

Research Article

Regulation of Investor Protection of Information Technology-Based Shari'ah Crowdfunding Services in Indonesia from the Perspective of Shari'ah Economic Law

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ABSTRACT

Investor protection is needed in IT-based Islamic crowdfunding services to avoid the use of funds that are not in accordance with the predetermined Budget Plan (RAB) and late sukuk payments by the Issuer. In fact, in the report submitted by PT LBS Urun Dana as the organiser, there are several issuers who are late in paying sukuk. This situation raises concerns and losses for investors. This research aims to see how investor protection arrangements for Information Technology-based Islamic crowdfunding services in Indonesia and how the law of these arrangements in the perspective of Sharia Economic Law. This type of research is qualitative literature research with a juridical-normative approach. Data collection is done through documents. This research concludes that there is no law that contains investor protection regulations in IT-based sharia crowdfunding services. The absence of this law has the potential for non-transparent fund management and misappropriation by the Issuer. Clear regulations to avoid losses so that they are in accordance with the agreed agreement. From the perspective of Islamic economic law, the law on investor protection in Information Technology-based Islamic crowdfunding services is mandatory.

Keywords: Sharia Crowdfunding Services; Information Technology; Protection; Investors

1. INTRODUCTION

Information Technology (IT)-based shariah crowdfunding services are available not only for Muslims but also for non-Muslims (Harahap & Rumondang Sari Siregar, 2023). However, there are still weaknesses, namely: investors are prone to various risks of loss. This service still needs time and regulation to provide better protection for investors (Bradford, 2012). This is because investors invest based on trust and there is no guarantee obligation for the recipient of funds, such as in banks. Investor protection is a manifestation of protecting wealth (*hifzul maal*) in the context of *maqashid shariah* according to Wahbah al-Zuhaili (Anwar & Afif Noor, 2024). The Financial Services Authority (OJK) noted that as of August 2020, 157 fintechs have been registered in Indonesia, with total assets of IDR 3.12 trillion. Of these total assets, 11 of them are shariah fintechs, which account for 2.04 (IDR 64.97 billion) of the total assets. In terms of total financing disbursement, fintech in Indonesia has reached IDR 121.87 trillion with a growth of 122.74%. This proves that the opportunity for fintech in the country is wide open (Saripudin et al., 2021). The Financial Services Authority (OJK) issued POJK Number 57/POJK.04/2020 concerning securities offerings through Information Technology-based crowdfunding services which was amended by POJK number 16/POJK.04/2021. However, the POJK does not include supporting professions, such as: legal consultants, public accountants, notaries, trustees, securities rating agencies, Securities Administration Bureau (BAE), and custodian institutions, so that many risks await, including not receiving dividends, illiquid shares, dilution of share ownership, capital loss, and operational failure of the organiser. These are all risks that are prone to occur in Information Technology-based crowdfunding services, because their existence is not supported by the supporting professions above (Rahmadhani, 2021).

To produce novelty in this research, it is necessary to review several previous studies that have similar themes. These studies can be used as comparative references, which show that the specific focus of this research has not been explored by previous researchers or by using different approaches. First, research on the regulation of Information Technology-based sharia crowdfunding services in Indonesia by Alhadiansyah et al, with the title: '*The Sharia Funding Risk Issues in Fintech Securities Crowdfunding: Realisation of Legal Certainty in the Shari'ah Perspective*'. Alhadiansyah concluded that sharia funding through sharia Information Technology-based crowdfunding services in Indonesia provides attractive sharia

investment opportunities, but also contains various risks, such as: business risk, legal liquidity, sharia, and others. Legal certainty regulated by the Financial Services Authority (OJK) and the Shari'ah Supervisory Board (DPS) is the key to investor protection (Alhadiansyah et al., 2023).

Similar research was conducted by Al Sentot Sudarwanto et al, with the title '*Islamic crowdfunding and Shariah compliance regulation: problems and oversight*'. Sudarwanto et al. found that Islamic crowdfunding (ICF) is one of the fastest growing forms of Islamic financial technology. However, shariah compliance is still a problem in the implementation of ICF. This is due to regulatory support that is still lacking and supervision of shariah compliance that has not been optimised. Shariah compliance is the main principle in ICF services as part of Islamic good governance in shariah financial institutions. of Islamic good governance in sharia financial institutions (Sentot Sudarwanto, Dona Budi Kharisma, 2023).

