



## **Analysis of Securities Offering Regulations on Securities Crowdfunding Services Maslahah Approach**

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### **Abstract**

The acceleration of the Digital Era began with the spread of the COVID-19 virus, which caused the national economy to grow 2.5% in 2020, or down 5% from 2019. The lockdown policy was a factor in the slow turnaround of the economy. Another impact is digitalization in all aspects, including the financing sector and the formation of rules to regulate financing. Financial technology is an instrument that is experiencing accelerated growth because it is based on the internet of things (IOT). With the birth of the concept of crowdfunding securities, which has become an alternative funding source for business actors such as MSMEs, initially, MSME funding activities in the crowdfunding cycle were limited to equity based on POJK 37 of 2018, then the regulation developed into POJK 57 of 2020 and became POJK 16 of 2021. These regulatory changes changed the funding mechanism, which was initially equity-based and then developed to be based on sukuk and debt securities. These regulatory changes became the focus of research after examining the impact of these regulations on the funding of MSMEs and legal business entities in Indonesia. Maslahah theory became the knife in analyzing these regulations using normative legal research methodology as the research method and descriptive analysis as the analytical method. The use of this theory is based on the impact of existing regulatory developments, which have reached funding worth \$1 trillion and contain 481 business units, with funding sources coming from 160,368 investors. This funding achievement is a challenge to carry out comprehensive supervision regarding the distribution and use of capital by service-provider companies and the Financial Services Authority by paying attention to the principles of GCG, CSR, and open disclosure to guarantee and protect the rights of parties participating in related funding.

Keywords: Financial Technology; Securities Crowdfunding; Maslahah

### **Abstrak**

Percepatan Era Digital berawal pada menyebarnya virus COVID-19 yang membuat perekonomian nasional tumbuh 2,5% pada tahun 2020 atau turun 5% dari tahun 2019, kebijakan lockdown menjadi faktor lambatnya perputaran ekonomi. Dampak lain berupa terjadinya digitalisasi dalam segala aspek termasuk pada sektor pendanaan dan pembentukan aturan dalam meregulasi pendanaan tersebut. Financial technology menjadi instrumen yang mengalami percepatan pertumbuhan dikarenakan berbasis internet of things (IOT) dengan melahirkan konsep securities crowdfunding yang menjadi alternatif pendanaan bagi pelaku usaha seperti UMKM. Pada awalnya kegiatan pendanaan UMKM pada siklus crowdfunding terbatas pada ekuitas berdasarkan POJK 37 Tahun 2018, kemudian regulasi tersebut berkembang menjadi POJK 57 Tahun 2020 dan menjadi POJK 16 Tahun 2021 perubahan regulasi tersebut merubah mekanisme pendanaan yang awalnya berbasis ekuitas kemudian berkembang berbasis sukuk dan surat utang. Perubahan regulasi tersebut menjadi fokus penelitian dengan mengkaji dampak regulasi tersebut terhadap pendanaan UMKM dan badan usaha berbadan hukum di Indonesia, teori maslahah menjadi pisau analisis dalam menganalisis regulasi tersebut dengan metodologi penelitian hukum normatif sebagai metode penelitian dan deskriptif analisis sebagai metode analisis. Penggunaan teori tersebut berdasarkan dampak dari perkembangan regulasi yang ada telah mencapai pendanaan senilai 1 triliun yang mendanai 481 unit usaha dengan sumber pendanaan berasal dari 160.368 pemodal. Capaian pendanaan tersebut menjadi tantangan untuk dilakukan pengawasan yang komprehensif terkait penyaluran dan penggunaan modal oleh pihak perusahaan penyelenggara layanan dan Otoritas Jasa Keuangan dengan memperhatikan prinsip GCG, CSR dan open disclosure untuk menjamin serta melindungi hak-hak para pihak yang turut terkait dalam pendanaan.

Kata Kunci: Financial Technology; Securities Crowdfunding; Maslahah

## INTRODUCTION

In the securities offering mechanism, there are parties who need capital by issuing securities, and there are investors as parties who will invest in the company by buying securities<sup>1</sup> which are offered as a meeting place for supply and demand and offer investment options with a certain time period<sup>2</sup> such as equity shares, mutual funds, bonds, or other things<sup>3</sup> as proof that someone has included capital<sup>4</sup> or that there is an investor's capital participation as an owner.<sup>5</sup> According to Article 1, point 13 of Law Number 8 of 1995, the capital market is a cycle in which there are public offerings, securities transactions, the issuance of securities from public companies and agencies, as well as work related to securities. Clearly, what is meant by securities is contracts for futures activities on securities, any securities derivatives, commercial securities, participation units in collective investment contracts, bonds, proof of debt, shares, and debt recognition letters. These are the definitions of securities given in Article 1, point 5.<sup>6</sup>

On a smaller scale, the concept of capital participation that occurs on the stock exchange is adopted and developed based on crowdfunding services organised by the organising company as an intermediary between issuers and investors as users of crowdfunding services. An issuer is an Indonesian business entity in the form of a legal entity or other business entity that can issue securities through crowdfunding services. Investors are buyers of securities issued by the issuer.<sup>7</sup> In some strong economies, the institution that has a central role is the capital market. This is because the capital market plays a vital role in the country's economic growth.<sup>8</sup> Offering securities through the Securities Crowdfunding (SCF) service has a simpler mechanism, starting with a request for registration, screening, offering, and distribution of securities. When compared with the securities mechanism on the IDX, it does not require a long process and does not require a long time.

