometimes without complying to *shariah* principles.

#### 3.2 Sharia Fintech Needs Policy, Supervision and a Comprehensive Regulatory Framework

Fintech is an innovative service, which is no doubt expected to contribute to the expansion and growth of the Islamic finance institutions, which can lead to a better service or *maslahah*. The crucial issue is whether fintech based on lending service and structures is not an alternative to Islamic finance but a new phenomenon within Islamic finance. Fintech based on lending service is currently forced to go through the only one door to fintech operations based on *shariah* principles, although in *shariah* principles it is clearly not allowed to take profit of lending transactions. The determination of *maslahah* in the fintech world is a very risky issue. It is not even clear how fintech innovation platforms relate to Muslim needs. As such, the regulatory framework that covers Islamic fintech should be there in addressing consumer protection and market conduct issues.

The current registration procedure of *shariah*-based fintech is still the same as the conventional fintech. OJK itself is concocting regulations related to *shariah*-based fintech lending as a renewal of the POJK 77 of 2016. In the other word, nowadays *shariah* fintech is forced to be registered on the peer-to-peer lending mechanism and it is forced to be governed by general economic principles that are not adherent to *shariah* principles. It is clear that in its implementation it will be unsuitable or likely to violate the principles of *shariah*. The form of surveillance on fintech in general is clearly different from the supervision on the fintech of *shariah*.

In types of fintech of a lending-based service, the backer is entitled to regular compensation and is

entitled to recover funds, which is already provided within specified deadlines. By definition based on Imam Wahjono, a peer-to-peer lending service has the same mechanism as a lending service platform in a conventional bank. P2P lending or commonly referred to as social lending or person-to-person lending and is a form of debt fintech. P2P lending provides a facility for someone who wants to borrow money from someone who has never met them directly before. On the other hand, the investor can lend to someone who they never knew before and the information is only based on the credit record of the borrower. In this type of fintech, the backer is entitled to regular compensation (as well as interest) and is entitled to recover funds already provided within specified deadlines.

Based on the above description, clearly that this type of P2P lending fintech involves interest/ usury (riba) to gain profit and is definitely not allowed or is unlawful law in an Islamic perspective. However, some argue that this type can be allowed if it meets certain conditions. Generally fintech-based loans or a fintech lending service, such as bank lending mechanisms. The risk of return of this type is high, therefore the prospective lender is very cautious, though usually promising additional loan allowance is very attractive. The sharia fintech requires the Sharia Council to ensure that Islamic law takes place and is implemented in this regard.

In this case, the author's analysis of a fintech lending-based/debt-based service is based on Ibn Qudamah's opinion. He explained that Ibnul Mundhir said: "The scholars agree that if a person lends money then he gives the borrower a condition for additional or reward, then borrow and make it in such a way, then the additional taking here is usury". It is narrated by Ubay bin Ka'ab, Ibn 'Abbas and Ibn Mas'ud that they forbid from any form of accounts receivable with profit. Accounts payable include contracts that help and seek rewards for helping others. But if helping is the purpose, why even look for profit; this is outside the intention to lighten the burden of others. (Al Mughni, 6: 436).

Under masalah principle, in order to run its business currently, PT Ammana Fintek Syariah has officially registered in the OJK list as a fintech-based lending service. Even though fintech is based on lending services it is not in line with sharia principles, PT Ammana Fintek Syariah is the first fintech based on sharia principles which is listed in OJK with a P2P lending platform. The other is a sharia unit in PT Investree Radhika Jaya, this unit as the only peer-to-peer financing that has received a letter of recommendation for the appointment of a sharia

expert team from the National Sharia Council and has been recorded in the Directorate of Non-Bank Financial Institutions Sharia Financial Services Authority (IKNB OJK).

