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IDENTIFYING BARRIERS TO DATA PROTECTION AND INVESTOR PRIVACY IN EQUITY CROWDFUNDING: EXPERIENCES FROM INDONESIA AND MALAYSIA

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ABSTRACT

Equity crowdfunding (ECF) in Indonesia is a fundraiser organized to attract many investors to finance social and business activities on online platforms. In Malaysia, ECF reflects small businesses, especially those of entry-level businesses, raising funds from the public through websites registered with the Malaysian Securities Commission. There are differences in legal protection between Indonesia and Malaysia regarding protection of personal data and investor privacy in ECF activities. This study aimed to examine the barriers faced in data protection and privacy related to equity crowdfunding in Indonesia and Malaysia. This normative legal research focused on positive legal norms, laws, and regulations. It is found that Indonesia and Malaysia have different barriers in protecting personal data and investor privacy

in ECF activities. In Indonesia, data protection and investor privacy concerning ECF refer to several legal rules for resolving issues regarding personal data. They often encounter conflicting legal rules in the application of personal data protection and investor privacy in ECF activities. Meanwhile, the protection of personal data and investor privacy on ECF activities has been specifically regulated in the Personal Data Protection Act (PDPA) 2010 in Malaysia. Despite the rules regarding the protection of investor data, cases of personal data theft in Malaysia are high as compared to Indonesia. This is due to the lack of legal awareness for the ECF platform organizers in implementing the provisions set out in the PDPA 2010.

Keywords: Personal Data Protection, Equity Crowdfunding, Barriers, Investors, PDPA 2010.

INTRODUCTION

The massive industrial revolution 4.0 has given rise to various scientific and technological innovations through digital technologies such as the Internet. The use of the Internet assisted by mobile phones greatly facilitates human activities. The impact of this technology in the finance sector is the emergent of Financial Technology (FinTech). FinTech is a result of the development of more innovative financial and information technology (Wang et al., 2021). The development of FinTech has dominated the financial system in recent decades (J. Li et al., 2020). This influence encourages financial firms to leverage and invest their money to remain competitive (Lee & Shin, 2018).

In this era, FinTech is seen as a taxonomy in the financial technology sector to improve the quality of services (Gai et al., 2018). To achieve this goal, FinTech is continuously developed. Its development allows for lifestyle changes that are influenced by several reasons. The first reason is the use of technology is dominated by millennials. The second reason is there are various online-based sites due to FinTech activities, and the last reason is the immense public trust in financial technology. Based on the reasons above, with this activity, the population of Internet users is increasing from year to year. The demographic data of this study shows the number of Internet users in Indonesia in 2016–2020, as presented in Table 1.

Table 1

Internet Users in Indonesia 2016–2020

No.	Year	Percentage
1	2012	64.1%
2	2014	66.6%
3	2016	76.9%
4	2018	87.4%
5	2020	88.7%

Source: APJII.or.id

The information presented in Table 1 illustrates an upward trend in the last five years regarding Internet users. The increase of Internet users shows humans' dependency on technology that facilitates all their respective affairs. From 2012 to 2020, there was an increase in the number of Internet users in Malaysia.

Table 2

Internet Users in Malaysia Over the Years

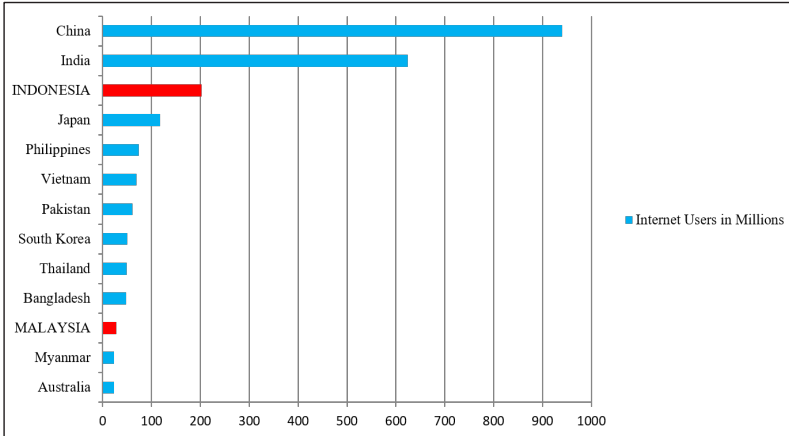
No.	Year	Percentage
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5	2020	88.7%

Source: MCMC.gov.my

Dissimilar to Indonesia, Malaysia surveys Internet users increase every two years. Data in table 2 shows a significant annual increase in Internet users in Malaysia. The Internet dramatically affects human activity. From 13 countries in the Asia Pacific region, Indonesia and Malaysia have the highest Internet users. Based on the data, Indonesia ranked third highest with 202.6 million users. Meanwhile Malaysia ranked eleventh with 27.43 million users. The information about the users of Internet can be seen in Figure 1.

Figure 1

The Number of Internet Users in the Asia Pacific Region as of January 2021, by country.



Source: *statista.com* accessed on 15 April 2021.

The development of FinTech is increasing yearly. One of the most widespread financial technology activities is crowdfunding. The growth of crowdfunding has been known among entrepreneurs, investors, and consumers (Guo et al., 2021). Crowdfunding is defined as funding from several parties to finance a new venture using an Internet platform (Mamonov & Malaga, 2020). Crowdfunding has become one of the primary sources of funding that supports individuals in developing their business (Saniei & Kent, 2021).