Second, Winda Fitri's research on the protection of security crowdfunding (SCF) in the selection of the MSME economy, entitled: '*The Legal Protection for Security Based on Sharia Investment in MESMES Economic Recovery*'. She argued that issuers of sharia-based securities are obliged to ensure that their business activities are in accordance with sharia principles and have sharia compliance in accordance with the guidelines of the Indonesian Sharia Economic Society (MESI). Shariah-based investment systems need to be supervised by the Financial Services Authority and the Indonesian Ulema Council (MUI). SCF that collects investments for halal MSME funding must refer to shariah contracts by involving issuers from the MUI Shariah Supervisory Board who assess investment activities to avoid Maysir, Gharar, and Riba (Fitri, 2023).

The research above confirms that crowdfunding services based on Information Technology is a form of financial technology that is growing rapidly as a source of funding for MSMEs. Alhadiansyah et al. and Fitri's research focuses on the risks in the operation of Shariah Information Technology-based crowdfunding services and the need for Shariah Information Technology-based crowdfunding services to comply with the principles of Islamic law. Meanwhile, this research focuses on the regulatory framework for investor protection of Information Technology-based Shari'ah crowdfunding services in Indonesia and how the law of the existence of these regulations in the perspective of Shari'ah Economic Law.

2. RESEARCH METHOD

This type of research is normative research with a statutory approach. Primary data sources are in the form of laws and regulations. While secondary data sources come from journals, scientific articles, and books that discuss information technology-based sharia crowdfunding services (Noor et al., 2023). The data analysis is using descriptive method, which is collecting primary and secondary data then assembled and analysed to find solutions to legal problems (Indradewi et al., 2022).

3. RESULTS AND DISCUSSION

3.1 Financial Technology

Financial technology (*fintech*) according to Pribadiono is a combination of finance and technology as a form of innovation in the financial sector that uses science and technology. The presence of fintech not only benefits developed countries that have adopted technology, but also developing countries, such as Indonesia. The emergence of fintech is expected to make the financial transaction process more efficient, safe, and profitable (Subagia & Effendi, 2023). Crowdfunding services based on Information Technology are included in the fintech sector. Crowdfunding is a method of collecting funds together or mutual cooperation to fulfil the financing of a particular business project online (Widodo & Kharisma, 2020). Crowdfunding is a funding technique sourced from a group of people to fund a particular project using the concept of 'asset-backed' transactions and a loss and profit sharing ratio that is in line with shariah principles (*shariah-compliance*) (Hendratmi et al., 2018).

Fintech crowdfunding, in its development, can be integrated into the shari'ah financial industry by the Accounting and Auditing Organisation for Islamic Financial Institutions and has been assessed in accordance with shari'ah principles. Islamic crowdfunding or sharia crowdfunding must comply with the principles of sharia (Novitarani & Setyowati, 2018). Islamic crowdfunding that focuses on funding through securities issuance is called Islamic securities-based crowdfunding or securities-based crowdfunding (SBC) Shari'ah, which is an offering of securities by the issuer through a crowdfunding platform directly to investors through an open electronic system network based on shari'ah principles (Majid & Nugraha, 2022).

Investor is a legal subject. A legal subject can be a person (*Naturlijk persoon*) and (*Recht persoon*). As a legal subject, it must be protected because it is unable to act alone. In securities offerings, the organiser is required to screen the issuer in advance to maintain integrity, especially towards the OJK and investors (Rizky & Apriani, 2023). In the capital market, the

supporting profession is required to conduct an *Initial Public Offering* (IPO). In the capital market, supporting professions are required to conduct an *Initial Public Offering* (IPO). While in this Information Technology-based shariah crowdfunding service, an *Initial Public Offering* (IPO) is not required. However, the organiser can set a condition that the supporting profession assists the issuer in conducting a securities offering. The following is a scheme of the role of supporting professions in Information Technology-based crowdfunding services to help protect investors. In the IPO process, the issuer must bear various costs such as the services of a public accountant, legal advisor, notary, underwriter, stock valuation, stock custodian, prospectus printing, and others (Partamayasa, 2020). These costs are categorised as compliance costs, which are incurred to fulfil the IPO requirements.



