

JURIDICAL STUDY OF SETTLEMENT OF NON-PERFORMING LOAN BY DIGITAL BANK IN CONTINUATION FINANCING COOPERATION (CHANNELING) TO FINANCIAL TECHNOLOGY PEER-TO-PEER LENDING IN INDONESIA

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ABSTRACT

This research aims to find out and examine the arrangements for settling non-performing loans in cooperative financing (channeling) by digital banks for peer to peer lending in Indonesia. This research also examines the settlement of non-performing loans by digital banks in channeling financing cooperation for financial technology peer to peer lending in Indonesia. This research is normative research with a conceptual and statutory approach. The results of this research show, first, that there are no special regulations governing channeling financing by digital banks for P2P lending in Indonesia. Arrangements regarding NPL settlement are regulated in the cooperation agreement between P2P lending as the organizer and the digital bank as the fund provider which is set out in an electronic document and regulated in the lending and borrowing agreement between the digital bank and the borrower which is set out in the electronic document. Both digital banks as funders have the right to collect or settle NPLs based on electronic documents, however, based on the cooperation agreement, digital banks can authorize p2p lending as the provider to be able to make the necessary efforts by the lender to collect all obligations. Owed by the borrower. There are two ways to take if there is a default situation for the borrower, the first way out is to revitalize the credit which is carried out before more than 90 days from the maturity date by rescheduling, reconditioning or restructuring. Second way out efforts in the form of legal action in litigation with simple lawsuits or non-litigation such as negotiations or alternative settlements at LAPS-SJK which can be carried out through mediation, arbitration or binding opinions.

Keywords: Channeling Financing, Digital Bank, P2P Lending, Credit, Non-Performing Loan

1. INTRODUCTION

Digital disruption has made digital technology a central tool in various fields. Internet technology has had an enormous influence; the Internet has brought the world economy into a new phase, which is more popular with the term digital economics, so its existence is marked by the increasingly widespread economic activities that utilize the Internet as a medium for communication, collaboration, and cooperation. The digital economy is a form of socio-political change in the intelligence space economic system. Changes in digitalization in the economy certainly change business transactions that were previously manual and now use the internet. (Aprilia, 2021)

The digital economy produces phenomena of disruptive innovation (Christensen et al., 2018). This phenomenon occurs in various fields, including the financial services industry. Technological transformation in the financial sector can change the business sector in financial services; the presence of financial technology (Fintech) is a disruptive innovation. Fintech can bring about a more practical financial transaction process. Fintech is the implementation and use of technology to improve banking and financial services, generally carried out by start-up companies by utilizing the latest software, internet, communications, and computerization technology.

The development of the national economy still relies on the banking sector. The strategic role and position of banks in national development as public financial intermediary institutions (financial intermediary) has a mission and function as a development agent, namely as an institution whose aim



is to support national development to increase equality, economic growth, and national stability towards improving the welfare of the people at large.

Changes in people's consumption patterns towards digital, total digital transactions worldwide since 2017-2021 grew 118% from USD 3.09 trillion in 2017 to USD 6.75 trillion in 2021 (Otoritas Jasa Keuangan, 2022). In Indonesia, the development of digital transactions grew much higher, namely by 1,556 percent in 2017-2020. Electronic money transactions reached IDR 786.35 trillion in 2021. This value increased by IDR 281.39 trillion (55.73%) compared to only IDR 504.96 trillion in the previous year. (Otoritas Jasa Keuangan, 2022)

Banks are transforming from being physically based with branches to intensively using information technology and big data (Vives, 2019). In Indonesia, various banks are emerging whose operations are carried out digitally with limited physical offices. The development of banking digitalization is needed to reach the unbanked people; the remaining population is relatively large, namely 97.7 million people or 48% of the total population (Departemen Komunikasi Bank Indonesia, 2023). The shift from conventional banking to digital banking is expected to increase efficiency in work processes and improve the quality of service for bank customers (Dewantara & Sitorus, 2022). The need for speed and flexibility in banking services to be accessed anytime and anywhere is also the reason for the emergence of digital banks (RI, 2022).