The internet as a foundation for meeting working capital is used through open joint venture activities used in securities crowdfunding. The implementation of securities offerings through SCF services is based on Law Number 8 of 1995 concerning capital markets using Financial Services Authority regulations as technical rules for implementation starting from POJK 37 2018 with regulations that funding using crowdfunding services is only limited to equity securities or share ownership and the amount. The administrative requirements that must be fulfilled are as in Article 6, which regulates the registration obligations of the organizer with Kominfo (the Ministry of Communication and Information). Then it was updated with securities crowdfunding regulations, which can offer various securities such as equity, debt securities, and sukuk in POJK 57 2020, and updated again to make it easier for MSMEs to obtain funding for this service with the POJK 16 2021 regulations by streamlining administration in the

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<sup>1</sup> Inda Rahadiyan, *Hukum Pasar Modal Di Indonesia Pengawasan Pasar Modal Pasca Terbentuknya Otoritas Jasa Keuangan* (Yogyakarta: Universitas Islam Indonesia Press, 2014).

<sup>2</sup> Indah Yuliana, *Investasi Produk Keuangan Syariah* (Malang: UIN Malang Press, 2010).

<sup>3</sup> Vidya Noor Rachmadini, "Perlindungan Hukum Bagi Investor Dalam Pasar Modal Menurut Undang-Undang Pasar Modal Dan Undang-Undang Otoritas Jasa Keuangan," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 18, no. 2 (July 21, 2020), <https://doi.org/10.31941/pj.v18i2.1093>.

<sup>4</sup> Zalmi Zubir, *Manajemen Portofolio Penerapannya Dalam Investasi Saham* (Jakarta: Salemba Empat, 2011).

<sup>5</sup> Harris Darmawan Melvin Mumpuni, *Panduan Berinvestasi Saham Bagi Pemula* (Jakarta: PT Solusi Finansialku Indonesia, 2017).

<sup>6</sup> Nasution dan Mustafa Edwin Nurul Huda, *Investasi Pada Pasar Modal Syariah* (Jakarta: Kencana Prenadamedia Group, 2007).

<sup>7</sup> Pasal 1 (5-8) Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 57 Tahun 2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi

<sup>8</sup> Asri Sitompul, *Pasar Modal, Penawaran Umum Dan Permasalahannya* (Bandung: Citra Adya Bakti, 1995).

form of deleting Article 6, Article 13(1) e, and adding Article 15A between articles 15 and 16 of economics because capital funding involves all components of society with the concept of securities crowdfunding.

The impact of the regulatory change from equity crowdfunding to securities crowdfunding has had an impact on funding growth, which has reached total funding of IDR. 1,000,000,000,000.00 (1 trillion) with contributions from 160,368 investors distributed to 481 businesses and projects. This impact is the basis for this research in examining securities crowdfunding regulations using a problem-based approach. The use of the masalah approach is in the form of propriety, harmony, appropriateness, usefulness, and goodness with the indicators dharuriyyah, Hajiyyah, and Tahsiniyyah. Using this approach, we will later examine the benefits of existing regulations by paying attention to the technical impact on the availability of capital for MSMEs and business entities that require capital.

## **RESEARCH METHOD**

This research will focus on the legal aspects of implementing securities crowdfunding using qualitative research methods, including library research using approaches and conceptual approaches masalah such as the concept of risk with the principle of not doing harm or harm, and others. The primary data used is in the form of Financial Services Authority Regulation Number 57 of 2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services and in the form of Services Authority Regulation Number 16 of 2021 Amendment to Financial Services Authority Regulation Number 57/POJK.04/2020, while the secondary data is in the form of data published by the Financial Services Authority, the Indonesian Central Securities Depository, and other data related to securities crowdfunding, which will help with mapping and reading the impacts caused. The data analysis methods used in this research are descriptive analysis and comparative analysis. The discussion ends with research findings and conclusions.

## **RESULTS AND DISCUSSION**

### **ANALYSIS OF THE IMPACT OF SECURITIES CROWDFUNDING SERVICES FUNDING REGULATIONS**

#### ***Legal Aspects of Service Provision***

The securities offering mechanism for securities crowdfunding services is carried out by three parties holding the securities offering, including the organizer. The organizer in this case is a legal entity company that has obtained an operational permit from the OJK, whose role is to organize and connect the parties. The organizing company can be established by a legal subject and a foreign party with a maximum capital percentage of 49% and a capital deposit of at least Rp. 2,500,000,000.00 (two billion five hundred million rupiah).<sup>9</sup> An issuer is a company or legal entity whose role is as an issuer offering its securities, which does not have the status of a public company (Tbk) with a maximum net assets of IDR. 10,000,000,000.00 (ten billion rupiah), and investors are investors who provide funding through purchasing securities.<sup>10</sup>