Figure 1. Scheme of supporting professional roles in Information Technology-based crowdfunding services

3.1.1 Investor Protection

The Capital Market Law regulates investor protection which aims to provide guarantees to investors so that they have the right to information and indicators that are the basis for investor decision making. These protections are first, notification of registration. This principle is regulated in Articles 10-19 of the Capital Market Law. Second, Continuing Disclosure. After the public offering, the company is still obliged to provide information disclosure to investors. In crowdfunding services, the issuer must periodically submit information and present relevant reports. This is regulated in Article 22 of POJK Number 57/POJK.04/2020. Third, important and relevant information. Legal protection in the form of repression is regulated in Articles 103-110 of the Capital Market Law, regarding administrative sanctions and criminal sanctions for those who violate these provisions.

Law Number 21 of 2021 concerning the Financial Services Authority (OJK) contains legal protection for investors contained in Articles 28, 29, and 30 which are expected to prevent losses. Recognition and protection of investors' rights in the truth of information on crowdfunding services is needed, considering that investors have differences in understanding of investing. In POJK Number 57/POJK.04/2020 Article 79, the organiser must be responsible for losses. Departing from this, the organiser has a responsibility to investors and issuers who are users of Information Technology-Based Crowdfunding Services. However, losses incurred due to business risks are not the responsibility of the organiser.

In Article 1365 of the Civil Code, it explains that anyone who causes harm must be compensated. Therefore, legal protection is something absolute. It should be emphasised here that compensation must be made by the perpetrator who committed the error or negligence, not the user. Even though Article 70 POJK number 57/2020 requires the organiser to create an Electronic Know Your Customer (E-KYC) system to provide protection to investors. POJK number 57/POJK.04/2020 Article 85 OJK can impose administrative sanctions on parties who commit violations and parties who cause violations (Tektona, 2022). In this case, the POJK still needs to be optimised regarding fault liability in order to provide clarity and legal protection for investors in Information Technology-Based Crowdfunding Services (Aqilah & Gultom, 2023). Legal protection for investors is very important considering that Information Technology Shari'ah-based crowdfunding services are still new in Indonesia. Legal protection can be divided into 2 (two), namely preventive legal protection and repressive legal protection. Preventive protection is an effort to prevent before an offence occurs, while repressive protection is an effort made by force after a violation of the law (Purwito, 2023).



Figure 2. Scheme of Information Technology-Based Shari'ah Crowdfunding Service

Source: KNEKS, 2022

Information Technology-based Shariah crowdfunding services are in high demand in both developed and developing countries to fund an internet-based business. This service is an intermediary between the issuer and the investor through an organiser (platform). This service consists of issuers, organisers, and investors (Ingrid Pamesti & Heradhayksa, 2020) (Ingrid Pamesti & Heradhayksa, 2020). This service includes offering equity or debt securities directly to investors via the internet. The parties do not know each other. Investors buying securities offered by issuers or entrepreneurs only know the company's profile based on the information provided by the organiser displayed on its wall platform. On the other hand, the issuer does not know the identity of the buyer of the securities. This mechanism of buying and selling securities is very risky for users of Information Technology-based sharia crowdfunding services, especially the risk of losing funds for investors who buy securities through the intermediary of this service platform. The securities issuer also bears the risk of misuse of the data it submits to the organiser of the sharia crowdfunding service.

3.1.2 Regulation on Investor Protection of Information Technology-Based Shari'ah Crowdfunding Services

Regulation is a fundamental legal product of a legal system. Hans Kelsen, in his *stufenbau* theory, *states lex superior derogat legi inferiori*, which means that lower legal regulations in this POJK number 57/POJK.04/2020 laws and regulations must not conflict with higher ones (Araszkievicz et al., 2021). Investor protection regulations for Information Technology-based crowdfunding services in Indonesia have indeed been regulated through POJK number 57/POJK.04/2020 concerning securities offerings through Information Technology-based crowdfunding services. However, based on Hans Kelsen's theory above, there are several weaknesses because they conflict with the Capital Market Law Number 8 of 1995. Among them are:

1. Article 13 of the Capital Market Law states that crowdfunding service providers based on Information Technology are included in financial services in the capital market aspect. This law also states that financial services must be in the form of a Limited Liability Company. Meanwhile, Article 2 of POJK number 57/POJK.04/2020 allows all forms of business, including legal entities and other bodies to issue shares and bonds, as long as their assets do not exceed IDR 10 billion. POJK should follow the Capital Market Law (Noor et al., 2024).
2. Information Technology-based crowdfunding services based on the Capital Market law are equity in nature and included in the capital market, however, the Issuer based on POJK number 57/POJK.04/2020 cannot conduct an offering through an Initial Public Offering (IPO) as in the capital market.
3. POJK number 57/POJK.04/2020 does not explain about organisers who do not have a business permit from OJK and when irregularities are found, only administrative sanctions are given. The POJK also does not regulate illegal Information Technology-based crowdfunding service providers (Noor et al., 2023).

4. OJK must act as the regulator authorised to regulate and supervise the financial services industry. In POJK 57/POJK.04/2020 Articles 57, 62, and 63 do not explain the form of guarantee that must be imposed on the issuer, resulting in differences in interpretation between the issuer and the organiser (platform) of Information Technology-based sharia crowdfunding services that have the potential to harm issuers and investors. One of the principles in laws and regulations is clarity of formulation, which refers to Article 5 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations (UUP3), as last amended by Law No.13 of 2022 (Nasaruddin Umar, 2018).
5. Legal protection of investors has indeed been regulated in several Articles of the OJK Law and POJK, but due to limitations, Article 40 of POJK Number 57/POJK.04/2020 does not explain the obligation to submit progress reports and OJK is also deemed necessary to convey transparent information to investors about the status of the securities registration agreement report with KSEI. OJK is obliged to optimise and educate regarding the realisation of the POJK in an inclusive and sustainable manner on the obligations of the organiser if investors suffer losses due to negligence committed by the issuer. In addition, it is equally important to provide an understanding of the concept of investment in the form of sukuk, because it is prone to risks that will be borne by investors.
6. In relation to investor protection, POJK Article 85 and Article 86 POJK 57/POJK.04/2020 only regulate violations that will be given administrative sanctions. But it does not regulate criminal sanctions. Meanwhile, in the Capital Market Law, criminal sanctions are described in Articles 103-110 of the Capital Market Law and POJK Number 3/POJK.04/2021 concerning the implementation in the capital market sector (Hapsari & Riska, 2021).

The regulation of Information Technology-based crowdfunding services, so far, is only regulated through POJK. This POJK does not exist in the level of laws and regulations in Indonesia based on Law 12/2011 on the Formation of Laws and Regulations as last amended by Law No.13 of 2022. POJK is a regulation mandated by Law Number 21 of 2021 concerning the Financial Services Authority, so it has legal force and is recognised for its existence. So all forms of Information Technology-based crowdfunding services must be in line with the POJK. Law Number 21 of 2011 concerning the Financial Services Authority only regulates Information Technology-based crowdfunding services that offer profit sharing (Iman Kurniawan & Karunia Arti, 2023).

Now, based on the explanation above, the investor's position is in a weak position. In this case, OJK must be committed to protecting it from losses even though POJK Article 64 has provided signs regarding this issue (Indramayu & Barlinti, 2022). Protection of users of Technology-Based Crowdfunding Services has essentially been regulated in POJK Number 1/POJK.04/2013 concerning Consumer protection in the Financial Services Sector, in which case investors are categorised as consumers who invest their funds in financial services institutions, although the definition of investors in the POJK is still mentioned in general terms. Consumer protection is a measure to protect consumers, including financial service businesses. The purpose of protection in the POJK is to protect investors so that users of Information Technology-Based Crowdfunding Services do not commit fraudulent acts or other actions that can harm investors. In essence, investors get protection, but not the protection of guaranteed profits to be obtained or business risks but criminal acts committed by the organiser (Mamma, 2020). The rise of providers who take an active role makes it difficult for OJK to supervise Information Technology-Based Crowdfunding Services activities carried out by the platform, because the provider is the only stock exchange. This has led to various non-optimisations in the implementation of Information Technology-Based Crowdfunding Services. Research conducted by Widodo and Kharisma states that many organisers do not include risk mitigation on their platforms which makes investors lose confidence in Information Technology-Based Crowdfunding Services (Aulia Ibrahim et al., 2021).

