RESEARCH COLLABORATION AGREEMENT

BETWEEN

UNIVERSITI UTARA MALAYSIA

AND

UNIVERSITAS AHMAD DAHLAN

TITLE: A Comparative Analysis of Equity Crowdfunding Regulation in Malaysia and Indonesia

DATE: 4th Nov. 2020

This **RESEARCH COLLABORATION AGREEMENT** (hereinafter referred to as "this Agreement") is made on the 4 day of November 2020

BETWEEN

UNIVERSITI UTARA MALAYSIA, an institution of higher learning and a body incorporated in Malaysia under the Universiti Utara Malaysia (Incorporation) Order 1984 and under the Universities and University Colleges Act 1971, whose address is at Universiti Utara Malaysia, 06010 UUM Sintok, Kedah Darul Aman, Malaysia (hereinafter referred to as "**UUM**") and shall include its lawful representatives and permitted assigns of the first part;

AND

UNIVERSITAS AHMAD DAHLAN, an institution of higher learning and a body incorporated in Indonesia under the Association of Muhammadiyah, whose address is at Jalan Kapas No. 9, Semaki, Umbulharjo, Yogyakarta 55166 (hereinafter referred to as "**UAD**") and shall include its lawful representatives and permitted assigns of the second part.

(**UUM** and **UAD** hereinafter referred to singularly as the "the Party" and collectively as "the Parties")

WHEREAS

A. **UUM** is an established university which strives to enhance and strengthen its research, consultancy and publication that has taken various initiatives to complement its educational excellence and has entered into various collaborative arrangements with other parties.

B. **UAD** strives to internationalize its educational mission, advance its teaching, and research efforts to meet global standards of excellence. **UAD** actively pursues international contacts with overseas universities and institutes for cooperative activities including student and faculty exchange, joint training programs, organizing academic conferences and seminars, as well as other types of academic cooperation.

C. The Parties are desirous of formalising this collaboration by entering into this Agreement subject to terms and conditions as stipulated herein.

REPRESENTATION AND WARRANTY

UAD represents and warrants to **UUM** that:

(a) it is a private university established in Indonesia under the Association of Muhammadiyah;

(b) it has the corporate power to enter into and perform its obligations under this MoA and to carry out the transactions and business as stipulated by this MoA;

(c) it has taken all necessary corporate actions to authorize the entry into and performance of this MoA and to carry out the transactions stipulated by this MoA;

(d) as at the execution date, neither the execution nor performance by it of this MoA nor any transactions contemplated by this MoA shall violate in any respect any provision of:

i. **UAD** statutes and governing laws of Indonesia; or
ii. any other document or agreement which is binding upon it or its asset;

(e) no litigation, arbitration, tax claim, dispute or administrative proceeding is presently current or pending or, to its knowledge, threatened, which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under this MoA;

(f) this MoA constitutes a legal, valid and binding obligation of **UAD** and is enforceable in accordance with its terms and conditions; and

(g) it has necessary capability to undertake the responsibilities and acknowledges that **UUM** has entered into this MoA in reliance on its representations and warranties as aforesaid.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1.0 DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, unless the context otherwise requires: -

"Intellectual Property" means

(a) Inventions; manner, method or process of manufacture; method or principle of construction; or design; plan, drawing or design; or scientific, technical or engineering information or document;

(b) Improvement, modification or development of any of the foregoing;

(c) Patent, application for a patent, right to apply for a patent or similar rights for or in respect of any Intellectual Property referred to in paragraph (a) or (b);

(d) Trade secret, know-how, confidential information or right of secrecy or confidentiality in respect of any information or document or other intellectual Property referred to in paragraph (a) or (b);

(e) Copyright or other rights in the nature of copyright subsisting in any works or other subject matter referred to in paragraph (a) or (b);

(f) Registered and unregistered trademark, registered design, application for registration of a design, right to apply for registration of a design or similar rights for or in respect of any work referred to in paragraph (a) or (b);

(g) Any Intellectual Property in addition to the above which falls within the definition of Intellectual Property rights contained in Article 2 of the World Intellectual Property Organisation Convention of July 1967; and

(h) Any other rights arising from intellectual activities in the scientific, literary or artistic fields,

whether vested before or after the date of this Agreement and whether existing in Malaysia or otherwise and for the duration of the rights.

1.2 Monetary references are in Ringgit Malaysia.

1.3 Any word (including a word defined or given a special meaning) denoting the singular shall include the plural and vice versa.

1.4 Any word denoting one gender only shall include each other gender.

1.5 A reference to a person shall include a corporation as well as a natural person.

1.6 A reference to a Schedule is a reference to a Schedule to this Agreement.

2.0 COMMENCEMENT AND TERM

This Agreement shall become effective on the date of this Agreement and shall be in force for the duration of **twelve (12)** months thereafter unless subsequent time extensions, supplement, continuation, or renewal is mutually agreed upon in writing between the Parties.