Crowdfunding is divided into four types: equity-based, gift-based, donation-based, and loan-based crowdfunding (Guo et al., 2021). From the four types, equity crowdfunding attracts the attention of many parties. Equity crowdfunding (ECF) is the financing effort by some people on creative ideas through online sites (Pietro et al., 2021). In addition, ECF services are categorized as a contributing factor for businesses that need financial assistance in the form of investments (Hornuf & Schwiendbacher, 2018).

ECF has been widely implemented in various countries around the world. Indonesia and Malaysia are two countries that utilize ECF

technology. In Indonesia, ECF is known as a fundraising service by many investors to finance social and business activities on Internet platforms. The basis for the implementation of fundraising services is contained in the Financial Services Authority (*Peraturan Otoritas Jasa Keuangan*, POJK) Regulation No. 37/POJK.04/2018 on Securities Offering Through Information Technology-Based Crowdfunding Services (equity crowdfunding). However, after two years, the regulation was amended by POJK No. 57/POJK.04/2020, which provides an expansion of the previous securities offering on POJK No. 37/POJK.04/2018. This regulated stock offering for sale of securities is not limited to equity securities, but also includes debt. Therefore, the term used in POJK No. 57/POJK.04/2020 is Securities Crowdfunding. Equity and Securities of Crowdfunding are arrangements on POJK No. 37/POJK.04/2018. POJK No. 57/POJK.04/2020 lists Law No. 8 of 1995 on Capital Markets and Law No. 21 of 2011 on Financial Services Authority on weighing points. However, the Law on Capital Markets and the Act on Financial Services Authorities do not explicitly regulate ECF and securities crowdfunding.

Meanwhile, in Malaysia, ECF reflects small businesses, especially those at the entry level, raising funds from the public on websites registered with the Malaysian Securities Commission. Malaysia became the first and only country in Southeast Asia to have its regulations regarding ECF. The regulation of equity-based funds in Malaysia is regulated in the Guidelines on Regulation of Markets under Section 34 of the Capital Market and Services Act (Guideline 34) issued by the Malaysian Securities Commission. The protection provided in ECF activities is on disclosing information that each party is concerned about in Malaysia. If the issuer makes an offer, it is not mandatory to obtain approval from the Securities Commission of Malaysia. In addition, the issuer is exempted from the obligation to issue a prospectus as referred to in Article 212 jo and Article 232 Capital Market and Services Act (CMSA) 2007.

In Indonesia, arrangements related to the implementation of ECF have not explicitly been regulated in laws. Until now, rules regarding the implementation are only regulated at the level of OJK regulations. The implementation of ECF uses an electronic system. This means that every user can access the platform, and even hack the crowdfunding platform site. Although the Ministry of Communication and

Informatics of the Republic of Indonesia requires that the organizer must have a permit for the Implementation of Electronic Systems, this rule is only aimed at collecting data from the government. It is not a system device for cyber security; it is not a form of absolute protection from the government for the protection of investors' data. Moreover, ECF activities are still occurring; however, the legal certainty of personal data protection at the legal level is still not available or legal. On the other hand, in Malaysia, arrangements related to the implementation of ECF have explicitly been regulated for financial technology companies to protect investors' data. This form of protection is guaranteed in Guideline 34 Article 11 paragraph (5) letter j, which requires ECF organizers to maintain data and privacy on online platforms related to ECF activities following the Personal Data Protection Act 2010 (PDPA 2010). In recent developments, Malaysian ECF has shown a significant difference compared to that of Indonesia. There are 10 ECF platforms that have registered and obtained business licenses in Malaysia as ECF organizers (Capital Markets Malaysia [CMM], 2020). Meanwhile, Indonesia only has two platforms that are officially registered and have obtained permission from the Financial Services Authority (*Oteritas Jasa Keuangan*, OJK) as ECF organizers.

The various phenomena in data protection and investor privacy in ECF activities show differences in legal protection between Indonesia and Malaysia. Malaysia already has its own rules that specifically regulate the technicalities of providing data protection and privacy in the PDPA 2010. Nevertheless, it has experienced problems in implementation, including many data breaches and investor privacy. In Indonesia, the phenomenon of ECF activities is related to the absence of special regulations related to data protection and privacy equivalent to the law. Therefore, crimes in data breaches and investor privacy concerning ECF are still not controlled by law and thus have no deterrent effects on the culprit. Based on the background above, the author is interested in further reviewing data protection and investor privacy in Indonesia and Malaysia to find the best practice from each country.

METHODOLOGY

This research was conducted based on the normative legal research method, focusing on existing legislations. Normative research is the study of a statutory substance on legal issues in terms of its consistency

with existing rules (Marzuki, 2014). The techniques used were law interpretation techniques applied based on the literal rule, the golden rule, the mischief rule, and the purposive approach by describing legislations relevant to crowdfunding, and judicial precedent doctrine techniques in analyzing cases related to ECF. Besides, this study also used a comparative approach by comparing the implementation of ECF in Indonesia with Malaysia regarding data protection and privacy.

RESULTS AND DISCUSSIONS

Data Protection and Privacy of Equity Crowdfunding Investors in Indonesia

In Indonesia, the protection of personal data and privacy has been guaranteed in the Indonesian Constitution. The provisions of Article 28G state unequivocally that recognizing the right to protect personal self, family, honor, dignity, and property is in its control. This rule was released because of the recognition of human rights values regulated very complexly in the 1945 Constitution and the appreciation of individual rights. In addition, the involvement of Indonesia as a member of the International Covenant on Civil and Political Rights (ICCPR), which has been passed through Law No. 12 of 2005, affirms the obligation of the Indonesian Government to protect the privacy and personal data of its citizens. Therefore, in ensuring every right that the 1945 Constitution has granted, additional arrangements are needed to further strengthen the guarantee of privacy and personal data security and ensure the implementation of a stable and conducive business climate.