In the context of legal protection of investors, it is unfortunate that there is no statutory regulation governing Information Technology-based shariah crowdfunding services. Information Technology-based shariah crowdfunding services should be regulated in a separate regulation outside the regulation of conventional Information Technology-based crowdfunding services. So that investors are protected from losses and the perpetrators must be responsible for their actions. Hans Kelsen in the theory of legal responsibility says that a person is considered responsible for a certain legal act, then he must receive sanctions because his actions violate the law and failure to take the precautionary principles required by law is called negligence, while negligence is included in culpa (Dyani, 2017). Law becomes a shield in protecting the interests of society in creating order and justice, as stated by Soediman Kartohadiprojo that the purpose of law is to create justice (Rachmadini, 2020).

3.1.3 Regulation of Investor Protection of Information Technology-Based Shari'ah Crowdfunding Services from the Perspective of Shari'ah Economic Law

Information Technology-based shariah crowdfunding services bridge investors with issuers and organisers online through a platform. Until 2024, Information Technology-based shariah crowdfunding service platforms that have obtained licences include Dana Investasi Bersama (FundEx), Bizhare, Shafiq Digital Indonesia, LBS Urun Dana, Halalvestor Global Asia (Vestora), and Urun Bangun Negeri (Urun RI) (Syamsuri et al., 2023). The data above is reinforced by OJK as of 17 May 2024 which states that there are 117 Information Technology-based crowdfunding service providers that have obtained permits and 533 issuers, with a total investment of IDR 1.1 trillion. Securities issued were 50% shares, 45% sukuk and 5% bonds. Sukuk is the most popular instrument. This shows that Information Technology-based crowdfunding services are increasingly providing positive opportunities for financing (Noor et al., 2023).

The great investment potential above, regulatively requires protection so that investors do not suffer losses. In this context, investors in Information Technology-based shariah crowdfunding services require legal protection that is different from conventional Information Technology-based crowdfunding services. This is because Information Technology-based shariah crowdfunding services are shariah financial institutions whose business activities must comply with the provisions of Islamic law. All parties, including investors, involved in Information Technology-based shari'ah crowdfunding services, in addition to being entitled to legal protection in terms of fund security and guaranteed protection of personal data, are also entitled to protection that this business activity, from the perspective of shari'ah economic law, is in accordance with the principles of shari'ah (Rizky & Apriani, 2023) (Rizky & Apriani, 2023).

In the perspective of sharia economic law, welfare is the goal of every muamalah activity including investment, both on a worldly and afterlife scale. However, unfortunately, regulations regarding sharia crowdfunding services based on Information Technology are still conventional (Berlian & Sapri, 2023). Regulation of Information Technology-based sharia crowdfunding services needs to be regulated in a separate law that includes sharia principles. Indeed, this regulatory gap has been filled by the DSN MUI fatwa No. 140/DSN-MUI/VIII/2021 concerning the offering of sharia securities through Information Technology-based crowdfunding services based on sharia principles. But in fact, there are still many issuers who are not trustworthy, violating the agreed agreements, such as PT. Tri Buana Cemerlang and PT. Wahyu Farm Sejahtera which are considered to be detrimental to investors. This fatwa is the result of an initiative by the DSN-MUI together with the Financial Services Authority (OJK) and the Information Technology-based Crowdfunding Services Association (ALUDI). In this case, the DSN MUI is considered quite responsive in responding to the modern era. However, the fatwa is not supported by strong regulations. Regulations that can guarantee and bind the parties to create legal certainty are very much needed (Hidayati et al., 2023).

