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Analysis of Islamic Legal Study on Financial Technology Transactions: Maqashid Sharia Perspective

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ABSTRACT

This paper discusses the impact of digital technology on various economic activities, particularly on the financial sector, leading to the emergence of Fintech. Indonesia is seen as having significant potential for Fintech development due to its geography, growing middle class, and underdeveloped financial product market. The research utilized a descriptive and qualitative literature review approach to analyze the development of Fintech in Indonesia through the lens of Maqashid Sharia. The research analysed the need for Fintech compliance with Islamic commercial law, which excludes Maysir, Gharar, and Riba. The Maqashid Sharia approach is suggested as a way to ensure that Fintech adheres to Islamic principles. Fintech as the hybridization of technology with traditional financial services and explains that it gradually replaces incumbents with better and more efficient services. The importance of Fintech transactions being in compliance with Islamic law, which is based on the Quran and Hadith.

Keywords: Fintech, Islamic law, Maqashid Sharia, Sharia values, financial services

INTRODUCTION

Digital technology is a breakthrough and a new innovation in all economic activities. It has the potential to affect various sectors such as trade, agriculture, and particularly the financial sector. One of the sectors currently being developed is Financial Technology, commonly known as Fintech, which is the latest innovation of today. Financial technology is a business that focuses on providing financial services using software and modern tools [1]–[3]. Fintech has gained global attention as a technology that will empower companies to compete effectively in the twenty-first century. Governments around the world are now paying attention to the challenges and designing policies and regulations to support the development of Fintech.

Financial technology, or Fintech, in Indonesia represents a highly potential market opportunity. The vast geography, significant middle-class growth, and relatively weak financial product potential combine to create a robust market for Fintech development in Indonesia. [3], [4] With 36% of the population having a bank account, Fintech in Indonesia promises financial services that can be accessed by the unbankable population. Fintech platforms in Indonesia have generally experienced rapid growth from 2015 until the end of 2022. [5]

Based on data registered by the Otoritas Jasa Keuangan (OJK) until March 2018, the growth of Fintech in Indonesia has shown positive progress, with around 40 sharia-based Fintech companies having received official operating permits from the OJK [6], [7]. As the largest Muslim-populated country in the world, the prospects for the sharia-based Fintech industry in Indonesia appear to be very promising.[8] Overall, Fintech in Indonesia has significant potential to provide solutions for urgent needs that cannot be met by traditional financial institutions. [9], [10] In addition, the explosion in mobile penetration (with 70% of the population using mobile phones to access the web) in the country has created a fertile ground for rapid growth of the Fintech industry. [11]

According to the Otoritas Jasa Keuangan (OJK) data in 2022, Fintech companies in Indonesia are divided into several sectors, namely: 1) financial planning, 2) lending, 3) crowdfunding, 4) aggregator, 5) payment, and 6) other Fintech sectors. Payment sector dominates Fintech companies in Indonesia with 42.22%, followed by lending sector (17.78%), aggregator sector (12.59%), financial planning sector (8.15%), crowdfunding sector (8.15%), and other Fintech sectors (11.11%).[6]

As Fintech continues to develop, its compliance with Islamic commercial law (fikih muamalah) must be based on sharia principles, which exclude Maysir, Gharar, and Riba. Despite the use of technological systems, the principles of Islamic law must still be adhered to. [12] Therefore, research on the tijarah contract in Fintech transactions with a Maqashid Sharia approach must be conducted so that Muslims can follow the development of technology and Fintech financial institutions in accordance with the principles of Maqashid Sharia.

The approach taken in this analysis is the Maqashid Sharia approach as the main foundation for determining legal ijtihad. This is done to create a correlation between practice and theory based on sources related to the theme of this research.

METHODS

The type of research utilized in this paper is a literature review obtained from various sources. This research is descriptive and qualitative, meaning that it describes a research subject, in this case, the development of Fintech in Indonesia from the perspective of maqashid sharia, and interprets the findings or observations to determine its relevance to the principles of Islamic law. The nature of this research is descriptive, meaning that it aims to describe and interpret the findings or observations regarding the increasingly rampant development of Fintech in Indonesia through the lens of maqashid sharia. The type of data used in this paper is secondary data, which is data that the researcher takes as support for the scientific research by conducting a literature review (searching through books, articles, journals, magazines, the internet, and other sources). The data collection techniques used in this paper include several methods, such as literature review, which is used to explore the fundamental theories related to the concepts and mechanisms of the rapidly growing Fintech industry to ensure that it does not contradict the principles of Islamic law. Additionally, this method aims to identify the current development of Fintech through the lens of maqashid sharia as the primary foundation, to create a correlation between practice and theory based on the sources of Islamic economic teachings.