Article 14 of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (UU P2SK), in addition to Article 7B paragraph (1) of Law Number 7 of 1992 concerning Banking (Banking Law), states that in carrying out business activities commercial banks can operate as a digital bank. A digital bank is an Indonesian Legal Entity (BHI) bank that provides. It carries out business activities primarily through electronic channels without a physical office other than the head office or using limited physical offices.

One of the bank's business activities is distributing funds through credit. Digital banks intensively carry out digital credit distribution. For example, until December 2022, Bank Raya distributed digital credit to IDR 918 billion or an increase of 87.65% year on year. Bank Jago also recorded that the total credit disbursed reached IDR. 9.4 trillion Until the end of December 2022 (unaudited), this figure grew 75.6% compared to the previous year.

Credit distribution segments by digital banks other than unbanked people are Micro, Small, and Medium Enterprise Units (MSMEs) and start-up companies (start-ups). This digital banking market segment certainly has a riskier profile. Digital banks are faced with high credit risk, which is a risk that arises because debtors cannot return the funds borrowed and the interest that must be paid to the bank. Credit risk resulting from the borrower's failure to return the funds increases the risk of non-performing loans (non-performing loan/NPL) for digital banks. Several digital banks have reported an increase in the non-performing loans (non-performing loan/NPL) ratio in semester I-2023. Digital banks have prepared several strategies to reduce the NPL ratio. One of the strategies is to carry out forward financing cooperation (channeling). Continuation funding (channeling) is the distribution of credit to debtors through specific financial institutions, namely BPR, BPRS, and/or other non-bank financial institutions. Credit distribution in financing cooperation by digital banks is carried out through financial technology peer-to-peer lending (P2P lending).

P2P Lending first distributes digital credit to the public, the digital bank financing segment. Based on data from the Financial Services Authority, outstanding loans in July 2023 will reach IDR. 55,997 billion. This number increased compared to the previous year in the same month, from 45,729 billion. The increase in the number of outstanding loans on P2P Lending was followed by an increase in TWP 90 from 2.67% in July 2022 to 3.47% in July 2023. Such figures tend to be high compared to the fintech lending NPL target set by OJK, which is below 1%. (Rahadiyan & Hawin, 2020)

Industry fintech still needs to predict the optimal limit for non-performing loans or NPL. The segment causes a high probability of default worked on by FinTech, which has a riskier profile for NPLs. Lucky Suryo Wicaksono stated that the approach taken by the company places more emphasis on the ability to pay capacity); therefore, deep P2P lending Collateral is not a thing in nature mandatory.

Continuation financing (channeling) can only be carried out if the risks arising from this activity lie with the owner of the funds. Digital banks, as parties that distribute funds, have risks in the form of

potential loss of all funding or part of it due to default by the borrower. The party receiving the funds (in this case, P2P lending as the organizer) only acts as a manager and obtains compensation from managing the funds.

Based on this, the fact is that the NPL ratio is relatively high in P2P Lending, and the risk of potential loss of all or part of the funding due to default by the borrower of funds covered by the digital bank will undoubtedly affect the bank's health level in the future. The importance of regulations regarding dispute resolution in channeling financing) in order to create legal certainty and legal protection, this is an exciting study in legal research entitled "Judicial Study of Non-Performing Loan Settlement by Digital Banks in Channel Financing Cooperation) To Financial Technology Peer to Peer Lending"

2. PROBLEM FORMULATION

1. How is the settlement arranged non-performing loan on co-financing (channeling) by digital bank to peer to peer lending in Indonesia?
2. How is the solution for non-performing loans by digital banks in cooperation with continuation financing (channeling) top financial technology peer to peer lending in Indonesia?

