

FINANCIAL TECHNOLOGY (FINTECH) COUNTERMEASURES NOT REGISTERED IN GIVING SYARIA MSME LOANS

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Abstract

The Financial Technology Platform (Fintech) is an example of a revolutionary form of modern financing transactions. Surely the activity is accommodated by its supervision by the Financial Services Authority (OJK). The problems that occur as legal issues are discussed in this paper, OJK's legal countermeasures model for problematic fintech-based business capital loans for Syaria MSME, and what are the inhibiting factors for controlling fintech problems. The method used is based on normative inventory of fintech legislation and its implementation based on observations of the functions and authority of the OJK. The results of this study explain the classification of fintech provisions in Indonesia and their implementation, and OJK's obstacles in dealing with fintechs whose implementation problems. The conclusion from the discussion explains the role of OJK still has limitations in overcoming the problematic fintech, but continues to optimize its performance in minimizing the impact of the problem through collaboration with other government agencies.

Keywords: *Fintech, Loans, MSME, OJK*

Introduction

Advances in information and communication technology have resulted in an increase in non-bank financial institutions that facilitate fintech-based loans to consumers / customers. According to The National Digital Research Center (NDRC), in Dublin, Ireland, defining fintech as "innovation in financial services" or "innovation in financial services fintech" is an innovation in the financial sector that gets a touch of modern technology. Financial transactions through fintech include payments, investments, money lending, transfers, financial plans and other financial product comparisons.¹

The existence of fintech in a business activity provides benefits for consumers by providing convenience in obtaining loans with varied loan rates. Meanwhile, for product or service traders, fintech provides benefits, which is to simplify the transaction chain, reduce operational costs and capital costs and freeze the flow of information. More broadly for a country, fintech provides benefits that is encouraging the transmission of economic policies, increasing the velocity of money so as to improve the economy of the people and in Indonesia, fintech also supports the National Financial Inclusion Strategy (SKNI).²

Based on OJK 2018 data, fintech companies in Indonesia are divided into several sectors namely, Financial Planning, Lending, Crowdfunding, Aggregator, Payment, and others. Fintech companies in Indonesia are dominated by the payment sector by 42.22% the loan sector 17.78% the aggregator sector by 12.59%, the financial planning sector 8.15%, the

¹ <http://bapenda.jabarprov.go.id/2016/12/26/financial-technology-layanan-finansialberbasis-it/> access on December 26th 2018

² [https://www.google.com/search?q=di+Indonesia%2C+fintech+turut+mendorong+Strategi+Nasional+Keuangan+Inklusif+\(SKNI\).&oq=di+Indonesia%2C+fintech+turut+mendorong+Strategi+Nasional+Keuangan+Inklusif+\(SKNI\).&aqs=chrome..69i57.346j0j7&sourceid=chrome&ie=UTF-8#](https://www.google.com/search?q=di+Indonesia%2C+fintech+turut+mendorong+Strategi+Nasional+Keuangan+Inklusif+(SKNI).&oq=di+Indonesia%2C+fintech+turut+mendorong+Strategi+Nasional+Keuangan+Inklusif+(SKNI).&aqs=chrome..69i57.346j0j7&sourceid=chrome&ie=UTF-8#) access on December 26th 2018

crowdfunding sector by 8.15% and other fintech sectors by 11.11 %.³ Data as of August 5, 2020 describes 158 Fintech Lending Companies registered with the OJK.⁴

Indonesia as a country that adheres to the Pancasila legal basis also gives freedom to the public to access the fintech platform because, Pancasila is always open to enrichment processes and new interpretations, with the condition to pay attention to the basic spirit contained therein and its interconnection.⁵ This is an effort to fulfill the financing of community business activities while categorized as legal.

The development of fintech which continues to stretch until now must also be balanced with the presence of clear regulations and supervision of the business running. Based on the provisions of Article 5 of Law Number 21 Year 2011 concerning the Financial Services Authority (OJK) (OJK Law), it is stipulated that OJK functions to organize an integrated regulation and supervision system for the overall activities in the financial services sector.