RESULT AND DISCUSSION

Financial Technology (Fintech) is the hybridization of technology with traditional financial services processes. [13] According to PWC, Fintech is a dynamic segment at the intersection of the financial services sector and technology, where technology-focused start-ups innovate new products and services currently provided by the traditional financial services industry. [2] Another definition of Fintech refers to the use of technology to provide solutions in the financial sector. [14] Fintech Sharia, on the other hand, is the combination of financial and technological innovations that facilitate transaction and investment processes based on Sharia values. Despite being a new breakthrough, Fintech has experienced rapid growth. Islam is a comprehensive religion, and thus, the financial sector must abide by Sharia principles.

The development of technology is marked by the emergence of Fintech, which is one of the proofs of digital-based technological advancements and a new innovation impacting all economic activities. Fintech is a business that focuses on providing financial services using modern software and technology. Furthermore, the theory introduced by economist Joseph Schumpeter, namely creative destruction, explains that new innovations destroy old players and replace them with something new. However, this theory cannot fully explain the impact of Fintech as Fintech does not aim to destroy incumbents that have long existed. Instead, Fintech gradually reduces the functions of incumbents with something better, more effective, and efficient. Additionally, the purpose of Fintech must align with the objectives of its transactions, which are to bring and maintain benefits while avoiding harm, both in this world and the hereafter.

Acknowledging the vast potential of the Muslim market worldwide, Fintech startups have seized the opportunity by developing Sharia-compliant Fintech. Sharia-compliant Fintech has specific criteria, including the absence of riba (interest), ghoror (fraud), madlorot (negative effects), and jahalah (lack of transparency) between buyers and sellers. Beehive, the first Sharia-compliant Fintech startup, was established in Dubai in 2004. This world's first Sharia-compliant Fintech provided cheap financing for SMEs using a peer-to-peer lending marketplace approach. In Southeast Asia, Kapital Boost, a Singapore-based Fintech, obtained its Sharia compliance certificate from Financial Sharia Advisory Consultancy (FSAC) in Singapore in 2016 and was named "The First Islamic SME Crowdfunding Platform." Ethis Crowd, another Singapore-based Fintech, has dominated the Indonesian market since 2014 and now offers Sharia-compliant services. In recent years, Sharia crowdfunding has continued to grow worldwide, including Alamisharia.com, Indves.com, Blossom, Launch Good, Narwi, and Skola Fund. In Indonesia, current Sharia-compliant Fintech startups include Investree, Start Zakat, Indves, SyarQ, Mari Usaha (P2P), among others. [15] Although Sharia-compliant Fintech has started to grow, the number of conventional Fintech companies still surpasses Sharia-compliant Fintech. [16]

As of June 2019, according to data published on the OJK official website, there were 113 technology-based financial services providers licensed by the OJK, with more than half of them being conventional services. [17] These financial technology services are gradually entering the Sharia financial system. This is evidenced by the emergence of startups that operate their businesses based on Sharia principles and are registered with the OJK and DSN-MUI. Thus, it is essential for Sharia-based start-ups to apply Sharia regulations, starting from the products offered, the contracts used, and the pillars and legal limitations according to the fatwas, as well as not contradicting consumer protection principles. [9]

Majelis Ulama Indonesia (MUI) responded to public concerns about Sharia-based products offered by Sharia-based startups in Indonesia by considering various aspects, as the financial technology business is growing in Indonesia. [18], [19] There is also a need for clarity on the rules and legal limitations related to Sharia-compliant technology-based financing services. MUI issued the National Sharia Council-Indonesian Ulama Council (DSN-MUI) Fatwa No. 117/DSN-MUI/II/2018 Regarding Sharia-Compliant Technology-Based Financing Services, consisting of eight sections: 1) general provisions; 2) legal provisions; 3) legal subjects; 4) provisions regarding general guidelines for technology-based financing services; 5) models of technology-based financing services; 6) provisions regarding mechanisms and contracts; 7) dispute resolution; 8) closing provisions. [9]

This fatwa addresses consumer doubts or concerns about understanding the legal rules and limitations that underpin the Sharia compliance of products offered by startups in Indonesia. Therefore, the fatwa provides legal certainty, increasing public trust in Sharia-compliant financing services offered by Sharia-based fintech startups, and thereby increasing public interest in transacting using financial technology.