Personal data collects a person's confidential, private, professional, commercial, and public information (de Terwangne, 2021). Personal data also means a description that contains information about a person that can be identified either directly or indirectly concerning name, identification number, location data, social identity, genetic, physiological, economic, cultural, and mental (Galič & Gellert, 2021). Such information should be provided with protection that could avoid a person from actions that threaten the users' safety. This form of protection should be granted with the following conditions:

1. Competent authorities can only access confidential data.
2. The service provider must ensure that others do not know its customer data in an unauthorized manner.

3. Data storage using secure channels, identity management, and encryption.
4. Data integrity describes its complete, intact, and disproportionate state that there is no guarantee of actions that intentionally undermine integrity during data transmission, processing, and storage.
5. The organization maintains the functionality of the system.
6. The government makes sure there is no transaction avoidance.
7. The organization can verify users and provide service access restrictions. (Amamou et al., 2019).

The term personal data in developed countries is known as privacy through the term “the right to be alone” initiated by an American judge named Thomas Cooley in 1879 based on two things, which are personal honor that concerns the values of dignity, autonomy, and self-centered person, and personal independence. Privacy is an individual or group’s claim to limit the extent, when and how information about them is published to others (Goad et al., 2021).

In terms of understanding, personal data and privacy are interrelated. However, the definition is broad as privacy has a wider understanding. Privacy is an action taken against a person’s data. Disclosure of personally identifiable and privacy-related information can lead to identity theft because privacy is considered one of the core values of security (Ayub & Yusoff, 2020). Personal data and privacy need to be protected by all.

Personal data security and privacy should be given more attention. One important reason for the security is to avoid data theft by third parties during communication. FinTech development, personal data, and privacy protection focus on consumer and seller data (Barkatullah & Djumadi, 2018). Data protection is essential because users have experienced personal data breaches. Social networking companies should regulate the collection and use of personal data as a form of anticipation and restoration of trust in the digital economy (Conti & Reverberi, 2021).

Previously, the inception of POJK No. 57/POJK.04/2020 on Securities Offering through Information Technology-Based Crowdfunding Services has been arranged in POJK No. 37/POJK.04/2018. In the

Regulation of the Financial Services Authority, there are three subjects involved in forming Equity Crowdfunding, namely: (1) Organizer, (2) Issuer, and (3) Financier / Investor. The Organizer as a provider of the platform can make the Issuer, Financier, and Investor meet in ECF activities; they must maintain the confidentiality of data and privacy of the investors. The Financial Services Authority (OJK) is an institution that has the authority to supervise the implementation of FinTech activities and provide protection against parties involved in FinTech; one of which is investors as parties who put their capital into ECF platforms.

ECF or fundraising service refers to a platform that gives opportunities to a person or group of people to help a company or project that needs financial assistance in the form of equity (Milian et al., 2019). A person or group who provides financial assistance is referred to as an investor. ECF services appear as a new mechanism that helps companies deal with financial barriers. These fundraising services can help practitioners and financial system regulators (De Crescenzo et al., 2020), and even professional investors. The implementation of ECF provides several benefits to businesses and companies. The real benefit is alleviating concerns about the stalling of ongoing projects. Therefore, fundraising services have become one of the best solutions in developing a company's business and projects.

In recent years, the presence of ECF has helped start-ups grow their businesses through the help of several individuals. The concept of ECF in its implementation is similar to the conventional equity financing model. On the one hand, ECF uses the default venture fundraising paradigm, which is done through online platforms. On the other hand, traditional equity financing models use conventional face-to-face methods. (Y. Li et al., 2020). ECF allows big companies, start-ups, and small companies to participate. These types of companies and business are given an opportunity to ask for help from the community through online platforms to trust businesses that are being pursued (Pattanapanyasat, 2020).

Usually, the activities of ECF involve the publisher or fundraiser applying to place the campaign on the platform via the organizer. After successful application, the fundraiser places information about the company and its projects on the platform through documents and

videos. Interested investors must then first register on the organizer's website/platform to invest in the company or issuer. Depending on the relevant regulatory framework and platform business model, investors can invest directly using a fiduciary account/escrow account with a unification contract (Tiberius, 2021).

Santara, Bizhare, and Crowddana have officially registered ECF platforms licensed by the Financial Services Authority. In addition, the three ECF organizing platforms cooperate with P.T. Indonesian Central Securities Custodian (KSEI). The cooperation was established due to the issuance of Financial Services Authority (POJK) Regulation No. 37/POJK.4/2018 on Securities Offering through Information Technology-Based Crowdfunding Services. Unfortunately, the issuance of this rule is not accompanied by more specific rules related to data protection and privacy of investors who register themselves on online platforms in ECF activities, giving rise to various concerns that continue to overshadow every step of the parties involved. ECF activities that have a profitable side also have conflicting issues that can potentially pose risks. This can be seen in the high level of wiretapping and break-ins to cybercrime that often afflict online sites (Christmastianto, 2017).