OJK is an agency that regulates and supervises the growth and development of fintech. Fintech is part of the financial services sector of the bank financial industry (IKB) and the Non-Bank Financial Industry (IKNB) which is overseen by the OJK. Supervision is very important for the sustainability of fintech in Indonesia. This relates to the legality of the business being run because in its implementation fintech development has potential risks which are related to consumer protection, financial system stability, payment systems and economic stability, one of which is by issuing OJK Regulation Number 13/POJK.02/2018 concerning Financial Innovation Digital in the Financial Services Sector as a legal umbrella oversight and regulation of the fintech industry.⁶

Lending is not always legal, meaning that lenders do not always have a legal entity and are registered with the Financial Services Authority (OJK). So that many capital lenders in the form of money violate the rules and have a negative impact on customers or consumers. Fintech applications are increasingly mushrooming during the 2018-2019 timeframe, OJK has blocked thousands of fintech applications that violate established regulations / illegal operations.

The Ministry of Communication and Informatics (Kominfo) has blocked 669 illegal lending and lending sites since 2012. It cannot be denied, since it was blocked, business actors could create new sites or applications. that, Directorate General of Informatics Application of the Ministry of Communication and Information Samuel Abrijani Pangerepan asked the public to remain cautious about using online loan services, he suggested using only registered applications (legal).⁷

The list of fintech lending registered at OJK can be checked through the OJK website. At present, 73 fintech lending have been registered at OJK. The state agency regularly updates

³ Hadad, dalam Rohmatun Nafiah dan Ahmad Faih, *Analisis Transaksi Financial Technology (Fintech) Syariah dalam Perspektif Muqashid Syariah*, Jurnal Iqtishadia: Jurnal Ekonomi dan Perbankan Syariah, Vol.6 No. 2 Desember 2019, pg.168

⁴ Interview with, Kasubbag Pengawasan Pasar Modal OJK Lampung Bapak Mildano Pani 10th August 2020

⁵ Translate from “Pancasila is always open to the process of enrichment and new interpretation, on the condition of paying attention to the basic spirit contained in it and its interconnection.” Yudi Latif, *The Religiosity, Nationality, and Sociality of Pancasila: Toward Pancasila Through Soekarno’s Way*, Jurnal Studia Islamika, Vol 25 No. 2, 2018 pg. 240

⁶ <https://www.ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/Siaran-Pers-OJK-Terbitkan-Aturan-Inovasi-Kuangan-Digital.aspx>access on Feb 20th 2020

⁷ www.ojk.go.id/id/berita-dan-kegiatan/publikasi

the names of legal fintechs registered on its site. If the public discovers that there is illegal fintech offering their services, they can report to the Ministry of Communication and Information by e-mail.⁸ The main thing is actually education to the community, said the Director General of Informatics, Ministry of Communication and Information. The complaint will be accommodated by the Ministry of Communication and Information in collaboration with the Investment Alert Task Force from OJK, Google, Apple to block the site and application. In addition, if it finds a criminal element, the manager of illegal fintech will be processed in the realm of criminal law. Deputy Chairperson of the Indonesian Joint Funding Fintech Association (AFPI) Suni Widyatmoko agreed, the community should only use fintech lending services that have been registered with the OJK.

One of the fintech products currently available is a capital loan for Micro, Small and Medium Enterprises (MSMEs). This type of Fintech provides an alternative investment container while offering business loans with a peer-to-peer (P2P) Lending system, which is the process of lending and borrowing carried out by parties (fintech and consumer providers) without involving banks. The fintech provider in Indonesia has implemented a capital loan for SMEs. The business loans offered are also MSME business owners.

Capital owners are potential investors who can learn about the investment programs offered through the website, while monitoring where their capital is being distributed and the development of their investments because all data is reported regularly and openly. The initial capital needed is affordable, starting from three million rupiah. This capital will help the SMEs to continue their business and open a business and the ones based on it are usually those who live in remote areas whose communities have difficulty accessing loans and other financial services.⁹ Some fintech companies registered with OJK include Akseleran, Amarnya, Crowdo, Danamas, Investree, and 104 other companies.¹⁰

Based on a brief description of this background, the writer is interested in composing a scientific article with the title **Financial Technology (Fintech) Countermeasures Not Registered In Giving MSME Loans.**

Problems

The problems in this research focus into two basic things, namely: 1) How is the legal analysis of countermeasures for problematic fintech-based business capital loans for MSME perpetrators conducted by OJK? and 2) What factors are obstacles to overcoming the problem of problematic fintech-based loans?