At the initial or pre-market stage, the service provider provides applications for registration of the issuer's securities. At the organizer stage, the service provider carries out a screening and

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<sup>9</sup> Pasal 8 a, 9 (1-2) dan 11 (1) Peraturan Otoritas Jasa Keuangan Nomor 57 Tahun 2020 tentang Penawaran Efek Melalui Layanan Urut Dana Berbasis Teknologi Informasi

<sup>10</sup> Pasal 5-8

assessment process for the registering issuer by reviewing the prospectus, which contains at least the company profile, company fundamental reports for the last few years, business profile or undertakings, projection of the business to be carried out, and the amount of funds required in the offering along with the application. Then the issuing company is obliged to carry out and fulfill its obligations towards investors. Apart from that, the issuing company is prohibited from carrying out its securities offering process before its obligations are fulfilled, with the exception of if the securities offering is carried out in stages.<sup>11</sup>

Organizers, together with publishers, are not permitted to exceed the 12-month limit of the maximum collection amount of RP. 10,000,000,000.00 (ten billion rupiah) and can do so in one or more offers.<sup>12</sup> In determining the minimum funds to be raised through an initial public offering, the organizer and the publisher can enter into an agreement on the minimum limit for raising funds.<sup>13</sup> After the issuer's prospectus is received, the organizer reviews and audits the document, and if there are any discrepancies, the organizer orders the issuer to correct them. After the prospectus is validated, the organizer is obliged to upload publisher data to the organizer's website and conduct an initial public offering to the public. Offering securities through this service is different from offering securities on the IDX, as shown in the table below. The results of a comparison of Law Number 8 of 1995 and POJK Number 57 of 2020 and POJK Number 16 of 2021:

No	Indicator	Capital Market	Securities crowdfunding
1	Organizing company	Indonesia Stock Exchange	Financial Services Providing Company
2	Organizing Company Quantity	Single (PT Indonesian Stock Exchange)	10 (Increase)
3	Supervisors and Regulators	PT Indonesia Stock Exchange and Financial Services Authority (OJK)	Organizer (Supervises the Securities Held by Investors) OJK (Supervises the Organizer)
4	Mechanism Type	Go Public or Initial Public Offering (IPO)	Securities Offering
5	Offer Flow	Application for Registration, Screening, Initial Offering, Public Offering, Securities Allotment, Share Distribution and IPO	Application for Registration, Screening, Offering and Distribution of Securities
6	Issuer Status	Public (Tbk)	Privat
7	Minimum Net Worth	Rp3.000.000.000,00	-

<sup>11</sup> Pasal 31 - 32

<sup>12</sup> Pasal 33 (Pasal 3 ayat 2 OJK dapat menentukan nilai minimum pada saat tertentu)

<sup>13</sup> Pasal 34 (1-2)

8	Maximum Net Worth	-	Rp. 10.000.000.000,00
9	Trading System	Regular, Negotiated And Cash	Reguler
10	Trading Intensity	Traded During Post- IPO Exchange Hours	Traded Twice in One Year

Tabel 1 Comparison of Implementation Mechanisms

In the securities crowdfunding scheme, investors can invest in the sector or type of securities they control. Investors carry out the registration process on the securities crowdfunding service provider platform. The Indonesian Central Securities Depository, or KSEI, accepts registration of securities carried out by the issuer as part of securities in the form of equity and debt, or sukuk. Then the organizer connects investors with issuers by conveying information related to securities in the form of a prospectus to investors.<sup>14</sup>

The simple operation of the securities crowdfunding working system is that the publisher, after selecting the organizer's platform, submits a proposal. After the proposal is approved, the publisher will start offering its securities through the organizer's platform. The investor then chooses the issuer to be financed after studying the issuer's securities prospectus. If the funding target has been met by the investor, the funds collected will be distributed to the issuer to be used according to the needs stated in the prospectus. When the funds have been distributed, the investor has the right to receive an allotment of the securities purchased as proof of participation in ownership and has the right to receive a return as stated in the prospectus.<sup>15</sup>

### **Impact of Regulations on Capital Growth**

Activities that include securities-supporting professions, securities-issuing companies, securities trading, and securities offerings to the public constitute an understanding of the capital market.<sup>16</sup> The collaboration between technology and the financial sector has given birth to a sophisticated transaction mechanism that provides flexibility and security; this is called financial technology (fintech). Products in the form of digital payments, digital wallets, investments (equity crowdfunding), peer-to-peer lending, and financing (crowdfunding, microloans, and credit facilities) are categorized as fintech.<sup>17</sup> Applications that function as financial connectors can be interpreted as fintech, also defined as an industry based on the use of technology with the aim of financial system efficiency. The impact of fintech is significant on financial services business models that innovate to produce business models, products, and service applications.<sup>18</sup>

The concept of crowdsourcing gives birth to an independent freedom that has no limits on contributions that do not require education, religion, citizenship, or employment to carry out

<sup>14</sup> Webinar Bulan Inklusi Keuangan (10 Oktober 2023), *Securities crowdfunding Syariah Sebagai Alternatif Investasi dan Permodalan* yang disampaikan oleh M. Agung Probowo, Founder dan CEO PT Dana Investasi Bersama atau Platform Penyelenggara FundEx.