3. METHODS

This research is normative legal research; normative legal research is a process of researching and studying law as norms, rules, legal principles, legal doctrine, legal theory, and other literature to answer the legal problems being studied (Muhaimin, 2020). The research approach in this writing uses conceptual and statutory approaches. The legal materials in this research consist of primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques using literature study and data analysis techniques in this writing use qualitative methods.

4. RESULTS AND DISCUSSION

4.1 Settlement Settings Non-Performing Loan On Continuation Funding (Channeling) By Digital Bank to Peer-to-Peer Lending in Indonesia

The existence of digital banks is strictly regulated in Financial Services Authority Regulation Number 12/POJK.03/2021 concerning Commercial Banks (POJK 12/2021). One of the advantages of transforming a bank into a digital bank is that it can offer various products and features that make it easier for customers to access savings, apply for loans, and invest in the future just through smartphones. (Suharbi & Margono, 2022)

The most crucial part of banking management is managing available funds, as most available funds are allocated for credit. The bank's most significant income comes from interest on loans customers enjoy (Abdullah, 2017). Banks function as credit distributors to customers, which shows that banks function as intermediation institutions (Putera & SH, 2020). The main objective of credit distribution is to make a profit. Apart from that, providing credit also helps the development of customers' and the government's businesses in receiving income through taxes, opens up employment opportunities, increases the circulation of goods and services, and increases the country's foreign exchange. (Putera & SH, 2020)

Currently, it is not only banks that can distribute financing or credit to the public, especially with advances in technology and information currently increasing the ease of access for the public in seeking loan funds, one of which is through P2P Lending as an innovation in financial services. Inda Rahadiyan stated that the development of fintech has resulted in the decentralization of the financial system, which means a condition where there has been an elimination or reduction in the function of centralized financial intermediation institutions.

Disruption of the bank's intermediation role due to its presence in P2P Lending can challenge the future role and services of banks by simplifying the transaction chain, helping customers make financial decisions and various choices, and easing the services provided. Based on these circumstances, the bank needs to determine a step to continue to survive and carry out its function of distributing funds.

Digital transformation by banking institutions can reach more customers by collaborating to distribute credit through P2P Lending to create a digital financial ecosystem. One of the credit distribution collaborations that can be carried out is through forward financing (channeling). The definition of continuation financing (channeling) can be found in Bank Indonesia Circular Letter Number 15/35/DPAU 2013, which states that continuation financing (channeling) is the distribution of credit or financing to MSME debtors through specific financial institutions. Try Widiyono defines continuation financing (channeling) continuation funding (channeling) is a pattern of providing credit to debtors through an institution/company (agent) that is in direct contact with the debtor. Based on the understanding that has been explained, a scheme for the flow of continuation financing can be described (channeling) as follows:

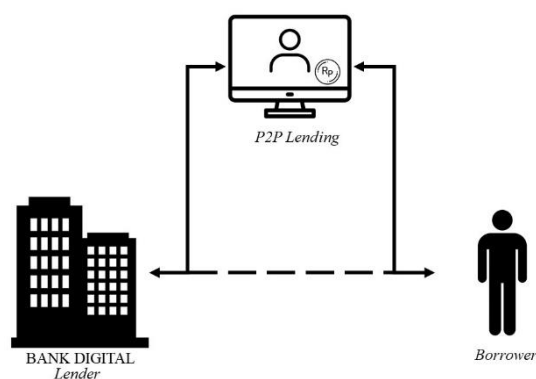


Figure 1. Flow of Forwarding Financing (channeling)

Source: Processed by the author, quoted from the Financial Services Authority, 2021

Based on this illustration, the implementation of forward financing (channeling) involves three parties: service providers, lenders (lenders), and loan recipients (borrowers). Digital banks, as fund providers, provide credit to borrowers through Lending. Function P2P Lending is an agent company that forwards financing (channeling) stipulated in the cooperation agreement, which is an electronic document. In case a credit agreement is signed between the borrower and the organizer, the organizer concerned is obliged to obtain power of attorney from the creditor (bank) because the organizer, in this case, acts in his capacity based on a power of attorney and, therefore, for and on behalf of the bank. As a proxy channeling agent, it can act up to the authority given.