In international monitoring bodies and policy recommendations regarding the global financial system, the Financial Stability Board (FSB) divides fintech into four categories based on the type of innovation: 9

First, payment, clearing and settlement. This is a fintech that provides payment system services, both held by the banking industry and conducted by Bank Indonesia such as Bank Indonesia Real Time Gross Settlement (BI-RTGS), BI National Clearing System (SKNBI) to BI Scriptless Securities Settlement System (BI-SSSS). For example, Kartuku, Doku, iPaymu, Finnet and Xendit.

Second, e-aggregator. This fintech collects and processes data that consumers can use to help make decisions. This start-up provides product comparisons ranging from prices, features to benefits. For example, Cekaja, Cermati, KreditGogo and Tunaiku.

Third, risk management and investment. This fintech provides services such as robo advisor (software that provides financial planning services and e-trading and e-insurance platforms. For example, Bareksa, Cekpremi and Rajapremi.

Fourth, peer-to-peer lending (P2P). This fintech brings together lenders (investors) with loan seekers on one platform. Later the investors will get interest from the loaned funds. For example, Modalku, Investree, Amartha and KoinWorks.

Sharia fintech only has been enacted in guidance of the National Sharia Board through Fatwa DSN-MUI No.117/2018. In this Fatwa MUI, the definition of financing services based on information technology under sharia principles is the implementation of financial services based on sharia principles, which bring together or connect financiers with financing recipients in order to built financing contracts through electronic systems by using the Internet. Sharia fintech, especially peer-to-peer lending service as it is regulated in OJK regulation No. 77/2016 is more appropriately referred to as P2P financing rather than "lending service" or "P2P lending" due to basically P2P lending being contrary to sharia principles. Both PT Ammana Fintek Syariah and the sharia unit in Investree are registered with OJK as a part of a lending service based on information technology, which is based on sharia principles. Both provide financing services for venture capital or legitimate funding based on sharia rules and regulations. By using a halal and profitable

peer-to-peer financing scheme, borrowers who need financing and lenders who want to get paid for their funding will be brought together in a single facility called the marketplace. Moreover, both expect to develop SME business growth by meeting the financing needs and financing of lending without *riba* in accordance with sharia principles while supporting the growth of a sharia economy in Indonesia.

Due to the absence of law regulating the provision of Islamic/sharia fintech, thus the definition of it specifically has not been found in the regulation of Indonesia. Meanwhile, based on Article No.1 verse (25) of the shariah law, on the definition of funding, the provision of funding or a bill which is considered to be similar to that is in the form of:

1. Profit share transaction in the form of *Mudharabah* and *Musyarakah*
2. Renting transaction in a form of *ijarah* or *ijarah muntahiya bittamlik*
3. Trade transaction in a form of accounts receivable *murabahah*, *salam*, *istishan*,
4. Lending transactions in a form of accounts receivable *qardh*
5. Service renting transaction in a form of *ijarah*
6. Multi-service transaction. Many fintech products and procedures seem to be not in full compliance with formal requirements of *uqud/’aqad* (Islamic contract law) in general and shariah nominate contracts in particular. The fundamental issue is the reliability of information on a fund-seeking project in general and on its shariah qualities in particular. For Instance, a Muslim investor has to be sure that the contracts of an “Islamic” P2P equity or lending platform, as well as the use of the funds by the borrower(s) are under shariah compliance. For example, supervision of fintech regulations for conventional fintech will not be sufficient for Islamic schemes where the shariah compliance of contracts and the use of funds are essential for the lender/investor.

Besides the lack of regulations, which is a need policy, and a comprehensive regulatory framework, moreover, sharia fintech needs to be supervised.

Regarding the legal protection of the sharia fintech system, it is related to the government's supervision of the lending service based on the fintech system itself. Supervision must be carried out by the authorized institution so that there is no overlapping in carrying out the supervisory function. Regarding supervision in the field of financial technology, there is still a lack of regulation so that the coordination system between Central Bank of Indonesia (hereinafter referred to as Bank Indonesia) and the OJK has not been realized because until now

there are no legal instruments governing the formal framework (both at the level of general policy makers and at the technical level) in order to support the supervisory task related to the course of crowd funding activities. The UK regulatory body for technology-based financial services is called the Financial Conduct Authority (FCA), while in Singapore it is called the Singapore Monetary Authority (MAS). Strictly speaking, the British Financial Organizing Authority stated on its official website that the regulated Internet business model activities only deal with loan-based crowd funding platforms (loan-based crowd funding): also known as 'peer-to-peer lending', and investment-based crowd funding (investment-based crowd funding) and FAC does not regulate donation-based crowd funding (donation-based crowd funding) and pre-payment or rewards-based crowdfunding<sup>10</sup>.