<sup>15</sup> Webinar Bulan Inklusi Keuangan (10 Oktober 2023), *Securities crowdfunding Syariah Sebagai Alternatif Investasi dan Permodalan* yang disampaikan oleh Rifqi Muhammad, Ahli Syariah, Dewan Pengawas Syariah dan Guru Besar Program Studi Akuntansi Universitas Islam Indonesia.

<sup>16</sup> Rusdin, *Pasar Modal: Teori, Masalah, Dan Kebijakan Dalam Praktik* (Bandung: Alfabeta, 2008).

<sup>17</sup> Meline Gerarita Sitompul, "Urgensi Legalitas Financial Technology (Fintech) : Peer To Peer (P2P) Lending Di Indonesia," *Jurnal Yuridis Unaja* 1, no. 2 (2018): 70, <https://dx.doi.org/10.5281/jyu.v1i2.428>.

<sup>18</sup> Hida Hiyanti et al., "Peluang Dan Tantangan Fintech (Financial Technology) Syariah Di Indonesia," *Jurnal Ilmiah Ekonomi Islam* 5, no. 3 (January 12, 2020): 2, <https://doi.org/10.29040/jiei.v5i3.578>.

problem solving that cannot be done by institutions or others. Crowdsourcing gave birth to the concept of crowdfunding, which gives anyone the freedom to carry out joint funding or financing. Crowdfunding comes from English, which consists of two words: crowd, which means crowd, a similar crowd, and funding, which means funding, capital, financing, and the like.<sup>19</sup>

The regulator and supervisor of securities crowdfunding activities is mandated by the Financial Services Authority, which is independent and located outside the government <sup>20</sup> and carries out its main duties and functions in the capital markets sector.<sup>21</sup> The implementation of crowdfunding services can consist of three main components, namely organisers, issuers, and financiers. The organiser, as the first component, has a vital role as a liaison between investors (individuals or legal entities who have excess capital) and issuing companies (companies, MSMEs, or start-up companies that need working capital).<sup>22</sup> Currently, the implementation of crowdfunding services is carried out by ten organizers, including :

No	Kode	Nama	Produk	Jumlah
1	BZHR1	PT Investasi Digital Nusantara (Bizhare)	ECF	79
			Sukuk	12
2	CRWD1	PT Crowddana Teknologi Indonusa (Crowddana)	ECF	32
3	DSMB1	PT Dana Saham Bersama (Danasaham)	ECF	2
4	FNDX1	PT Dana Investasi Bersama (Fundex)	ECF	1
			Sukuk	7
5	LNDX1	PT ICX Bangun Indonesia (LandX)	ECF	40
6	LBSU1	PT LBS Urun Dana (LBS)	ECF	3
			Sukuk	5
7	SDIM1	PT Santara Daya Inspiratama (Santara)	ECF	41
	SHFQ1	PT Shafiq Digital Indonesia (Shafiq)	ECF	1
			Sukuk	35
9	EKUI1	PT Likuid Jaya Pratama (Ekuid)	DCF	6

<sup>19</sup> Iswi Haryani, "Perlindungan Hukum Sistem Donation Bases Crowdfunding Pada Pendanaan Industri Kreatif Di Indonesia," *Jurnal Legislasi Indonesia* 12, no. 4 (2015): 6.

<sup>20</sup> Wiwin Sri Rahyani, "Independensi Otoritas Jasa Keuangan Dalam Perspektif Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan," *Legislasi Indonesia* 9, no. 3 (2012).

<sup>21</sup> Hasan Hasbi, "Efektivitas Pengawasan Otoritas Jasa Keuangan Terhadap Lembaga Perbankan Syariah," *Legislasi Indonesia* 9, no. 3 (2012).

<sup>22</sup> Rastri Kusumaningrum Gigih Prahastoro, Firdaus Yuni Dharta, "Strategi Komunikasi Pemasaran Layanan Securities Crowdfunding Dalam Menarik Minat Masyarakat Untuk Berinvestasi Di Sektor Ukm," *Kinerja Jurnal Ekonomi Dan Manajemen* 18, no. 2 (2021), <https://doi.org/10.30872/jkin.v18i2.9651>.