Responding to problems that continue to occur in the implementation of ECF, the Government of Indonesia recently issued a new policy contained in POJK No. 57/POJK.04/2020 on Securities Offering through Information Technology-Based Crowdfunding Services. This provision is a manifestation of the seriousness of the Government in addressing legal uncertainty that has continued to overshadow the implementation of ECF activities, especially regarding data protection and investor privacy in conducting crowdfunding business. With the ratification of POJK No. 57/POJK.04/2020, the provisions of POJK No. 37/POJK.04/2018 were officially revoked and declared invalid.

In Indonesia, provisions regarding personal data and privacy have been applied in several laws and regulations. The laws and regulations include Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions, Law No. 14 of 2008 on Public Information Disclosure, Law No. 24 of 2013 on Amendments to Law No. 23 of 2006 on Population Administration, Law No. 10 of 1998 on Banking, Law No. 8 of 1999 on Consumer Protection,

and Law No. 39 of 2009 on Health. All these regulations regulate the provisions regarding data protection and privacy in their respective sectors.

The regulations governing data protection and privacy in Indonesia, as described above, do not make Indonesia free from all forms of crime resulting in data leakage and privacy. In the past few years, there have been many cases of data theft and buying and selling of data on dark websites and personal information by irresponsible individuals. However, the guarantee of data protection has been stipulated in Article 15 paragraph (1) of the ITE Act, which requires each electronic platform to maintain their security. Article 26 affirms the protection of personal data in electronic systems. These cases are caused by two factors: the first is a weak security system of the platform and the second is a lack of supervision from the relevant parties.

Data protection and investor privacy or their implementation in Indonesia refers to data protection and consumer privacy. The basis of references is based on the factors of equal understanding and role between investors and consumers. The consumer is the one who consumes a product. Consumers can also be defined as users of goods or services produced. In comparison, the financier is the party that finances the work or services. In this sense, financiers are service users who utilize the services of others to help produce goods and services. Based on the above understanding, both consumers and investors have similarities as service users. Therefore, it is necessary to acquire the same protection from the legal side because the law protects all parties.

The arrangement for data protection and investor privacy in ECF activities in Indonesia is regulated in Article 53 of POJK No. 37/POJK.04/2018 and POJK No. 57/POJK.04/2020 that list the principle of data confidentiality and security by investor data, organizers and issuers, the principle of transparency, equal rights, and light and direct costs. Article 53 explicitly states the obligation of the organizer to ensure that any data are free from the act aimed at retrieving the data. The form of data retrieval refers to a process that is not justified by both norms and laws, such as hacking, stealing, and claiming. The processes of collecting data using such methods belong to the criminal domain. Therefore, those who are entrusted with the data are obliged

to maintain trust. In addition, strong security protection is required on the sites used.

Another data protection in Article 68 of POJK No. 57/POJK.04/2020 also confirms that the Organizer can cooperate and exchange data with information technology-based support service providers to improve the quality of *Layanan Urun Dana* (Crowdfunding Services) by taking into account the confidentiality of data that will be provided by information technology-based support service providers. Other obligations for ECF organizers to the data of investors in Indonesia are also stipulated in Article 70, including:

- a. Maintaining the confidentiality, integrity, and availability of personal data, transaction data, and financial data managed by the Organizer from the time the data are obtained until the data are destroyed;
- b. Ensuring the availability of authentication, verification, and validation processes that support the use of the disclaimer in accessing, processing, and executing personal data, transaction data, and financial data managed by the Organizer;
- c. Ensuring that the acquisition, use, utilization, and disclosure of personal data, transaction data, and financial data obtained by the Organizer are based on the consent of the owner of personal data, transaction data, and financial data, unless otherwise specified by the provisions of the laws and regulations;
- d. Providing other communication media other than the Urun Dana Service Electronic System to ensure the continuity of financier services that can be in the form of electronic mail, call centers, or other communication media; and
- e. Notifying the owner in writing of personal data, transaction data, and financial data in the event of a failure in protecting the confidentiality of personal data, transaction data, and financial data managed by the Organizer.

Meanwhile, referring to the Circular Letter of the Financial Services Authority Number 14/SEOJK.07/2014 on the confidentiality and security of data and/or personal information of consumers, the personal data that must be protected are as follows:

1. Individual data that include name, address, age, date of birth, phone number, and information related to the name of the birth mother;

2. Company data that contain information about the name, company address, phone number, board of directors, shareholders, identification evidenced by the board of directors' I.D. card or passport, and a certificate of residence permit for foreigners.

The Circular Letter of the Financial Services Authority Number 18/SEOJK.02/2017 has similar elements. Such elements seen are investors' obligation to provide information to the organizers to collect investor data. The information provided by the investor is accessible to the organizer and by the investor himself. The access provided is to monitor the extent to which the organizer accesses the personal data provided and replaces the data errors provided at the time of registration of the platform. This is because the registration on the ECF organizer platform is very risky to the theft of investor data, which can be caused by the weak system provided by the organizer in ECF activities.

Although data protection and investor privacy in ECF activities have been guaranteed in OJK Regulation No. 57/POJK.04/2020 on Securities Offering through Information Technology-Based Crowdfunding Services, the regulation is still weak in the hierarchy of legislation in Indonesia. Therefore, it requires the efforts of the Government to take policies related to data protection and privacy of ECF investors in higher regulations in the form of laws as well as data protection and privacy regulations in other sectors, namely population, banking, health, and trade sectors. With the regulation of data protection and privacy of ECF investors in the law and guaranteeing legal certainty, the law also has a higher position than the OJK Regulation, which is lower than the law in the hierarchy of laws and regulations in Indonesia.