The fintech service platform is differentiated on the purpose of the activity. If it is intended to be built on an *ijarah* contract that aims to carry out activities primarily related to financing services, the financing services authority is the institution authorized to monitor it. This has been regulated in Article 6 of Act Number 21 of 2011 concerning the Financial Services Authority (State Gazette of the Republic of Indonesia of 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253), that the financial services authority carries out the task of regulating and supervising the activities of financial services in the banking sector, financial services activities in the capital market sector, and financial services activities in the insurance sector, pension funds, financial institutions and other financial services institutions. The OJK functions to organize an integrated system of regulation and supervision of all activities within the financial services sector. OJK has authority in the field of regulation and supervision. In the field of supervision, OJK supervises and protects consumers in the banking sector, capital market, and Non-Bank Financial Industry (IKNB), provides and/or revokes business licenses, approves or determines dissolution, gives written orders to financial service institutions and appoints site managers sharia fintech service web and is authorized to set administrative sanctions. In the task of bank supervision there is coordination between Bank Indonesia and OJK. Bank Indonesia exercises its authority in the field of the macro-prudential, and OJK in the field of micro-prudential.<sup>11</sup>

Supervisory agencies will be different if an Islamic fintech service binds itself to a *tabarru* contract, in which the main activity is donation-based

crowd funding and the position of the funder is a donor, not a capital provider. If the funds raised in fundraising are a donation based on fintech, it is very possible if the funds are included in the category of zakat, infaq and sadaqah. Related to the management of zakat regulated by the Law of the Republic of Indonesia Number 23 of 2011 concerning Management of Zakat (State Gazette of the Republic of Indonesia Number 115 in 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5255), hereinafter referred to as the Zakat Management Law, the supervisory function is on the National Zakat Board/Badan Zakat Nasional (hereinafter referred to as BAZNAS). In this case, the Government carries out regulatory control duties, and BAZNAS is the executing agency. The reason for the government designing BAZNAS as a non-structural government institution whose membership consists of elements of society and government, is that its nature is not lost. To assist BAZNAS in the implementation of collecting, distributing and utilizing zakat, in the community it is possible to create Amil zakat agencies (Lembaga Amil Zakat). Every LAZs must obtain permission from the government. Zakat finance is not included in the national budget of Indonesia's balance sheet, but just reports it. The state has an interest in facilitating Muslims in fulfilling the obligation of zakat, but not taking advantage of the people's funds. Strictly speaking Article 1 jo Article 5 of the Zakat Management Law states that BAZNAS is an institution that carries out zakat management nationally, domiciled in the capital city of the country and is a non-structural government institution that is independent and responsible to the President through the Minister.

Nur Aqidah Suhaili 12 stated that in Islamic crowd funding it can apply waqf as an object of fundraising, if so, then the supervisory function related to waqf is regulated in Article 34 jo Article 36 of Law Number 41 of 2004 concerning waqf (State Gazette of the Republic of Indonesia of 2004 Number 159, Supplement to the State Gazette of the Republic of Indonesia Number 4459) hereinafter referred to as the Waqf Law. The provisions in the Waqf Law stipulate that the authorized institution in the land waqf field is the National Land Agency. Authorized institutions in the field of waqf of movable objects other than money are agencies related to their main duties. Agencies that are authorized in the field of waqf of movable objects other than unregistered goods are the Indonesian Waqf Board (Badan Wakaf Indonesia).