Methods

This study uses a statutory regulatory approach (statue approach), a legislative approach used to map the foundation of government authority (in this case OJK) in managing capital loans to MSMEs based on the fintech platform. After that it is associated with the existing fintech transaction conditions in the form of problems consisting of rule classification, and inhibiting

⁸ Pengaduan *Fintech* ilegal kepada Kementerian Kominfo di alamat email aduankonten@mail.kominfo.go.id

⁹ Eni V, Pangabean, *Peran Ekonomi Digital dalam Mendorong Pertumbuhan Ekonomi Nasional*, Makalah Seminar *Fintech* tanggal, 16 Desember 2016, Departement Kebijakan dan Pengawasan Sistem Pembayaran Bank Indonesia, 2016, pg.7

¹⁰ Data FIntech Terdaftar di OJK dalam Suci Romadona, Muhammad Zilal Hamzah, Eleonora Sofilda, *Fintech Peer-to-Peer Lending Sebagai Peluang Peningkatan UMK di Indonesia*, Jurnal Media Ekonomi Vol.26, No.2 Oktober 2018, pg. 122

factors and OJK's efforts to overcome the problematic fintech in carrying out loan financial activities for MSMEs. This research was conducted at the Financial Services Authority Office of Lampung Province.

Results

1. Legal Analysis of Fintech-Based Business Capital Loan Management for Troubled MSMEs by OJK

Although MSME occupies a fairly central economic foundation, in reality access to capital is still not optimal. This is because businesses run by MSMEs are more independent without having groups or under other groups such as large industries. Most of the production is in the form of goods that still use low technology.¹¹ Because it is characterized by a regional economy, it also affects the orientation of the MSME market which tends to be local. Therefore, one of the alternatives in supporting capital development through fintech, but not a few problems occur in the field regarding the transaction.

Cases that harm consumers occur in the practice of fintech-based loans by non-bank financial institutions, revealed by the Indonesian Consumers Foundation (YLKI) which urges the FSA to block more and more fintech providers. At present there are already more than 100 complaints from consumers of fintech victims received by YLKI, in the form of terror, daily fines, or very high interest and commissions. YLKI has repeatedly lodged complaints regarding the organizer of this fintech, but violations of consumer rights, both civil and criminal, continue to occur. Violations in the form of terror are generally carried out through telephone lines or text messages. On the other hand, there are also fintech operators who charge extremely high daily fines, for example fifty thousand rupiah per day or set an interest rate of 62% of the principal debt. Not only the lending and borrowing provisions are considered detrimental, YLKI also highlighted a number of fintech organizers who do not have operational licenses from the OJK, but can operate in Indonesia. According to data collected by YLKI there are more than 300 existing fintech organizers, but only 64 companies have been licensed by OJK.

POJK 13/2018 is a government initiative to stimulate innovation in the digital financial services ecosystem such as equity crowdfunding, settlement, investment management, insurance, and so on. Digital Financial Investment is defined as an activity to update business processes, business models and financial instruments by involving the digital ecosystem.¹² This regulation classifies these companies as Digital Financial Innovation Providers (IKD) which must comply with OJK regulations sandboxing.

In order to be classified as IKD Providers, digital financial service providers must meet certain criteria, such as providing innovative digital financial products and services that represent new business processes or models; activities, enhancements or efficiencies that provide value to the IKD ecosystem; future-oriented through the use of information and communication technology; useful for the public; and can be integrated with existing financial services.

¹¹ Achmad Rifai, *Peran Bank Pembiayaan Rakyat Syariah dalam Mengimplementasikan Keuangan Inklusif Melalui Pembiayaan UMKM*, *Ikonomika: Journal of Islamic Economics and Business*, Vol.2 No.2 (2017), pg.180

¹² <https://ap-lawsolution.com/id/legal-headlines/peraturan-otoritas-jasa-keuangan-no-13-pojk-02-2018-tentang-sandbox-regulasi-bagi-inovasi-keuangan-digital-di-sektors-jasa-keuangan/> access on 22th March 2020

IKD organizers must comply with applicable laws and regulations regarding anti-money laundering and terrorism financing. Furthermore, IKD Providers must consider aspects of data protection and / or user information as defined in OJK Regulation No.1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector (POJK 1/2013). IKD Organizer is prohibited from utilizing the user's personal data except with the user's prior consent. In addition, IKD Providers must place their data centers and data recovery centers in Indonesia.