In addition, to be more effective, special regulations are needed regarding the protection of personal data and privacy in Indonesia. Previously, lawmakers had drafted a Bill related to Personal Data Protection (PDP). Nevertheless, the discussion stalled halfway for reasons that have not yet been ascertained. Looking at the provisions that are the substance of the Personal Data Protection Act, the author is interested in the principle of extraterritorial jurisdiction where enforcement is addressed to any person, whether a person, legal

entity, or on behalf of an organization that performs legal acts in the region. This means that compared to the POJK rules, the PDP Bill has undergone progress that can accommodate the enforcement of the desired legal certainty. The law enforcement cannot be done statistically. In its application, it needs to be developed in a broader context until it enters the realm of business, social, and technical activities.

Barriers to Data Protection and Investor Privacy at Equity Crowdfunding in Indonesia

Data protection and investor privacy are quite challenging. One of the causes of the difficulty of data protection and privacy is the lack of public awareness of data and privacy. Social networks make privacy a shared consumption. Privacy is no longer exclusive. Even a cynical culture of society is further expanding the dissemination of privacy-related information.

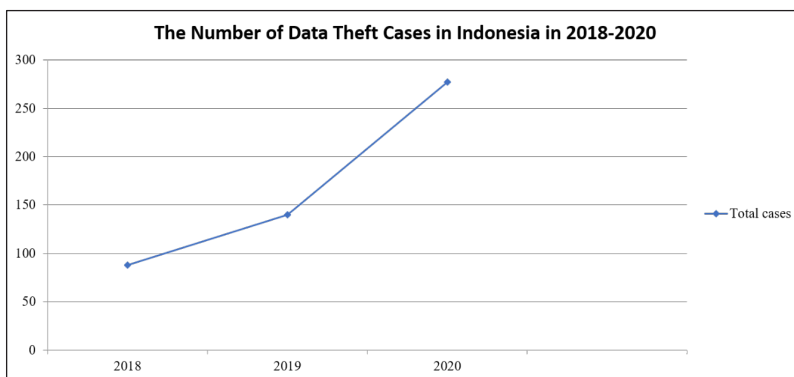
Regarding the implementation of ECF, the security of the applications used is still not stable. Other parties can still enter the security system by damaging the existing system for a specific purpose. Professionals using barcodes can also do system destruction.

When deciding to join a platform, investors are burdened with filling in some data, including contact information in the form of emails and phone numbers that facilitate access to communication between both parties. This access aims to provide direct and open information about obstacles and achievements during cooperation. Besides providing information through online platforms, organizers must also inform investors via email so that investors always receive the latest update or progress in activities and do not miss related information related. If the publisher is provided with information through the platform, the financier must also be provided with information via email. The author outlines this fair definition in this activity. In addition, the provision of information directly to investors that is not submitted through the platform indicates that the investors' private space is maintained. In addition, the data submitted on the site will invite other individuals' attention. Therefore, it is better conveyed personally to the investor himself.

In the last three years in Indonesia, data theft cases have continued to increase. In 2018, there were only 88 cases. Then, the number increased to 140 cases and ended up with 277 cases in 2020.

Figure 2

Overview of the Number of Data Theft Cases in Indonesia in 2018–2020



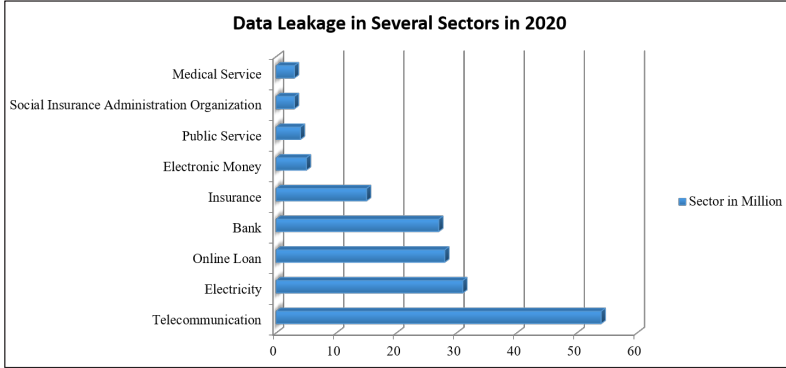
Source: Indonesia Internet Services Providers Association.

Cases of data theft based on the demographic data above show a significant increase every year. Several factors trigger the increase in crime rates. One factor is a shortcut to earning money in the revision period and the absence of a rule of law that can reduce the crime rate. Considering the consumptive but practical Indonesian society, digital technology is the right choice. The use of online sites is very profitable in terms of cost and time. As a result, humans prefer to do their activities via online platforms, and technological intelligence diverts real-world crime to the digital world.

According to the data from the Indonesian Consumer Institute Foundation in 2020, the financial sector still ranked the highest in data leaks. The increase was triggered by the continued increase in the use of e-commerce. Data leaks occur in several sectors as depicted in Figure 3.

Figure 3

Graph of 2020 Data Leaks in Several Sectors



Source: Indonesian Consumer Institute Foundation.

Based on the figure above, the most reported cases of data theft occurred in the telecommunications sector in 2020, which amounted to 54 cases. 17 incidents were reported in the banking industry, and there were up to 5 cases of electronic money. These three cases were close to ECF. In mid-2020, Indonesia was horrified by hacking activities on one of the leading e-commerce sites, Tokopedia. Tokopedia data hacking cases reached 91 million accounts and 7 million merchant accounts. The stolen data were sold on the dark website in the form of user I.D., email address, entire name identity, date of birth, gender, and information related to phone number, and secured password. Tokopedia data were sold at an astonishing price of around Rp 74,000,000 (seventy-four million rupiah).