When the distribution of results and achievements related to the fulfillment of the contract is not appropriate, then the liability efforts and sanctions are the answer to the legal protection of Islamic fintech. In the national legal system as a consequence of Article 1367 Burgerlijk Wetboek states that everyone must be responsible for persons or objects under his control. As outlined earlier, that crowd funding systems that depend on the Internet are subject to the Act of Electronic Technology Information Law (hereinafter referred to as ETI Law), but in this ETI law there is no explicit provision if the principle of liability is adopted. The ETI law states that parties that conduct electronic transactions must act under the good faith principle, and among them three forms of liability, namely (i) liability for errors (liability based on fault), (ii) liability for negligence (negligence) or (iii) principle of liability without error (strict liability).

### 3.3 Sharia Fintech Under Maslahah Principle

Mazhab Maliki fully supports the al-maslahah al-mursalah principle. It is in line with maqasid al-shariah and it brings justice to people in society. Five main objectives of shariah (maqasid al-shariah) are i) *hifzu al-din* (protection of religion); ii) *hifzu al-nafs* (protection of life); iii) *hifzu al-mal* (protection of wealth); iv) *hifzu al-aql* (protection of intellect); and v) *hifzu al-nasl* (protection of progeny). By protecting these five *maqasid* it leads to serve the public interest as against individual interest. Again by protection of the *maqasid* it would lead to mutual and peaceful coexistence in the society. On the other hand, without protecting it, it will lead to chaos in the society and the whole nature<sup>13</sup>. Al-Kaylani stated that "maqasid" is plural of "maqasid", which brings the meanings of the straightness of a path, justice and balance, and a directive destination. While "Shari'ah" is translated as a source of water or a path towards it. The Shari'ah epitomizes the teachings of Islam, which establishes a set of norms, values, and laws that govern every single aspect of life. Marwa referred to Laldin & Furqani, that Shari'ah establishes rulings, which cover the whole belief system, the concept of morality and ethics, the relationship between God and humans, and established human relationships. So that "maqasid alShari'ah" can be interpreted as "the higher objectives of Islamic law"<sup>14</sup>.

"Al-maslahah is an Islamic philosophical principle which means 'public interest or benefit'. In other words, it means if any decision is taken which

has no reference in the Quran and Sunnah it is acceptable in Islamic philosophy as it brings benefit for the people in the society as long as it is not contradictory with any principle in Islamic law". In a different way, in utility principle which it measures is 'the greatest good principle' and is relative depending on the subject matter. But in Islam when something is fixed by shariah (the Islamic law) as a principle it must be followed, take it for granted, no matter if it brings good for a majority of people or not.

Islamic jurisprudence has developed a special utilitarian method for both understanding Shari'a and applying it in unprecedented situations. Classic Muslim jurists have divided maslahah up based both on its role in society and its relation to the Quran and Hadith. There are three categories of maslahah: necessities, needs, and embellishment. maslahah are also divided into three categories: ones that the Qur'an or Sunnah explicitly consider, ones that they explicitly dismiss or cancel, and ones that they do not mention at all. The method of considering maslahah in decision-making can be summarized in two steps: first step is that maslahah should promote one or all of the five goals of Shari'a. Second, maslahah should not cause the loss of a bigger utility or result in great harm 15.

Achsien and Purnamasari describe how sharia/Islamic fintech is perceived as value oriented, where it should meet the maqasid (purposes or goals) of sharia. Maqasid is to accomplish maslahah (benefit). Maqasid are the preservation of (1) religion, (2) life, (3) lineage, (4) intellect, and (5) property. Islamic fintech is constructed through concepts such as equity, justice, human dignity, freedom of enterprise, and moderation, with the ultimate objectives of utilizing economic and financial resources to satisfy the material and social needs of all members of the community16.