One of the fintech products currently available is a capital loan for Micro, Small and Medium Enterprises (MSMEs). This type of Fintech provides an alternative investment platform while offering business loans with a peer-to-peer (P2P) Lending system, namely the lending and borrowing process carried out by the parties (fintech and customer) without involving banks.

The Islamic financial system is vital in the development of the national economy which functions to provide payment for products, financing facilities, a place to exchange money and all forms of savings instruments.¹³ As a form of financing facility, there are provisions for fostering the implementation of sharia-based Fintech which Islamic law is accommodated through the Al-Qur'an, Al-Hadith, and Ijtihad Ulama, these provisions can generally be described:

QS. Al-Baqarah (4): 29;

"For those who believe, do not you take other people's property in vanity unless it is in the form of trade which is based on between you ..."

Hadith Rasul SAW narrated by Ibn Majah from 'Ubadah bin Al-Shamit R.A.

"It must not be dangerous, harm others and should not (also) be dangerous (harm caused by others) with danger (actions that harm him)"

Fiqh principles from the provisions of the MUI DSN Fatwa No. 117 / DSN-MUI / II / 2018 concerning Information Technology-Based Financing Services Based on Sharia Principles

"In reality, all forms of muamalah are not allowed unless there is evidence that prohibits it."

Fintech products are permitted according to sharia if they meet the signs, including the transaction must explain the terms of the contract according to sharia, this digital transaction is known and agreed upon, and the business object is halal. Likewise, there is a Kabul agreement according to the urf, there is a transfer of ownership, there is consumer protection, and based on existing laws and regulations, there is sharia supervision that ensures sharia principles are applied.

The events of capital loans by fintech companies to Sharia MSMEs are basically discussed in this writing based on the *Maqasid Sharia* theory¹⁴ which has the purpose of bermuamalah to realize the benefit of religion, the benefit of the soul, and the benefit of wealth.

¹³ Ahmad Mukri Aji, Harisah, Syarifah Gustiawati Mukri, 2020, *Revitalization of Fintech Era 4.0 in The Development of Islamic Microfinance Institution*, Al-Istiqad: Jurnal Ilmu Ekonomi Syariah (Journal of Islamic Economic) Vol.12 No.1 Jan-Jun, pg.2

¹⁴ Musolli, *Maqasid Syariah: Kajian Teoritis dan Aplikatif Pada Isu-Isu Kontemporer*, Jurnal At-Turas, Vol. V, No.1, Januari-Juli 2018, pg. 64

Capital owners (*sohibul mall*) are potential investors who can study the investment programs offered through the website, as well as monitor where their capital is channeled and the development of their investments because all data is reported regularly and openly. The initial capital needed is affordable, starting at three million rupiah. This capital will help MSMEs (*mudharib*) to continue their business and open a business and the basis is usually those who live in remote areas where the community has difficulty accessing loans and other financial services.¹⁵

In connection with the existence of venture capital financing activities from fintech organizers, the provisions of Article 22 of Law Number 20 Year 2008 concerning Business, Micro, Small and Medium Enterprises (MSME Law) determine that in the framework of increasing MSME funding sources the Government undertakes:

- a. Development of financing sources from bank loans and non-bank financial institutions;
- b. Development of venture capital institutions;
- c. Institutionalization of factoring transactions;
- d. Increased cooperation between MSMEs through savings and loan cooperatives and conventional and sharia financial services cooperatives; and
- e. Development of other funding sources in accordance with statutory provisions.

Mudharib must be selective in choosing fintech to be used as a source of business capital. This is to avoid the occurrence of things that will harm business people themselves billing and misuse of personal data. This can disrupt the current running of MSME business. UMKM should borrow from fintech whose credibility has been guaranteed, which is already registered with OJK. Data for March 2020¹⁶, OJK has closed 508 problematic fintechs.