Transactions that are in compliance with Islamic law are those that are based on the Quran and Hadith. All forms of economic activity and business transactions in accordance with Islamic teachings, derived from the Quran and Sunnah, are aimed at protecting the rights of individuals while promoting a high sense of solidarity towards society. The agreements present in Fintech are not contradictory as long as they do not violate Sharia principles. Additionally, Fintech refers to one of the principles of muamalah, which means mutual satisfaction between both parties. This is the basis for the validity of agreements or transactions between both parties.

Unlike conventional financial institutions, Islamic financial institutions must base their operations on Sharia principles, which prohibit riba, gharar, and maysir. Therefore, they emphasize profit and loss sharing as a replacement. Many Islamic experts have explained that the foundation of interest is strongly prohibited because it can lead to injustice in the economic system. In contrast, Islamic economic institutions are conceptually based on the principles of partnership based on equality, fairness, transparency, and seeking only lawful profits (falah oriented).

The comfort provided by Sharia-based Fintech transactions is due to the characteristics of Sharia-based business, which are based on the foundations of Islamic economics: divinity (ilahiah), justice (al-adl), prophecy (an-nubuwwah), governance (al-khilafah), and outcomes (ma'ad). The increasing demand for Sharia-based Fintech services, supported by the majority Muslim population in Indonesia, compels Sharia-based Fintech services to comply with Sharia rules in business transactions and must be in accordance with their Sharia objectives.

It is worth emphasizing that both conventional and Sharia-based Fintech services must prioritize the interests of Fintech users. Therefore, start-ups, especially those with Sharia principles, must include provisions on consumer protection contained in POJK No. 77/POJK.01/2016 and related laws and regulations, such as Law No. 8 of 1999 on Consumer Protection (UUPK), Government Regulation No. 82 of 2012 on Electronic System and Transaction Providers (PP PSTE), which is derived from Law No. 11 of 2008 on Electronic Information and Transactions (UU ITE). When examined more deeply, the content of these regulations and laws have relevance and correlation with the objectives of Sharia, which aim to safeguard the welfare of humanity, including: first, consumer protection in Fintech transactions before an agreement is made, which includes 1) Consumer approach or education, 2) completeness of information and transparency of service products, 3) handling complaints and resolving consumer disputes, 4) Prevention of fraud and reliability of service systems, and 5) Protection of personal data. [20]

Secondly, consumer protection in Fintech after the contract has been made encompasses: 1) Protection against payment delays; 2) Consumer protection against broken promises; 3) Protection for the resolution of disputes in a just manner; and 4) Analysis of debt collection ethics. In its services and functions, Sharia-compliant Fintech is adapted to the objectives and foundations of Sharia maqasid so that it does not deviate from Islamic teachings in practice. [21] The following is an explanation of Sharia-compliant Fintech from the perspective of maqasid Sharia:

Firstly, Upholding Religion (Al-Din) mashlahah is related to the level of an individual's faith in the Creator, Allah SWT, which is then manifested in the form of worship such as the five daily prayers, fasting, zakat, hajj, and paying off debts. In this regard, Sharia-compliant Fintech was created with the aim of facilitating transactions to achieve the enjoyment of worship. One of the types of Sharia-compliant Fintech that supports this mashlahah is digital payment fintech, which includes features that enable people to pay for charity, alms, zakat, and even Hajj expenses. [22] This is one of the efforts made by Sharia-compliant Fintech to uphold the religion of its users.

Secondly, Upholding the Self (Al-Nafs) mashlahah is related to preserving an individual's mental and physical health by not causing any illness that can disrupt their well-being. Sharia-compliant Fintech prioritizes mashlahat from the beginning, which is intended to promote the prosperity and well-being of society. Sharia-compliant Fintech is also protected by legal provisions to provide comfort for its users. These laws are stated in Law No. 8 of 1999 concerning Consumer Protection (UUPK) and Government Regulation No. 82 of 2012 concerning Electronic System and Transaction Providers (PP PSTE). [23], [24]

Thirdly, Upholding Progeny (Nasb) mashlahah is related to marriage, which is the Sharia-compliant way of having children. Sharia-compliant Fintech aims to preserve progeny through investment-based Fintech (financing and investment). This type of Sharia-compliant Fintech is expected to be utilized effectively by its users to plan for their family's future, thereby achieving prosperity and harmony in the family.