The legal relationship between the organizer and the lender is a power of attorney agreement regulated in Article 1792 of the Civil Code. The organizer only provides facilities that bring together lenders (lender) and the loan recipient based on the power of attorney given by the lender. The organizer for and on behalf of the lender agrees to borrow and borrow money belonging to the lender and the loan recipient. The organizer has no authority to decide on the provision of credit or financing. The digital bank, as the fund provider, is the party that has the authority to decide on credit and bear the risk if the borrower defaults.

Continuation financing (channeling) can only be carried out if the risks arising from financing activities lie with the owner of the funds. In line with these provisions, if we look at the legal relationship that arises between the lender and the recipient of the loan, a lending and borrowing relationship will arise as regulated in Article 1754 of the Civil Code, then the fund provider is the one who bears the risk of channeling financing through P2P Lending—facilities provided by P2P Lending as the organizer in providing access to everyone to give or receive loans. The requirements for loan recipients are simplified so that they can cause inaccuracies in the risk assessment of potential loan recipients. Default is the most significant risk faced when providing credit. The event of default is a reality in lending and borrowing activities, so there is a risk that some or all of the loans will fail to pay. A loan is said to have defaulted, or NPL occurs when interest payments and/or principal payments are overdue for 90 days or more, or interest payments for 90 days or more have been

capitalized, refinanced, or postponed by agreement, or payments are less than 90 days old. However, there are other reasons.

Credit risk is a fundamental problem in P2P lending and at the bank. There is a need for credit risk regulation, from mitigation to settlement. Regulations are the source of many policies and procedures that must be followed as a form of compliance, and they also help maintain customer trust in the financial services institution's system. Until now, there have been no standard guidelines issued by the regulator regarding continuation financing (channeling) by digital banks to P2P Lending to provide legal certainty and protection to the parties. Article 39 paragraph (2) of the Financial Services Authority Regulation Number 35/POJK.05/2018 concerning the Implementation of Financing Company Business (POJK 35/2018) states that cooperation through forward financing (channeling) must be carried out by the laws and regulations governing each party.

Dispute resolution, especially NPL, is stated in an agreement between the parties so that it can be seen from the agreement between the lender and the organizer as well as the lender and the loan recipient. Arrangements for dispute resolution, especially NPL, by P2P Lending as the organizer in Article 31 paragraph (1) POJK 10/POJK.05/2022 concerning Information Technology-Based Joint Funding (POJK 10/2022), the agreement between the organizer and the funder as outlined in the electronic document contains mitigation in the event of funding delays and dispute resolution mechanisms. Elucidation of Article 31 paragraph (1) POJK 10/2022 states that what is meant by "risk mitigation in the event of bad funding" is the resolution of bad funding that can be carried out by the funder, which consists of billing by the organizer, transfer of billing to third parties, and claims insurance or guarantee. Furthermore, POJK 10/2022 regulates that funding agreements between fund providers and recipients of funds, which are outlined in electronic documents, must contain a dispute resolution mechanism.

Try Widiyono stated that there are several variations in channeling financing patterns) each of which has different legal aspects that must be included in the cooperation agreement, namely:

1. The organizer with the pattern of the organizer's obligation to take over the credit (take over) If end user defaults, in this pattern, the bank does not need to provide authority to exercise the creditor's rights in making claims if the end-user defaults;
2. Organizer with a pattern of no obligation of the organizer to take over credit (take over) End user in default, the bank is obliged to provide authority to exercise the creditor's rights in making claims if the end-user defaults.