Tackling fintech companies that have problems in carrying out their capital loan transactions requires synergistic legal instruments to optimize their sentences. These efforts are related to G.P.Hoefnagels¹⁷ theory which deals with countermeasures through Persuasive, Preventive, and Repressive stages. Synergy between the Investment Alert Task Force in tackling problematic fintech companies conducted by the OJK, the Police, and the Prosecutors' Office, is guided by overcoming this in accordance with the implementation of the Hoefnagels theory.

The Alert Investigation Task Force whose center is implemented by the OJK in tackling problematic finteches undertakes the following efforts:¹⁸

1. Inventing cases of alleged illegal actions in the field of collecting public funds and managing investments that have the potential to harm the community;
2. Analyzing cases of alleged unlawful actions in the field of collecting public funds and managing investments, in accordance with statutory regulations;
3. Stopping or hindering the rampant cases of collecting public funds and managing investments suspected of violating the law that have the potential to harm the community;

¹⁵ Eni V, Pangabean, *Op.Cit.* pg.7

¹⁶ <https://www.cnbcindonesia.com/tech/20200316103633-37-145078/ojk-kembali-tutup-388-fintech-ilegal-ini-daftarnya-dikutip-pada-jumat-3-april-2020>

¹⁷ Barda Nawawi Arief in article (8 Maret 2017) <https://info-hukum.com/2017/03/08/kebijakan-penanggulangan-kejahatan/> access on 31 July 2020

¹⁸ <https://waspadainvestasi.ojk.go.id/about-us/tugas-satgas-waspada-investasi> access on April 2020

4. Conduct joint examinations and / or clarifications related to alleged violations that occur in the community and follow up to stop the illegal actions, in accordance with the duties and authorities of each Task Force member;
5. Doing a joint search of sites that are used as a means to collect public funds and manage investments suspected of violating the law that have the potential to harm the community; and
6. Prepare recommendations for the follow-up handling of alleged unlawful actions in the field of collecting public funds and investment management to each Task Force member in accordance with their authority.

2. Factors Inhibiting Problem Solving Fintech-Based Loans Problem

In carrying out its functions, OJK organizes a system of regulation and supervision that is integrated to all activities in the financial services sector.¹⁹ OJK in its statutory provisions has the task of regulating and supervising:

- a. Financial services activities in the Banking sector;
- b. Financial service activities in the Capital Market sector; and
- c. Financial service activities in the Insurance sector, Pension Funds, Financing Institutions, and Other Financial Services Institutions.

OJK continues to remind fintech companies to be able to maintain a code of ethics in conducting their business. Meanwhile, the code of ethics needs to refer to at least basic principles such as consumer protection, which includes product transparency, price, responsible product methods, complaint handling and management system standards. Second, mitigation and risk management. Third, good corporate governance. Fourth, anti-money laundering and terrorism financing.²⁰

The head of the investment alert task force, Tongam Lumban Tobing, said that Google as the owner of the Play Store could not afford the actions the government wanted. The government has talked to Google like asking for permission from the OJK before the online loan application appears on the Play Store page. However, according to Tongam, Google reasoned that the Play Store domain is open sources meaning that anyone can create and upload their work freely. Tongam suspected that the makers of online loan applications without pocketing permission from the OJK had entered the Play Store by fooling Google and Google itself could not detect it. He said the government would still try to overcome the form of blocking. In this case, the Government has tried to compare every illegal P2P Lending fintech that appears with the data of those who have registered with the OJK. If they are found to have not been registered, then it is certain that the government will not hesitate to block it after verification is carried out.²¹

Based on the data discussed earlier, this shows that OJK is still weak in supervision and YLKI also urged OJK to immediately block illegal fintech organizers. YLKI urges people not to borrow money from fintech or online credit providers not registered with the OJK. YLKI emphasized that consumers only carry out lending and borrowing activities with fintechs that have obtained OJK permits. Thus, if there is a problem in the future, then there is the role of the state that can be directly responsible for protecting customers and business providers

¹⁹Kasmir, *Bank dan Lembaga Keuangan Lainnya*, Rajawali Pers, Jakarta, 2015, hlm.322.