Furthermore, in the same year, other hackers also targeted Bukalapak's account. In the hacker forum, 13 million user data in the form of username, email address, mobile number, password, email and Facebook password, and date of birth were sold. A Pakistani hacker named Gnosticplayers carried out the hack. Similarly, a group of hackers known as ShinyHunters hacked into Bhinneka.com's account by stealing 1.2 million user data. These events show that hacking is still prevalent in the digital age.

Resolving issues related to personal data and privacy is still facing difficulties. In Indonesia, data leakage and investor privacy cases are resolved using Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions. Through this regulation, personal data and privacy are subject to administrative sanctions. The form of administrative sanctions given is account blocking. The author considers that the above sanction is ineffective. Ineffectiveness occurs because there will be a repetition of the same activity with different platforms. The purpose of the sanction is to provide a deterrent effect to reduce the crime rate. If the sanction is only site blocking, this will not be effective considering that creating a new site does not require burdensome requirements.

Articles 85, 86, and 87 of POJK No. 57/POJK.04/2020, like the ITE Law, set administrative consequences for parties who violate ECF activities. Therefore, the author assumes that the context of factual law that the Government of Indonesia wants to enforce is because the resulting legal products are only toy goods under the guise of legal certainty. Legal certainty not only speaks to the extent of regulation but how existing regulations can be used as a legal umbrella that protects the public from obscurity. The author asserts that POJK No. 57/POJK.04/2020 is a failed product that is still used.

Data Protection and Privacy of Equity Crowdfunding Investors in Malaysia

Malaysia is the first country in Southeast Asia to legislate on ECF in 2015 by issuing six licenses for ECF platforms (Rahman, 2020). ECF is an innovative form of alternative fundraising whereby entrepreneurs (issuers) make an open call to sell specific equity in a company using an online platform registered by the Securities Commission Malaysia, attracting a large group of investors. ECF organizers utilize online platforms to offer forums where investors and issuers can come together to finance profitable companies (Haniff, 2019). To date, 10 ECF platforms have been registered (Securities Commission Malaysia [SCM], 2021), which are as follows:

1. Ata Plus Sdn. Bhd.;
2. Crowdplus Sdn. Bhd.;
3. Crowdo Malaysia Sdn. Bhd.;
4. Ethis Ventures Sdn. Bhd.;
5. Eureeca SEA Sdn. Bhd.;

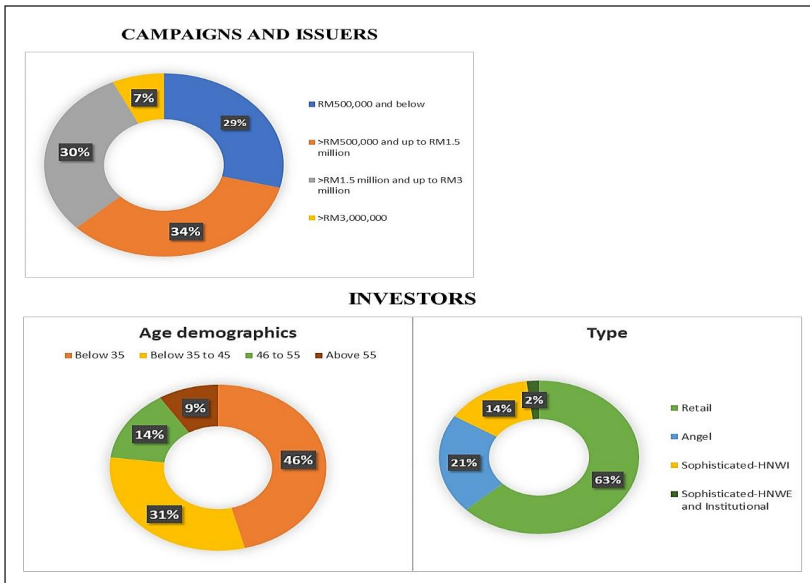
6. FBM Crowdtech Sdn. Bhd.;
7. Fundnel Technologies Sdn. Bhd.;
8. Leet Capital Sdn. Bhd.;
9. MyStartr Sdn. Bhd.;
10. Pitch Platforms Sdn. Bhd.

ECF allows small businesses to offer equity in their companies to investors, who invest in ideas that they see the potential. With ECF, investors have the opportunity to diversify their investments outside of traditional asset classes.

ECF has become the mechanism of choice for small businesses and start-ups, mainly to raise funds from investors because of its quick and easy process as compared to seeking funds from banks and financial institutions (Hoegen, 2018). The ECF platform in Malaysia has experienced significant growth, in line with the Malaysian Government’s call for fund providers to embrace technology to develop more inclusive, innovative, and efficient capital markets.

Figure 4

Equity Crowdfunding (ECF) Key Statistics in Malaysia in 2021



Source: *sc.com.my* accessed on 22 October 2021.

As of 30 June 2021, ECF has raised RM294.21 million from 214 successful campaigns and 203 publishers. The investment demographic revealed that 46 percent of participants were under 35, and 63 percent of the investments were in the retail sector.