The Indonesian Crowdfunding Service Association (ALUDI) has been officially appointed by OJK as the official association in Information Technology-Based Crowdfunding Services. However, it is unfortunate that ALUDI's authority is limited to only covering the organizer's platform. POJK number 57/POJK.04/57/2020 states that the association's task is only to provide recommendations to OJK. This limited authority means that ALUDI cannot actively assist OJK in organizing Information Technology-Based Crowdfunding Services. One solution is to form an internal Standard Operating Procedure (SOP), this is in accordance with Article 83 of POJK number 57/POJK.04/2020, organizers must be members of the Association. The Information Technology-Based Crowdfunding Service regulation should have accommodated this problem. ALUDI should be given the function of a *Self Regulatory Organization* (SRO) by OJK to optimize supervision and maintain investor trust in general. If SRO is not possible, at least ALUDI is given the authority to supervise Information Technology-Based Crowdfunding Services (Aulia Ibrahim et al., 2021). Regulation of Information Technology-based sharia crowdfunding services is a medium (tool) to realize the welfare that is the goal of all muamalah activities, namely protecting investors from various kinds of losses. In the context of *maqasid al-syari'ah*, it can be included in the category of *hifz al-mal*, namely protecting assets. The legal status of the media (tool) is the same as the status of the legal objective itself. If maintaining the objectives of muamalah (namely: protecting investors from various kinds of losses) is mandatory, then the existence of laws and regulations containing regulations for protecting investors in Information Technology-based sharia crowdfunding services is also mandatory. This is in accordance with the fiqh principle "*li al-wasa'ili hukmu al-maqasid*" (to the media (tool), the law that is in the objective applies).

The above fiqh rule is in accordance with the core fiqh rule "*jalbu al-maslahah wa dar'u al-mafsadah*" (attracting *maslahah* and rejecting *mafsadah* [loss]). This rule can be the basis for two functions related to the existence of laws and regulations containing regulations for protecting investors in Information Technology-based sharia crowdfunding services. *First*, the process of organizing Information Technology-based sharia crowdfunding services runs more safely and comfortably for all related parties, such as: organizers, publishers, and investors. *Second*, creating a disciplined, trustworthy, and responsible attitude and behavior, so as to avoid negligence, errors, and fraud, which can harm investors. Anyone who

causes losses must be legally responsible (Masriani, 2023). Thus, in terms of sharia economic law, the existence of laws and regulations containing regulations for protecting investors in Information Technology-based sharia crowdfunding services is an emergency and mandatory matter.

4. CONCLUSION

Based on the explanation above, it can be concluded that in general, the regulation of investor protection for Information Technology-based sharia crowdfunding services has not been regulated in a separate law. The existing law is still in the form of a regulation, namely Number 57/POJK.04/2020. Even then, it is still limited to conventional Information Technology-based crowdfunding services. This regulation is not strong enough to protect investors from various increasingly complex security threat risks and does not regulate the type of guarantee that will be charged to the issuer. This regulation does not explain the right to know and control the Issuer, so that it cannot participate in mitigating the risks that will occur. Therefore, it is necessary to have a separate regulation or law based on sharia principles that regulate the protection of investors for Information Technology-based sharia crowdfunding services to be more comprehensive and to correct existing deficiencies.

In the perspective of sharia economic law, the existence of regulations for sharia crowdfunding services based on Information Technology needs to be regulated in a separate law that includes sharia principles, the law is mandatory. This mandatory law is based on several reasons, namely: first, the law can be categorized as *hifz al-mal*, namely preserving assets. Second, in accordance with the fiqh principle “*li al-wasa’ili hukmu al-maqasid*” (towards the media (tools), the law that is in the purpose applies. This means that if investor protection from various kinds of losses is mandatory, then the existence of laws and regulations that regulate it is mandatory. Third, in accordance with the core fiqh principle “*jalbu al-maslahah wa dar’u al-mafsadah*”. Attracting *maslahah* and rejecting *mafsadah* [losses]. This principle can be a basis for the organizer of Information Technology-based sharia crowdfunding services to run more safely and comfortably for all related parties; creating a disciplined, trustworthy, and responsible attitude and behavior, and avoiding negligence, mistakes, and fraud, which can harm investors. This study examines 3 out of 6 information technology-based Islamic crowdfunding organisations. Due to data limitations. Future research is expected to explore all users of information technology-based sharia crowdfunding services, both issuers, investors, and organisers to find out their capital structure. *Wallahu ‘alamu bi al-shawab*.

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