Based on this, the rights and obligations of the organizer must be detailed in the cooperation agreement channeling between digital banks and P2P Lending. When continuation financing (channeling) with the pattern of the organizer's obligation to take over the credit if end user If there is a default, the digital bank as the funder demands that the P2P Lending company compensate for the losses of loan recipients who fail to pay. Succession financing (channeling) with the pattern that there is no obligation for the organizer to take over the credit if end user If there is a default, the P2P Lending company as the organizer is only the party appointed by the funder to distribute funds to the end user, the organizer has no responsibility in the loan agreement between the lender and the loan recipient because he is not a party to the agreement. In the case of a default end user, the digital bank claims directly to the end user through the organizer as the digital bank's proxy.

4.2 Solution Non-Performing Loan By Digital Bank in Continuation Financing Cooperation (channeling) to Financial Technology Peer to Peer Lending in Indonesia

Problematic credit or NPL is a risk contained in every credit grant (Hermansyah & Hum, 2005); credit risk arises because the debtor cannot return the funds borrowed and the interest that must be paid to the Bank (default) (Budisantoso & Triandaru, 2005). In general, credit can go wrong; two things cause this. First, the Bank needs to be more careful in its analysis so that what should happen is predicted promptly (Triandaru & Budisantoso, 2006). Secondly, on the borrower's part, credit congestion can occur due to intentional and unintentional elements. The element of intention means that the customer deliberately does not intend to pay his obligations, so the credit given is terrible; it can be said that there is no willingness to pay. The element of inadvertence is a situation where the debtor wants to pay but cannot (Triandaru & Budisantoso, 2006). Bad credit in forwarding

financing (channeling) can also occur because of the organizer, considering that the risk of default experienced by the lender can occur due to errors and negligenceP2P Lending as the organizer in the process of evaluating the creditworthiness of loan applications submitted by loan recipients.

POJK 10/2022 does not regulate agreements between organizersP2P Lending with the loan recipient, and there is no legal relationship between the organizer and the loan recipient. The relationship between the two is only an administrative relationship formed when a prospective loan recipient applies for a loan on the platform P2P Lending to meet the standards proposed by the organizer (Putri, 2018). A risk of default by the loan recipient may arise due to the organizer's negligence in assessing the loan recipient's data. Based on Article 37 of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services (POJK 77/2016), providers can be held responsible for losses arising from their mistakes, providing compensation is the right of the provider. Loans that P2P Lending must fulfill as the organizer. POJK 77/2016 is no longer valid with the promulgation of POJK 10/2022, which revokes the existing regulations regarding Lending. POJK 10/2022 does not regulate the organizer's liability for negligence as stipulated in Article 37 POJK 77/2016, and this is a weakness in providing legal protection for users in POJK 10/2022, which positions that the organizer is only an intermediary and is not responsible for losses arising from the analysis carried out by the organizer.

The digital bank, as the owner of the funds, is the party that has the authority to decide on the provision of credit and bears the risk if the debtor defaults or breaches his contract. Based on this, in the event of an NPL, the lender has the right to collect or carry out credit settlements but based on an electronic document signed between the organizer and the lender against the power of attorney where the lender gives authority to the organizer to be able to carry out appropriate efforts. The lender must collect all obligations the borrower owes of funds past the due date.

State of default or default on the part of the loan recipient, two ways can be taken by the digital bank directly if it does not give authority to P2P Lending as the organizer or by P2P Lending if it obtains authority from the digital bank, namely with legal efforts carried out by way of the first way out (FWO) the second way out (SWO).