Fourthly, Upholding Intellect (Al-Aql) mashlahah is related to knowledge as a basis for religious beliefs and work. A person without knowledge cannot think about the virtues of good deeds. Therefore, everything should be based on knowledge. The launch of Sharia-compliant Fintech has been studied in various disciplines of knowledge and is grounded in legal provisions. The content of these regulations and laws, when examined more deeply, has relevance and correlation with the guidance of maqashid Sharia, of which there are five, the main line being the preservation of humanity.

Fifthly, Upholding Wealth (Al-Mal) is an important component of life, but not the main one. Wealth is a tool used to fulfill needs. Wealth can be obtained through trade, cooperation between individuals, and others. In Islam, the acquisition of wealth must be free from the elements of usury, gambling, and uncertainty. Moreover, the purpose of Fintech must be in line with the purpose of the transaction, which is to bring and maintain benefits (goodness) while avoiding harm (damage) both in this world and in the hereafter. Sharia-compliant Fintech has specific criteria, including the absence of usury, deception, and negative effects, to ensure that the wealth of Fintech users is safe and halal.

Therefore, it can be seen that Sharia Fintech has a foundation in maqashid sharia and is also supported by clear legal frameworks enshrined in the law. The challenge lies in how stakeholders execute and evaluate the performance of Sharia Fintech, which will have a significant impact on the Muslim community in Indonesia. Although the current regulations have a point of convergence with maqashid sharia, these regulations are not yet perfect and final. However, at least they are good and will be reinforced and improved for the development of Sharia Fintech in Indonesia.

The obstacles faced by Sharia Fintech are related to the differences in the akad used in Sharia Fintech companies, the dual identification system possessed by users which complicates the screening of borrower data, and the requirement for data centers to be located in Indonesia. Therefore, the solutions include the need for technology education for the public, improving internet networks, and accelerating the process towards an integrated identification system to ensure the validity of borrower information. Another obstacle faced by Fintech companies is the relatively high capital requirement for registration. Companies seeking to register must have a minimum capital of IDR 1 billion, and when registered with the OJK, they must have a minimum capital of IDR 2.5 billion, which is a current obstacle. [5] In addition, the reach of the internet is still insufficient, and there is a lack of socialization to the public who wish to use Fintech technology.

Solutions that need to be implemented include providing education to remote areas so that all segments of society can enjoy the convenience of Fintech transactions, as well as equipping the public with Sharia-based Fintech education. The most fundamental principle is to avoid riba, which becomes a distinct advantage for individuals who want to shift from conventional economy. Therefore, this is already the initial step and effort to avoid the prohibition mentioned in the Quran, which is the prohibition of riba.

There is a need for improvement in legal regulations because the current regulations used by Sharia Fintech still follow conventional Fintech regulations. Therefore, specific regulations need to be created for Sharia Fintech. In addition, efforts are being made to educate the public on Sharia Fintech studies that are in line with Sharia principles.

The core issue faced in the development of Sharia Fintech is the lack of policy instruments that support Fintech processes and the availability of human resources for Fintech. The core strategy or foundation required in the framework of Sharia Fintech development is the ability to manage and analyze data in the era of big data and human resources in digital marketing. The important actors involved in the development of Sharia Fintech in Indonesia include the government or regulators, educational institutions (universities), and existing industries (banks and other financial institutions).

CONCLUSION

Based on the discussion above, it can be concluded that Sharia Fintech has a foundation in Sharia maqasid and is supported by clear legal frameworks outlined in existing laws. It has been demonstrated that Sharia Fintech fulfills the five objectives of Sharia, namely the preservation of religion, life, lineage, intellect, and property. Additionally, there are consumer protection laws, such as POJK No. 77/POJK.01/2016 and relevant regulations, including Government Regulation No. 82/2012 on the Implementation of Electronic Systems and Transactions (PP PSTE) and Law No. 8/1999 on Consumer Protection (UUPK), which are derivatives of Law No. 11/2008 on Electronic Information and Transactions (UU ITE). Fintech is a rapidly growing industry in Indonesia, and it has also been adopted in the Islamic finance sector. Fintech Sharia has emerged as a new sub-sector of the Indonesian fintech industry that provides financial services in compliance with Islamic law. Fintech Sharia is based on the principles of Maqasid Sharia, which include the preservation of religion, life, intellect, progeny, and wealth. It also operates under a clear legal framework provided by Indonesian laws, such as the Consumer Protection Law, the Electronic Information and Transactions Law, and the regulation on electronic system providers.

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