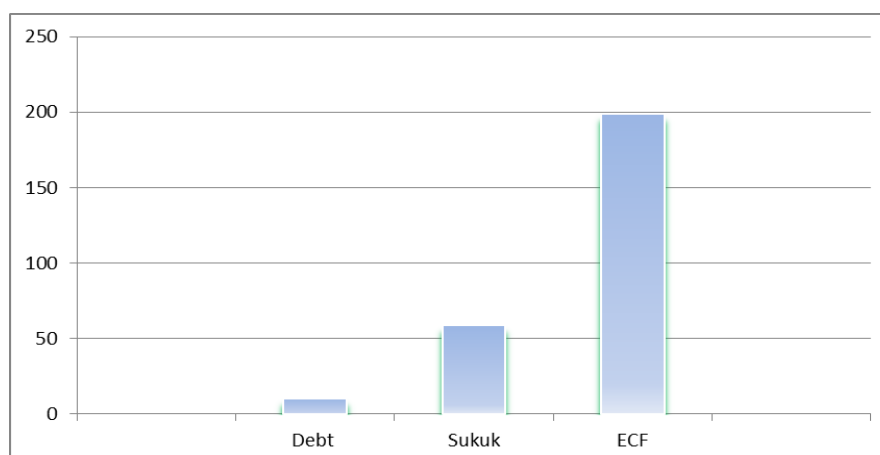
10	DNMR1	PT Dana Aguna Nusantara (Danamart)	DCF	4
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Tabel 2. List of Securities Crowdfunding Organizers

The ten organisers are registered with OJK (Financial Services Authority) and KSEI (Indonesian Central Securities Custodian Institution). First, this categorization is specifically for providers that offer conventional securities (ECF) and sharia (Sukuk). At the organiser, PT Investasi Digital Nusantara (Bizhare), 91 issuers are offering securities in the form of 79 shares of equity and 12 sukuk. There is a ratio of 13.18% being sharia securities and 86.82% being conventional securities. Then, the organiser, PT Dana Investasi Bersama (Fundex), offered securities from 8 issuers with details of 7 sukuk and 1 equity or share, with a ratio of 12.5% conventional securities and 87.5% sharia securities. Furthermore, PT LBS Urun Dana (LBS) offers securities from 8 issuers in the form of 3 equity shares and 5 sukuk, resulting in a ratio of 37% conventional securities and 63% sharia securities in the form of sukuk. PT Shafiq Digital Indonesia (Shafiq) also offered securities from 36 issuers, with 35 securities in the form of sukuk and 1 security in the form of equity or shares, with a ratio of 2.8% non-shariah and 97.2% sharia securities.

Second, this categorization is specifically for providers that offer securities from issuers in the form of equity or shares (ECF). The organisation offering conventional securities is organised by the organiser, PT Crowddana Teknologi Indonusa (Crowddana), offering securities issued by 32 issuers, all of which are equity or non-shariah-based shares. This was also done by the organiser of PT Dana Shares Together (Danasaham), which offered non-shariah securities from two issuers in the form of equity or shares. Then PT ICX Bangun Indonesia (LandX) also made offers from 40 publishers, all of which were equity- or share-based. Furthermore, PT Santara Daya Inspiratama (Santara) held crowdfunding by offering securities from 41 issuers, all of which were in the form of equity or shares.

Third, this categorization is specifically for organisers who issue debt securities, or what is called debt crowdfunding (DCF), with PT Likuid Jaya Pratama (Ekuid) issuing securities in the form of debt crowdfunding from six issuers, all of which are debt-based. PT Dana Aguna Nusantara (Danamart) also carries out similar publications from four publishers.



Grafik 1. Number of Effects

The graph above shows the number of issuer securities (as of August 10, 2023) promoted on the SCF funding service. The securities offering is in the form of debt securities or debt crowdfunding (DCF), with the offered amount being 10 securities (DCF) from the issuer. Then the next securities offered are sukuk, with the amount offered being 59 sukuk from the issuer. The next one that has a large portion of securities crowdfunding services is in the form of equity crowdfunding (ECF) or securities in the form of ownership, with the number of securities offered being 199 issuer securities. This data describes the securities crowdfunding services that are often offered in the form of equity or ownership shares.

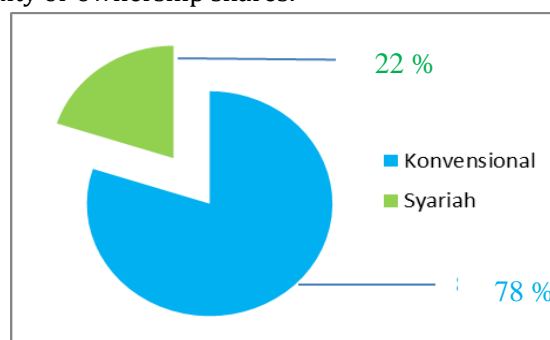


Diagram 1. Sebaran Efek

The distribution of securities is obtained by combining the total number of securities from each registered issuer (as of August 10, 2023), which is then calculated by converting to percent. Securities issued by issuers in the conventional sector in crowdfunding services dominate with a percentage of 78%, while securities issued by issuers in the sharia sector have a percentage of 22%. This is only limited to the number of securities issued by the issuer and does not include the overall market capitalization value. All the data that has been presented can illustrate the growth and development of securities crowdfunding services.