²⁰ <https://investor.id/finance/ojk-tingkatkan-perlindungan-nasabah-fintech> access on 18th April 2020

²¹ artikel "OJK Kesulitan Cegah Aplikasi Pinjaman Online Ilegal di Play Store", <https://tirto.id/diUv>

providing fintech.²² In accordance with the provisions of the Law that the FSA has the objective of independence, it is necessary so that the ability to regulate and oversee the operation of financial institutions in Indonesia can be done properly and decisively.²³

The OJK obstacles in dealing with problematic fintech include:

1. The lack of victims reporting.

Victims often do not report because they have the tendency that law enforcement officials will not optimally solve their cases. Moreover, there are those who do not report because the nominal losses are not as high as the costs of reporting or being brought into the realm of law. Even though the slightest loss, if the injured community reports, at least the apparatus will be more vigorous to socialize (its duty as protector) to the public to be more careful with investment activities.

2. Uncertainty about the status of the company known to the public / customers;

The problematic Fintech whose scope of work has not yet been met by its licensing component, makes it difficult for customers who have already joined and entered into a loan contract for the status of its legal relationship, not necessarily guaranteed by the state. This is in line with the limitations of the OJK which supervises and acts on registered fintech companies.

3. Lack of socialization of financial institutions, especially modern financial institutions;

Access to Indonesia's vast territory is an obstacle to any socialization within the scope of the authorities in realizing legal equality in all lines of society. However, this does not necessarily mean difficulties and is not carried out, this socialization can be arranged with the apparatus that adjusts the hours of community crowds in the districts with limited road access.

4. Limited Human Resourcher (HR);

The budget of the legal apparatus is very limited, forcing the internal officers of the agency to maximize the parties present in this case HR. HR procurement through the stages of filling new positions / new commitments, or increasing the quality of existing young human resources, this is in order to increase the capacity of HR workers who are more insightful and responsive to the latest atmosphere / conditions.

5. Infrastructure facilities are still implanted with Bank Indonesia (BI);

Facilities and infrastructure are also often limited because the budget must still be optimized for implementation, this is in line with whatever conditions of violations that exist, agencies that are given the authority to take action must maximally complete their tasks.

In addition, the community must pay attention to administrative requirements, including interest, and penalties for each fintech lending. Such information can be obtained by the public on the site of each service provider company. Afterwards the community must be able to measure their own abilities. If you feel that you cannot afford to pay from the interest,

²² <http://tirto.id/ylki-desak-ojk-blokir-fintech-yang-meneror-konsumen-eYIn>. access on 18th April 2019

²³ Irham Fahmi, 2016, *Bank dan Lembaga Keuangan Lainnya Teori dan Aplikasi*, Bandung, Alfabeta, pg.16

don't borrow it. But if people are already victims of illegal online loans, the borrowers immediately pay off their obligations first.

Legal or illegal must still be paid in order to prevent problems from happening in the future, because it still includes private events due to legal debts. Afterwards or simultaneously, victims can report the illegal fintech to the OJK and the Indonesian National Police (Polri) in the local area. Indeed illegal fintech is not under direct supervision under the OJK, but there is no harm in reporting also to the OJK so that it can be followed up and become an evaluation of OJK's performance to be more active in overseeing national financial transactions.

Conclusions

Based on the description of the discussion, several conclusions can be drawn namely,

Fintech products based on sharia provisions (Al-Qur'an, Hadith, and Ijtihad) are permitted according to sharia if they meet the signs, including transactions must explain the terms of the contract according to sharia, these digital transactions are known and agreed upon, and the object of business is halal, Indonesia is also has accommodated sharia provisions that support its implementation.

As the Fintech transaction progresses, problems arise as well as efforts to overcome Fintech problems in providing loans to Sharia MSMEs by the OJK by the task force through the following stages, Inventory cases of alleged illegal actions; Analyzing cases of alleged unlawful actions in the field of raising funds; Stopping or hindering the rampant cases of public fund raising and investment management; Carry out examinations and / or clarifications on a joint agency basis; Doing a joint search of sites that are used as a means to collect public funds; Prepare recommendations for the follow-up handling of alleged unlawful actions in the field of collecting public funds and investment management to each Task Force member in accordance with their authority.

While OJK's obstacles / obstacles in overcoming problematic finteches are: The lack of victims who report; Unclear fintech companies accommodated by victims; Lack of socialization of banking and non-bank financial institutions; Limited Human Resources; Facilities and infrastructure that are still implanted with BI.

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Interview

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