Due to language, language utility means usefulness, helpfulness or advantage, then this makes an opinion that equates to the utility principle with mashlahah, but if you look deeper there is a difference between the two. Differences in maslahah and utility include: a) the concept of maslahah is correlated with the "needs", while the utility is correlated with the desire ("want"). b) utility or satisfaction is individualistic, but maslahah not only can be felt by the individual but can also be felt by others or a group of other people or society. c) the problem is relatively more objective because it is based on an objective consideration (the criteria of halal or good) so that an economic thing can be

determined whether to have maslahah or not. While utilities are based on more subjective criteria, they may therefore differ from one individual to another. d) the individual's problem is relatively consistent with the social problem. In contrast, individual utilities are often opposed to social utilities. e) if the goals of maslahah are for all the parties in a business transaction, then all economic activities of society both consumption, production, and distribution will achieve the same goal, namely prosperity. This is in contrast to the utility in conventional economics, for example from a consumer perspective they measure it from the satisfaction of the consumer. While from the perspective of an entrepreneur, it is measured from the level of success to achieve optimum profit so different goals are achieved17.

Sharia fintech created on the basis of the incoherent methodology do not really exhibit the Islamic ethical framework of commercial contracts and the objectives of shari'ah. This is in line with Shahrudin's opinion18 that the historical sketch of the maslahah theory indicates good ground of philosophical discussions laid down by the classical jurists such as al-Ghazali and al-Shatibi. However, to apply the theory in the Islamic banking and finance matters, there is a need to develop a distinctive method to ensure its application does not deviate from the original concept. It is observed that the concept of maslahah or Shari'ah objectives has a significant impact on an Islamic framework for sharia fintech. Jalil19 believes that maslahah analysis should be carried out prior to performing the commercial and national profitability analysis of the project. In order to develop sharia fintech, it is necessary to establish cooperation between Islamic countries at the international level and it is also necessary to accelerate the initiative of the preparation of the guidelines and such cooperation would give birth to a detailed Islamic framework for a sharia fintech benchmark or evaluation. The principle of maslahah and shari'ah objectives could be the starting point of the project evaluation framework from the Islamic perspective without infringing sharia compliance.

Sharia fintech as a new alternative financial model has the potential areas that can be implemented, even though OJK has not yet provided the regulation, which is in accordance with the sharia principle. Several objectives of fintech comply with the maslahah principle including: (i) To provide an avenue to increase the size, and stabilize the stream of funds that can be channelled for profit of business or social programs. (ii) To promote improved social

outcomes and economics income for SMEs by directly linking funders to them through online. (iii) Providing an accountability and transparency mechanism of business because this transaction is supervised globally (iv) Providing a halal financing service of funding and lending without riba or other transactions which are contrary with Islamic law (v) Providing a simple mechanism financing service and reducing complicated mechanisms (vi) reducing the intervention of government policy (such as in the lending mechanism in conventional banks). These objectives and areas of implementation of sharia fintech comprehensively matched the elements related to the maqasid al-Shari'ah and maslahah. Actually, the sharia fintech can be said to be a model that epitomizes the ethical and moral framework of Islamic law. As a new alternative financing model, it is still in its developmental stage but is steadily attracting interest from institutions around the world. Unfortunately, OJK is considered slow in responding to building a sharia fintech system, mechanism and its supervision. Fintech is not growing from Islamic institutions or Islamic banks, but through fintech, potentially Muslim finance can be increasingly faster and more solid. Therefore, OJK needs to establish the sharia fintech system, which is including regulation under the sharia principle, provide sharia transactions, its mechanism and supervision. If OJK has provided regulation, which is specially based on fintech in sharia, every party can be fulfilling the maqasid al-Shari'ah and maslahah, without renouncing its business side and investment elements.