#### ANALYSIS OF SECURITIES CROWDFUNDING REGULATIONS MASLAHAH APPROACH

##### *Maslahah Approach*

Maslahah is an Arabic word that has the meaning of the word benefit in the form of *mufrad*<sup>23</sup> which has a development of meaning, which means it contains the meaning of good values in all aspects of human life, such as kindness and usefulness<sup>24</sup> has the opposite word, *al-mafsadah*, which means something that is bad.<sup>25</sup> There are three kinds of division of *mas}lah}ah* into three: *Al-mas}lah}ah al-mu'tabarah*, *Al-mas}lah}ah al-mulghah*, and *Al-mas}lah}ah al-mursalah*.<sup>26</sup>

يَأَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ<sup>27</sup>

This verse commands those who believe to complete or fulfil their contracts or agreements. Agreements or contracts for funding through securities crowdfunding have so far reached a total

<sup>23</sup> Satria Efendi, *Ushul Fiqh*, ed. Aminuddin Ya'qub dan Nurul Irvan, Cet. Ke-7 (Jakarta: Kencana, 2017).

<sup>24</sup> La Jidi, "Konsep Maslahat Terhadap Penetapan Hukum Islam," *Syattar* 2, no. 02 (2022): 89-97, <https://doi.org/10.35326/syattar.v1i2.1185> jurnal-umbuton.ac.id/index.php/syattar.

<sup>25</sup> Muhammad Harfin Zuhdi, "Formulasi Teori Maslahah Dalam Paradigma Pemikiran Hukum Islam Kontemporer," *Istinbath* 12, no. 1 (2013): 288-309.

<sup>26</sup> Efendi, *Ushul Fiqh*.

<sup>27</sup> Q.S. Al-Maidah (5) : 1



funding of IDR. 1,000,000,000,000.00 (1 trillion). This number illustrates the interest of the Indonesian people in participating in crowdfunding services. Currently, there are 160,368 investors or investors who have invested their capital in issuer securities. A number of these investors invested their capital in 481 businesses and projects organised by 16 crowdfunding service provider platforms<sup>28</sup> (if you refer to KSEI, the number of organisers is 10 securities crowdfunding service providers).

In the initial stage, convenience is provided through the net asset value contained in the crowdfunding securities regulations, which are aimed at issuers with a maximum value of IDR. 10,000,000,000.00 (ten billion rupiah). This is able to provide separate space for business actors with small market capitalization to be able to raise funding in a short time. Issuers or business actors carrying out business invasions through securities crowdfunding regulations are immobilized in additional working capital when opening a business branch or increasing the quantity of production through securities offering mechanisms through securities crowdfunding services.

Securities issuers who have underlying assets in the form of a business or business must offer their business plan as a guarantee of the business direction that the issuer will carry out in the future. This is an absolute requirement that is regulated to protect the interests of investors in making investment decisions. There are many reasons for issuers to apply for the issuance of their own securities to be able to obtain funds or capital, but in general, companies that issue their securities through the securities crowdfunding mechanism aim for business development and expansion, such as opening new branches to increase the quantity of production of the issuing company.

Investors, as parties who have excess capital, can invest or include their capital in the issuer, and then the issuer uses the capital collected in the crowdfunding service process for purposes that must be in line with the issuer's prospectus offered to investors. As an example, when a publisher succeeds in receiving funding from the public for the purposes of increasing production quantity or market expansion, the need for primary materials or production raw materials will certainly increase, where the demand for raw materials will increase, and this can increase the production quantity from suppliers of production materials. An increase in the number of requests from issuing companies can increase the production quantity of supplier companies, which means they have to increase production, which of course requires the availability of production power.

After increasing the availability of production personnel for companies supplying raw goods, publishing companies, in carrying out their market expansion, increase the quantity of production. In general, they will open business branches in different areas; this requires the availability of production personnel, which results in the opening of job opportunities in the surrounding areas. Apart from this, it will open up employment opportunities for the community. It is also an economic chain that will always be connected between the amount of demand for production power and raw materials for products. So the impact will be much greater in the future. Currently, there are 481 publishers and projects, which will continue to grow in the future.

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<sup>28</sup> PT. Shafiq Digital Indonesia, "Pendanaan Melalui SCF Tembus 1 T : Dukung Kemajuan Indonesia," Shafiq Administrator, 2023, <https://shafiq.id/berita/264/pendanaan-melalui-scf-tembus-1-t-dukung-kemajuan-umkm-indonesia/baca>.

The funding concept that involves the community in an information technology-based fund-raising mechanism provides efficiency for business actors who have small market capitalization to be able to improve and develop their businesses. The various impacts and benefits generated aim to support the development of Micro, Small and Medium Enterprises or MSMEs by involving the community as a capital component. This is an embodiment of a people's economy because the people are the center of financial circulation and are a solution for MSMEs and startup companies in need of working capital without going through the banking process which requires collateral in the loan application process.

These positive impacts are in line with the principle of benefit, which takes advantage and rejects damage in order to maintain the goals of Islamic law. The benefits that can be obtained can be of greater impact and are not limited to the explanation. National-scale impacts can occur over time with reference to muamalat activities being dynamic activities, and the benefits generated will be much greater than at present. The risks that will be faced in this service will always be there, such as the risk of electronic system failure, which is the responsibility of the service provider. Then there are investment risks, such as the risk of scarcity of dividend distribution, which is mitigated through the issuer's prospectus, which investors must understand because capital participation is not limited to profits sharing, but also risk sharing for both parties.