The first way out is to complete financing using credit revitalization. Credit revitalization as an effort is the first step to resolving problem loans through renegotiation between the bank and the borrower as debtor. Effort The First way out of NPL settlement can be done more than 90 days from the due date by rescheduling, reconditioning, and restructuring. Credit revitalization can be given if the customer has good intentions. Trisadini P. Usanti and Abd Somad provide a measure of customers having good intentions in resolving problem loans, which are based on the willingness and ability to pay from the customer's behavior, including:

- a. Customers are willing to be invited to discussions in order to resolve their credit;
- b. The customer is willing to provide correct financial data;
- c. The customer permits the bank to examine financial statements;
- d. Customers are willing to follow the problem credit rescue program and carry out the measures given by the bank.(Usanti & Shomad, 2017)

Whenever the first way out cannot be implemented or has been implemented but does not produce results, the following method can be carried out: the second way out in the form of legal action. In order for the bank to recover its rights, namely in the form of returning credit that the debtor has enjoyed, it must be channeled through applicable legal procedures by requesting legal protection from the court, namely obtaining a civil decision from the district court which gives the bank the right to force the debtor to pay off the debt.

Settlement through court begins with a subpoena issued by the bank to the debtor in default. Evidence of the subpoena issued by the bank is used as proof of filing a default if, after being served with the subpoena three times, the debtor has not fulfilled his obligations. Settlement can be done by a simple lawsuit (small claim court). The Supreme Court issued Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2015 jo. Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2019 concerning Procedures for Settlement of Simple Claims, which is the basis for fast settlement (Harviyani, 2021). A simple lawsuit is filed in cases of breach of contract

and/or unlawful acts with a material claim value of a maximum of IDR. 500,000,000.00 (five hundred million rupiah).

Because collateral is not mandatory, in case there is no collateral, Article 1131 of the Civil Code states that all movable and immovable property belonging to the debtor, whether existing or future, becomes collateral for the debtor's individual obligations. So, all of the debtor's assets automatically become collateral for the debt they have created so that digital banks can take legal action for collection through adjudication mechanisms through litigation and non-litigation channels.

Article 100 paragraph (1) POJK 10/2022 states that organizers must apply the principles of resolving consumer disputes in a simple, fast, and affordable. Alternative dispute resolution is an appropriate alternative step for resolving NPLs in forward financing (channeling). Alternative dispute resolution models that can be used include negotiation, opinion, mediation, conciliation, adjudication, and arbitration. Dispute resolution outside of court in the financial services sector is carried out through the Alternative Financial Services Sector Dispute Resolution Institute (LAPS-SJK). Dispute resolution services at LAPS-SJK can be carried out by mediation, arbitration, or binding opinions.

5. CONCLUSION

The existence of digital banks is strictly regulated in POJK 12/2021. Digital transformation by banking institutions can reach more customers by collaborating on credit distribution through P2P Lending to create a digital financial ecosystem. One of the credit distribution collaborations that can be carried out is through channeling financing. The implementation of channeling financing involves service providers, lenders, and borrowers. Digital banks, as fund providers, provide credit to borrowers through P2P Lending. The function of P2P Lending as an agent company in channeling financing is stipulated in the cooperation agreement, which is an electronic document. Channeling financing can only be carried out if the risks arising from financing activities lie with the owner of the funds. Default is the most significant risk faced when providing credit. Article 39, paragraph (2) (POJK 35/2018) states that cooperation through forward financing (channeling) must be carried out by the laws and regulations governing each party. Dispute resolution, especially NPL, is stated in an agreement between the parties so that it can be seen from the agreement between the lender, the organizer, the lender, and the loan recipient. Credit may go bad due to three things: the bank's lack of accuracy in carrying out the analysis, the borrower of funds either intentionally or unintentionally, and the organizer, who is negligent in evaluating creditworthiness. The financier has the right to collect or carry out credit settlements in the event of an NPL. However, the electronic document is signed between the organizer and the lender as a proxy where the lender gives authority to the organizer to be able to carry out the efforts necessary for the lender to carry out the collection of all obligations owed by the borrower of funds that have passed the due date. In the event of failure to pay or default on the part of the loan recipient, there are two ways that digital banks can take advantage of this. The first way out is by carrying out credit revitalization. The second way out is through legal action, namely through litigation by filing a simple lawsuit or non-litigation through LAPS-SJK.

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