It should be the implementation of peer-to-peer lending based on financial technology that is allowed in an Islamic perspective if this P2P transaction is without using interest. How that is done is actually through a sale contract. So, this is a P2P crowd funding for asset finance, using a contract from Islamic finance called Murabahah. In order to use this Murabahah contract, it must be done in a way that is sharia-compliant. This contract will be between the crowd, the platform, and an SME. So, a peer-to-peer lending service is different from peer-to-peer crowd funding or peer-to-peer financing. Therefore, in Indonesia the National Sharia Board in February has enacted guidance or fatwa through Fatwa Ref.#117/DSN-MUI/II/2018 regarding financing service based on information technology under sharia principles. This fatwa guidance uses the term "financing" not "lending". Clearly, from an Islamic law perspective, al-qardh (lending) is not categorized as a business transaction and it is not

allowed/prohibited to take a profit in a lending transaction. In fact, until June 10, 2018, there is one sharia fintech that has been registered with OJK (in the near future there will be four financial technology-based companies lending that run the principles of sharia in the process of filing a registered permit). This fact means that sharia fintech company candidate are inevitably forced to have an obligation to register with the the Financial Services Authority as a lending service platform.

In order not to hesitate in the formation of the contract, then any business innovation that develops at this time must first be reviewed in relation to the validity of the contract that is made. Attachment to Islamic law applies to both Muslim and non-Muslim parties who voluntarily submit themselves to Islamic Law on contracts or sharia contracts that have been made. In a business transaction, the principle of kafah is needed, which means that from the beginning of the contract signing to the end of its implementation, it submits itself to the sharia, including the instrument of settlement of the dispute in the event of a sharia economic dispute in the future. Internet technology has changed the mechanism of business transactions and created new forms of business innovation and has new characteristics that are very different from the characteristics of previous forms of business transactions. Starting from the harmony and the terms of making a contract, the type of contract that will be made, until the dispute resolution process (from beginning to end) is expected not to violate sharia compliance and not be categorized as a prohibited/forbidden transaction. In other words, the formation of a business innovation contract, including Islamic crowd funding is obliged to heed to sharia rules "alasy syai 'far'un' an tashuwurihi", which means that a legal assessment of a problem departs from the description of something.

Daud Ali concluded that the word "Islam" derived from the word "salima" contained the meaning of peace, prosperity, salvation of surrender (self), and obedience. Every person who conducts sharia financial transactions or every Muslim business actor is ordered to carry out the principles of Islamic law in a complete manner (kafah). This kafah principle underlies the birth of adherence to sharia principles as a whole in every activity of muamalah. Islamic crowd funding itself is categorized as a furu (branch) legal problem in muamalah fiqh, so that the contracts that are born on sharia fintech must be in line and in accordance with the Islamic Shari'ah, are not permitted to violate the norms of command and prohibition set by Allah Subhanahu Wa Ta'ala. The



Koran explicitly calls on believers to carry out the principles of Islamic law as a whole, without discriminating between one teaching and another, without distinguishing whether it is related to *aqidah*, worship or *muamalah*. Allah ta'ala said:

ول خدا اون مان یز لا اه یا ای لاوۀ فاك مل س لا ی فانی ب م  
ودع مک له ناطی ش لا تاوطخ اوع ب ت

"O ye who believe! Enter into the whole of Islam, and do not obey the steps of shaitan. Surely Satan is a real enemy for you." (Qur'an Al-Baqarah: 208).

Sutan Remi Sjahdeini expressed the opinion of Lee and Delta regarding the principles of sharia compliance as follows: "Islamic financial system, therefore, cannot be introduced merely by eliminating *riba* but only by adopting the Islamic principles of social justice and introducing laws, practices, procedures and instruments which help in the maintenance and dispensation of justice, equity and fairness."<sup>20</sup>

Some argue that this type can be allowed if it meets certain conditions. This type is called using the *mudharabah* or *qiradh* contract, which means that the owner of the money surrenders or lends money to the entrepreneur, trading, while the profits are shared and divided according to the collective agreement as stated in the business plan while campaigning. According to Sentot Imam Wahjono,<sup>21</sup> generally crowd funding loans are called peer-to-peer (P2P) lending, such as lending in bank mechanisms in general. The lending-based fintech requires the Sharia Board to ensure that Islamic law occurs and is implemented in this matter. The fintech mechanism service in a question is a business characterized by (i) *halalan thoyyibah* (does not contain elements of pork, blood, death, liquor, and categorized as uncertain (*gharar*) and doubtful (*mu'tasabihah*) including manufacture, sale, distribution and collection) not from theft, robbery, corruption, or income derived from sources that are prohibited by religion and official government regulations) and profits derived from *halal* money, (ii) profits from the business are ascertained to come from *halal* money (money channeled by lenders is a potential source that comes from the lawful and good, not from the results of theft, robbery, corruption, or income derived from sources that are prohibited by religion and official government regulations).