The main principle of maslahah in this crowdfunding service activity is to succeed in the objectives of Islamic law, including protecting religion and property. Applicable for safeguarding assets in the securities crowdfunding service concept is that regulations and systems must be built with sharia concepts to guarantee and protect the rights of Muslim business actors, including investors and publishers. Maintaining religion in this service means maintaining the implementation of securities crowdfunding activities using religious principles and values that are free from usury, maisir, and garar. This is based on the dynamics of Muslim life in maintaining life, one of which is through the process of muamalah, or commerce, so that the beneficial value of crowdfunding services remains in the corridor of the objectives of Islamic law to maintain all activities of Muslims based on religion. So the meaning of protecting religion lies in the implementation of muamalah using religious principles as the basic foundation; not protecting religion is interpreted as a religion that is protected textually.

Understanding safeguarding assets in the application of crowdfunding service activities as an action to channel assets to something that has useful value. Safeguarding assets does not mean guarding or storing assets for safe purposes; it means more than that. Maintaining assets certainly maintains the intrinsic value of the assets, with the aim of protecting their value so that they do not experience a decline in value. Channelling assets into something that has benefits means developing an understanding of protecting assets. Assets distributed through crowdfunding activities are, of course, to grow the intrinsic value of these assets to continue to increase. Apart from this, channelling assets through capital participation in crowdfunding services is an action to expand the reach of usefulness to provide benefits to other communities. This is a concept safeguarding assets in line with the objectives of Islamic law to have a wider beneficial impact.

يَأْيُهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ<sup>29</sup>

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<sup>29</sup> Q.S. Al-Nisa' (4) : 4

Allah commands those who believe in this verse to obtain wealth in a good way and have benefits for those who carry out business. According to data published by the OJK Investment Alert Task Force, losses experienced by the public reached Rp. 117.4 T with various kinds of money games, ponzi, and member-get-member schemes, all of which promise a fixed return at the start even though it is not. These schemes only deceive downlines with uplines to gain profits, which is prohibited fraud, لا تظلمون ولا تظلمون ولا تظلمون ولا تظلمون this is because it will form a continuous cycle of looking for downlines, making perpetrators uplines, and so on, resulting in a business that does not produce results as promised at the beginning, even though trading or doing business is permitted, but within the boundaries of the Sharia, it is not permissible to deceive or influence other people, taghrir. لا تظلمون ولا تظلمون

Funding through the securities offering mechanism in this crowdfunding service does not constitute a securities offering under Law Number 8 of 1995 concerning capital markets. The reason for using the Capital Markets Law is because the legal umbrella in the securities offering cycle refers to these regulations. This is based on the Legality Principle, which provides legal certainty by following the hierarchy of statutory regulations. However, in the rules issued regarding securities offering regulations for crowdfunding services, which are also technical or operational rules, there are exceptions due to the difference in the securities offering mechanism in the standard screening process relating to financial ratios, with the argument that the securities offerings in the regulation are not the same as those in the regulations. in the Capital Markets Law.<sup>30</sup>

The clause regarding differences in the purpose of offering securities also uses the principle of *lex specialis derogat legi generalis*, which is understood as specific rules overriding general rules. Article 3(1), which is the basis for differences in securities offerings in crowdfunding services, states that regulations do not exist or are not regulated regarding financial standards regulations on usurious debt ratios. If we refer to securities offerings on the Indonesian Stock Exchange, the financial standard for the ribawi debt ratio uses Financial Services Authority Regulation Number 17 of 2015 concerning the Issuance and Requirements for Sharia Securities in the Form of Shares by Sharia Issuers or Sharia Public Companies. This regulation is very clearly aimed at public companies in the sense of the IPO mechanism on the IDX, not crowdfunding services (closed companies).

The absence of regulations that comprehensively regulate the financial standards of ribawi debt ratios gives rise to legal problems related to the screening process (core business screening and financial ratio screening)<sup>31</sup> or filtering issuing companies that claim sharia securities based on existing regulations. If we refer to POJK 17 of 2015, the Ribawi debt ratio has a limit of 45%. This is a logical thing because it calculates the market capitalization of public companies with large value by converting it to the availability of national capital in banking or non-bank institutions, as has been said. explained in the previous subchapter. If the 45% ribawi debt ratio is used for crowdfunding services with much smaller capitalization, it is not an appropriate action considering that the net worth limit is limited to IDR. 10,000,000,000.00 and can describe the market

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<sup>30</sup> Pasal 3 (1) lama Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 57 Tahun 2020 Tentang Penawaran Efek Melalui Layanan Urut Dana Berbasis Teknologi Informasi

<sup>31</sup> Kefi Miftachul Ulum and Mohammad Khoirul Ulum, "Screening Standards in Sharia Capital Market Investor Legal Protection," *El-Mashlahah* 13, no. 1 (June 30, 2023): 77-91, <https://doi.org/10.23971/el-mashlahah.v13i1.5791>.

capitalization or reach of the business where the ribawi debt ratio can be reduced to a lower or tighter number.