ECF-related regulations in Malaysia are regulated in the Capital Market and Service Act (CMSA) 2007, which was read in conjunction with CMSA Subdivision 4 Division 2 Part II and Guidelines on Regulation of Markets (GRM) under Section 34 of CMSA (Item 1.01 GRM) issued by the Securities Commission. Section 15(g) of the Securities Commission Malaysia Act 1993 (Incorporating latest amendment-Act A1539/2017) explains that the function of this regulation is to regulate the activities of ECF and protect the interests of the parties involved, especially investors. In obtaining a license issued by the Securities Commission, the ECF platform operator must meet the criteria set out in the GRM first (Item 2.01 GRM).

Although ECF activities in Malaysia have been regulated in such a way in the Guidelines on Regulation of Markets, there are some weaknesses in the regulation because it does not regulate the protection of personal data and the privacy of ECF investors specifically. Settings related to personal data protection and privacy are set separately from those regulations, where personal data protection and privacy settings are regulated separately in the PDPA 2010.

PDPA 2010 can be applied to anyone who processes or has control over the processing of any type of personal data that can be used for commercial purposes. Furthermore, it can be applied if personal data are processed using Malaysian equipment, whether in the company's context or not, even though the person is not domiciled in Malaysia. PDPA does not apply to the Federal Government and state governments. If personal data are processed outside of Malaysia, PDPA will not apply. However, if data processing outside Malaysia is intended for further processing in Malaysia, then the Act can be applied.

Most data privacy laws such as PDPA apply when necessary to process personal data (Baskaran, 2020). Furthermore, data stored in the ECF platform during the registration process of ECF investor account are also subject to PDPA 2010. Seven principles make up Personal Data Protection, including General Principle, Notification

and Choice Principle, Disclosure Principles, Security Principle, Retention Principle, Data Integrity Principle, and Access Principle as set out in Sections 6, 7, 8, 9, 10, 11, and 12 (Part 5 paragraph (1) of the PDPA). Furthermore, third parties' data processing, including data users, data processors, or persons authorized in writing to process personal data under the direct supervision of data users are set out in Section 47 of PDPA 2010.

At the time of data processing by the ECF organizer/Platform in Malaysia, an investor data user in ECF activities must pay attention to the seven Principles of Personal Data Protection. If the ECF platform violates the provisions as stated in Section 5 paragraph (1) of the PDPA 2010 and if found guilty, then, the ECF organizer/platform found to have committed the violation may incur a fine of no more than three hundred thousand ringgit (RM300,000) or imprisonment for not more than two years or both (Section 5 paragraph (2) of the PDPA). From the above explanation, it can be known that the protection of personal data and privacy of ECF investors in Malaysia is regulated explicitly in the PDPA 2010.

Barriers to Data Protection and Investor Privacy at Equity Crowdfunding in Malaysia

In implementing ECF activities, the need for data protection must be made to reduce the risk of theft or misuse of personal data without consent. Malaysia has established protection of personal data through the PDPA 2010, which was successfully implemented in 2013 under the supervision of the Personal Data Protection Commission (PDPC) (Shahwahid & Miskam, 2015). To become an operator of the ECF platform, a company must obtain a license from the Securities Commission of Malaysia. In Malaysia, Securities Commission regulates financial technology such as the ECF platform as an intermediary between investors and issuers (Butarbutar, 2020).

In the ECF platform, data distribution systems are designed to control data access and are shared with parties participating in ECF activities. Participants can share data bilaterally as well as multilaterally, using the ECF platform governed by the system. The decentralized data-sharing model will create a new mechanism for exchanging trusted data among participants without requiring a single third party to handle the data. The main obstacle faced in this system is ensuring

that participants share data (Butarbutar, 2020). In the ECF platform, operators are responsible for collecting, assigning, and managing the use of investor data.

Section 9 of PDPA 2010 affirms that data users should consciously protect their data when processing personal data, including practical steps. Suppose the data processor carries out the processing. In that case, the user shall ensure that the data processor must: (1) provide adequate assurance concerning the technical and organizational security measures governing the processing to be carried out; and (2) take reasonable steps to ensure compliance with such measures.

In addition, in Section 10(1) of the PDPA, personal data processed for any purpose shall not be retained longer than necessary to fulfill such purposes. In other words, personal data should be deleted after they have been used for a specific purpose. Users of the data should take all reasonable steps to ensure that all personal data are permanently destroyed or deleted if they are no longer necessary for processing purposes.

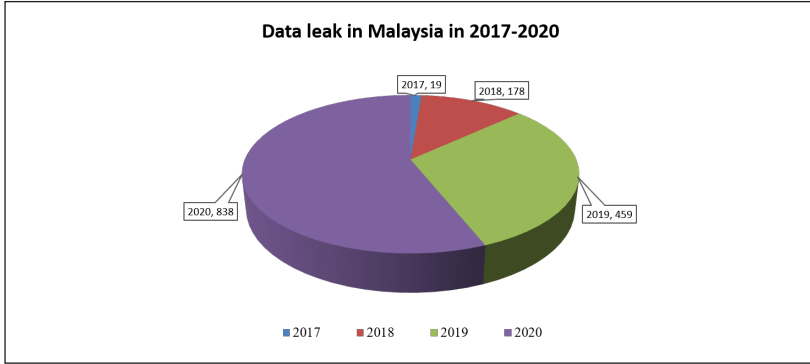
The issue of legal certainty that may arise is the risk that shareholders' data can be exposed to the public if the data user does not follow principles stipulated in Article 10 of the PDPA 2010. There is a risk of the data being exposed. Public exposure is on the rise as ECF operates virtually on the Internet. Therefore, to protect shareholders, data users should take reasonable steps to keep their shareholders' personal information following the principles in the PDPA 2010. In addition, there is no limit to the period of data storage provided by investors, which will make Article 10 of PDPA 2010 meaningless.