The opinion above is different from the opinion of the authors; *halalan thoyyibah* means that the project or business offered is justified (*halal*) by Islamic law and good. In this case, the analysis of researchers related to a lending-based/debt-based

fintech service is based on the opinion of Ibn Qudamah which states that:

قال نیا اذنتلا: او عنوا علی نأ السنلا اذ شرط علی السنلا  
زداية وأ تبة. السلف علی ذلذ، نأ ذخاً زدايالا علی ذلذ ابا. دلو روا نع ببا  
نب كعك، نياو عابع، نياو دو عسم، مهناً ناوه نع قرل رو عفنم. هتنو دفع  
إفالا تبرلو، اذذف شرط هيف لازدايا هورخاً نع هعووم

Meaning: "Ibnul Mundzir said: The scholars agreed that if someone lends money then he gives the borrower money for the existence of an addition or a gift, then he borrows and gives in such a way, the additional take here is usury." It was narrated by Ubay bin Ka'ab, Ibn 'Abbas and Ibn Mas'ud that they forbade the form of debts with benefits. Because the debt owed in jurisprudence is called *qardh*, where *qardh* is included in the *tabarru* contract, which aims to gain reward for helping others.

Lending transactions are built on *qardh* contracts where the aim of the lenders is to gain the benefits in the afterlife (*akherat*), and not to gain for profit in the world. Borrowing and lending contracts, such as lending-based fintech service or peer-to-peer lending has additional profits there, then the contract category contains elements of usury. This contract is unlawful/not permissible in Islamic law because *qardh* is not included in a contract or a business agreement that aims to generate profits or for commercial purposes. *Qardh* is included in a *tabarru* contract, which has the aim of giving something or to lend something. From the description above it is clear that this type of peer-to-peer lending service based on financial technology platform involves interest and it is certainly not allowed or is illegitimate from an Islamic perspective.

## 4 CONCLUSIONS

To sum up, the sharia fintech platform is designed to comply with the sharia principles and in accordance with Quran and Hadith. Sharia fintech in Indonesia is still regulated by general rules, which are not fully compliant with Islamic principles. As a business transaction, sharia fintech cannot be categorized as a lending service based on the fintech platform in common due to there being usury in its transaction. Moreover, the sharia fintech needs supervision under the institutions that actually apply sharia principles. Considering the *maslahah* principle, currently some sharia fintech/sharia units in conventional fintech have taken the risk and have officially registered their business as fintech based on lending services in order to operate the business. Even though there a few terms and mechanisms that are still contrary to the

sharia principle, for instance sharia fintech use the financing platform not the lending service platform and it is not gaining profit for the lending (there is no usury). So that it is a duty for OJK to control the fintech as an infant industry and build some regulation not only for fintech based on a P2P lending service but also for other platforms, especially sharia fintech, including its protection, its supervision and also for its dispute resolution. The *maslahah* principle which is implemented in sharia fintech still has to heed the applicable terms in the Quran and Hadith.

Regarding the globalization and economic ASEAN community, there is an opportunity to realize the state owned Islamic finance by the regulation and the role of the government to intervene in the policy side. The government action is allowed by sharia principle as long as it creates *maslahah* for the community and it is aligned with the community theories. Related to Indonesia as a global player in Islamic finance in the world, it will give a lot of beneficiaries for local economic activity, Islamic education, Islamic business and the stability of financial conditions<sup>22</sup>. OJK is expected immediately to establish the sharia fintech system, which is including regulation with the sharia principle, providing sharia transactions, its mechanism and supervision.

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