The absence of regulatory financial standards for the ribawi debt ratio if, in practice, the screening process continues to use the 45% standard in Financial Services Authority Regulation Number 17 of 2015 concerning the Issuance and Requirements for Sharia Securities in the Form of Shares by Sharia Issuers or Sharia Public Companies is a conflict of norms or contradiction. Among the precise regulations, these are aimed at public companies, while the companies (legal entities, Indonesian business entities) referred to in the Republic of Indonesia Financial Services Authority Regulation Number 57 of 2020 concerning Securities Offerings through Information Technology-Based Crowdfunding Services are closed companies. So emphasising or tightening the usurious debt ratio discussed in the previous sub-chapter can also suppress or reduce the dangers of interest-bearing debt in banks.

الضرر يزال

درء المفاسد مقدم على جلب المصالح

The growth and development of MSMEs and start-up companies is assisted by funding through the Republic of Indonesia Financial Services Authority Regulation Number 57 of 2020 concerning securities offerings through information technology-based crowdfunding services. With the concept of securities crowdfunding, such as total funding data reaching IDR. 1,000,000,000,000.00 (1 trillion), of course the regulations must be able to read the existing probabilities to project securities crowdfunding regulations in the future with predictable projections. The form of regulation can be in the form of technical rules that improve operational standard screening that regulates crowdfunding services as segmentation with escalation for small capital, so that the regulated regulations become integrated and comprehensive, whose regulatory function is to protect the rights of Muslim investors or investors in purchasing sharia securities, and the cycle comprehensive crowdfunding services.

مصلحة العامة مقدم على مصلحة الخاصة

For another purpose, to cover the existence of a *rechtsvacuum* on standard screening on financial ratio screening on securities offerings for crowdfunding services, the rules can be updated on the old rules of the Republic of Indonesia Financial Services Authority Regulation Number 57 of 2020 concerning Securities Offerings through Information Technology Based Crowdfunding Services and Authority Regulations Financial Services of the Republic of Indonesia Number 16 of 2021 concerning Amendments to Financial Services Authority Regulation Number 57/POJK.04/2020. In this way, the range of usefulness becomes more optimal in realising regulations that are integrated within the legal protection in *hifz al-dîn* dan *hifz al-mâl*.

### ***Opportunities and Challenges of Securities Crowdfunding Services***

Funding in the securities crowdfunding cycle has the opportunity to serve as an asset diversification instrument for investors or financiers and become an alternative capital for issuing companies with a more efficient mechanism. The public can participate in joint funding and diversify their capital into three products, such as equity, debt securities, or sukuk. Community participation on a relatively small scale compared to BEI increases financial inclusiveness in society

by fostering mutual awareness and developing the economy through mutual cooperation. Investors can also grow with companies or projects together with early-stage funding that has great potential by measuring the future probability of profitable returns. The involvement of the public community has an impact on the implementation of the open disclosure principle by presenting factual and accurate information about the issuing company and the project on the organizer's website, complete with the prospectus.

The opportunities and benefits that exist in offering securities crowdfunding also have risks. The risk that is potentially experienced by both the issuing company and the investors is failure or bankruptcy. This risk is based on securities issuing companies being companies in the early stages of growth or start-up companies and companies that are currently expanding the market by opening branches with the risk of failure. For investors or financiers, this risk can eliminate the capital they invest, either in whole or in part. Then the liquidity risk for securities holders on this service becomes a risk and challenge based on regulations that the securities owned can be traded twice a year. This trading intensity causes the securities owned to not have liquidity like on the IDX, resulting in the inability to sell securities. outside trading sessions.

Organizing companies as providers of financial services has risks and challenges in dealing with system failures. These risks are related to failures in network-based and electronic administration, so they are dependent on these two points. Similar risks also apply to system security and data protection, because the risk of cybercrime such as cracking and phishing will always exist in network systems. This is to protect the parties' personal and financial data. Another risk is regulatory changes, which will always occur to adjust to technological and economic conditions. This refers to the vulnerability that 2018–2021 will see regulatory changes three times (POJK 37 2018, POJK 57 2020 dan POJK 16 2021).

## **CONCLUSION**

Complying with regulations that initially took the form of a limited offering of equity securities, then developed into securities crowdfunding (POJK 37 2018, POJK 57 2020, and POJK 16 2021), with the securities offered being more varied in the form of equity, debt securities, and sukuk capable of reaching funding of IDR. 1,000,000,000,000.00 (one trillion rupiah), this is the impact of changes in regulations by funding 481 business units and projects involving 160,368 public investors from the community. The study of these regulations with a *masalah* approach becomes a differentiating point in the context of regulatory analysis, where providing these services is able to apply the principles of *hifz al-din* and *hifz al-mâl* as indicators or parameters of benefit. Apart from the benefits that arise, it is an important point in terms of supervision in responding to opportunities and challenges in this service to control that funds that have been distributed can be managed well so that the parties involved, such as investors, can receive the rights and benefits arising from the investment activities carried out and can encourage future capital growth.

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