Then, as outlined in PDPA 2010, data users should take reasonable steps to ensure that personal data collected from stakeholders are used and processed accurately, ultimately, not misleadingly, and constantly updated with due regard to purpose. In other words, companies that implement data collected from stakeholders will always ensure that the data are correct and always up to date so that the data in the system do not mislead people to incorrect use.

There have been many cases of data theft in Malaysia in the last three years, which are showing a significant increase. The following Figure 5 depicts the number of data leak cases in Malaysia.

Figure 5

Data Leak Cases in Malaysia in 2017–2020



Source: thestar.com.my accessed on 16 April 2021.

Based on the diagram above, the most significant number of cases occurred in 2020 with 838 cases. There were 459 cases in 2019, 178 in 2018, and 19 in 2017. The data also explained that the number of data leaks from year to year continued to increase. In connection with the increase, the Malaysian Government then heightened security by gathering several information technology companies, including equity crowdfunding, to find a method out of the problems faced. The Commissioner for Personal Data Protection (Commissioner) is the primary regulator that oversees data protection issues, appointed by the minister to carry out the functions and authorities given under the PDPA with terms and conditions considered appropriate. The Personal Data Protection Advisory Committee appoints the Commissioner.

Sections 104 and 105 of the PDPA 2010 explain the investigation process by the Commissioner. After the Commissioner receives the complaint, they will conduct an investigation related to the relevant data used to determine whether the actions specified in the complaint conflict with the PDPA. If the complainant is not satisfied (aggrieved), they can appeal. Furthermore, if data users are dissatisfied with the Decision of the Personal Data Protection Advisory Committee, they can file a review of the decision in the High Court of Malaysia (Butarbutar, 2020).

Malaysia's ECF platform allows the dissemination of personal data to others without the data owners' consent. Protection of personal data and privacy, particularly against investors in ECF activities, have been guaranteed in the PDPA 2010. However, there is a lack of public legal awareness, especially investors and ECF platform organizers, to implement the provisions contained in the PDPA 2010. The PDPA 2010 is less applied in carrying out ECF activities and the weakness of the technology system used by ECF platform organizing companies provides loopholes to individuals who aim to steal personal data of investors in ECF activities.

Problems in data integrity are commonly found in application codes and system logs, whereby data must be accurate and unchanged to ensure proper application functionality and proper detection of individual system glitches and changes. In addition, it is essential for the company to follow the principle of access when there is equity crowdfunding. Section 12 of the PDPA 2010 has demonstrated that individuals have the right to access, correct their data, and provide reasons why data users may refuse to allow data access or correction of data requested by that individual.

Based on the above explanation, it is clear that Indonesia and Malaysia have different obstacles in protecting personal data and investor privacy, especially in ECF activities. In Indonesia, data protection and investor privacy in ECF refer to several legal rules in resolving issues regarding personal data. The application of personal data protection and investor privacy in ECF activities often encounters conflicting legal rules. Conversely in Malaysia, which is more advanced, the rules in PDPA 2010 becomes an advantage. However, having specific rules regarding personal data protection policies in the PDPA 2010 is far from perfect. Imperfections are present due to the widespread opportunity of third parties to access investor data. Through broad authority, abuse becomes inevitable. This is due to the lack of legal awareness among the ECF platform organizers in implementing the provisions set out in the PDPA 2010, despite the Government's good efforts in protecting personal data.

Even though Indonesia does not pour arrangements related to personal data protection and privacy into special rules, some provisions regulate the limits of who can access someone's data. This restriction

will suppress the loophole of a person's data leak. Indonesia should observe Malaysia, which has special rules on personal data protection, and learn from Malaysia's PDPA 2010 deficiency to better improve the implementation of such personal data protection regulations. Both nations can minimize the obstacles that occur, especially in ECF activities.

CONCLUSION

Personal data protection and privacy in their application in Indonesia have not been maximized. Several factors trigger the emergence of some obstacles in the enforcement of protection. The factors in question are the absence of more specific legal rules governing the protection of personal data and privacy in equity crowdfunding activities, the current rules of law clashing with each other, the unclear protection of personal data law and investor privacy, and the absence of strict sanctions related to personal data protection and privacy. The provisions in POJK No. 37/POJK.04/2018 on Crowdfunding Services have been replaced with POJK No.57/POJK.04/2020 on Securities Offering through Information Technology-Based Crowdfunding Services. However, the rule change cannot have big changes in substance of data protection and privacy. As a result, law enforcement is still struggling to resolve personal data and investor privacy issues. While in Malaysia, the protection of personal data and investor privacy in ECF activities has been specifically regulated in PDPA 2010. Parties conducting ECF activities must comply with the Personal Data Protection Principles. Although Malaysia already has special rules regarding protecting personal data and investor privacy in ECF in the PDPA 2010, there are obstacles in protecting personal data and privacy in the country due to the lack of public legal awareness, especially among investors and ECF platform organizers to implement the provisions contained in the Act. PDPA 2010 is not commonly applied in carrying out ECF activities. The weak technology system used by ECF platform organizers provide loopholes to individuals who aim to steal the personal data of investors in ECF activities. Therefore, Indonesia should learn from Malaysia in protecting personal data of ECF activities. The Malaysian law related to data protection contained in the PDPA 2010 can be further adopted, improved, and applied.

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