3.0 SCOPE OF AGREEMENT

3.1 The Parties undertake the research and collaboration project as described in **Schedule A**.

3.2 For the purpose of this project, **UUM** is represented by a group of researchers as mentioned in **Schedule B**.

3.3 The Secretariat for **UUM** under this Agreement is represented by Research and Innovation Management Centre.

4.0 RESPONSIBILITIES OF THE PARTIES

4.1 In consideration of and subject to the terms of this Agreement and all applicable laws, the Parties shall carry out their respective responsibilities in accordance with the provisions of this Agreement and within the scope of responsibilities as set out below:

a) **UUM** Responsibilities:

i. To provide funds of Ringgit Malaysia Five Thousand (RM5,000.00) only to **UAD** as a matching grant.
ii. To conduct research in the scope of Malaysia.
iii. To ensure a full commitment and responsibilities from the UUM team.

iv. To publish articles in high impact journals and conference proceedings according to **UUM**'s rules and guidelines.

b) **UAD** Responsibilities:

i. To provide funds of Ringgit Malaysia Five Thousand (RM5,000.00) only to **UUM** as a matching grant.
ii. To conduct research in the scope of Indonesia.
iii. To ensure a full commitment and responsibilities from the **UAD** team.
iv. To publish articles in high impact journals and conference proceedings according to **UAD**'s rules and guidelines.

c) The Parties Joint Responsibilities:

i. To transfer a matching fund to each other's account. Refer to **Schedule D** for payment's information.
ii. To support the activities undertaken for the purpose of completing the Project.
iii. To communicate on the need basis.
iv. To respond promptly to any queries from time to time in respect of the Project and any other matters in relation thereto.
v. To provide all the available and necessary information for the Project.
vi. To produce a publication that related to the Project.

5.0 INTELLECTUAL PROPERTY

5.1 Upon being informed by any of their researchers of any inventions first actually reduced to practice in the performance of the Collaboration, the Parties shall promptly disclose to the other Party and shall hold such disclosure on a confidential basis and will not disclose the information to any third party without the written consent of the other Party.

5.2 All rights, titles and interests including any Intellectual Property rights which are made, created, developed, written or conceived pursuant to the Collaboration (hereinafter referred to as "the NEW IPR") shall be jointly owned by the Parties of which the proportion of ownership shall be based on the actual contribution of the respective Parties to the Project. The Parties agree that upon the successful completion of the Project and the Project as set out in sub-

clause 3.1 above, the authorization of the NEW IPR shall be undertaken and that the Parties acknowledge and agree that separate contractual document(s) shall be entered into between the Parties in relation to the authorization.

5.3 All rights, titles and interests including any Intellectual Property rights originating from either Party and used to produce any product which forms the NEW IPR, shall continue to belong to that Party; and the other Party shall not have any claim on them.

5.4 **UUM** shall retain the right to use the results of the Project for research and educational purposes subject to confidentiality and publication provisions of this Agreement.

6.0 PROGRESS REPORTS

6.1 The Parties shall furnish the other Party with written reports as to the progress of works carried out for the Project from time to time as per **Schedule C**.

6.2 The Party shall respond promptly to any queries from the other Party from time to time in respect of the progress of the works in relation to the Project and any other matters in relation thereto by such means as are agreed from time to time by the Parties hereto.

7.0 CONFIDENTIALITY

The Parties including its officers, agents and authorized representatives shall not disclose, use or communicate to persons any information which is confidential to the other Party and not otherwise publicly available nor known by the recipient at the time of disclosure.

8.0 RIGHT TO PUBLISH

8.1 The data and information accruing from the Project, which are of academic importance for the enrichment of knowledge, may be published by **UUM** in accordance with **UUM** policy. **UUM** shall provide **UAD** with a copy of any such proposed publication and the other Party may have at least twenty-one (21) days or such mutual extended period to be agreed upon by the Parties from the date of the other Party being provided with the copy of such proposed publication, for review of data and information deemed

confidential as defined in clause 7 above relating to confidentiality or patentable items (hereinafter referred to as the "Review Period").

8.2 If deemed reasonably necessary by **UUM** to protect such interests, any contemplated publication containing details of an invention, etc. shall be withheld until a patent application is filed or other appropriate steps to protect commercial value have been completed. However, in no event shall any delay of publication exceed twelve (12) months from the date the proposed publication is submitted to the other Party. All publications shall not include the Parties' confidential information as defined in the Confidentiality clause as reasonably determined and communicated to a Party within the Review Period.

9.0 RELATIONSHIP OF THE PARTIES

Nothing in this Agreement shall be construed as establishing or creating a partnership or a relationship of master and servant between any of the Parties hereto or as constituting any party as an agent or representative of the other Party for any purpose or in any manner whatsoever.

10.0 TERMINATION

10.1 If the Parties as the case may be commit any of the conditions stated below, then, the aggrieved Party shall be entitled to terminate this Agreement by serving a notice to that effect:

a) Either Party becomes insolvent or is unable to pay its debts when due or admits in writing its inability to pay its debts; or
b) Either Party enters any arrangement or composition with its creditors generally, or a receiver or manager is appointed; or
c) Either Party goes into liquidation or passed a resolution to go into liquidation, otherwise than for the purpose of reconstruction; or
d) Either Party fails to comply with any of the obligations under this Agreement.

10.2 The notice to terminate in the case of paragraphs (a) to (c) shall not be less than twenty one (21) days, save for in the case of sub-clause (d), whereby the notice to terminate shall take effect only after either party first giving twenty one (21) days' notice in writing to the other party to remedy a default, and where such default is not remedied in that period, upon giving not less than further twenty one (21) days' notice of termination.

10.3 Upon termination of this Agreement, the Parties shall have no obligation to each other except for payments still outstanding and payable by **UAD** to **UUM**, for activities already undertaken prior to the date of such termination.

11.0 *FORCE MAJEURE*

11.1 If either Party to this Agreement is temporarily unable by reason of *Force Majeure* or the laws or regulations of Malaysia to meet any of its obligations under this Agreement, and if such Party gives to the other Party written notice of the event within fourteen (14) days after such occurrence the obligations of the Party that it is unable to perform by reason of the event, shall be suspended for as long as the disabling situation continues. If *Force Majeure* event prevents either Party from performing its obligations for a period of thirty (30) days, either Party may terminate this Agreement.

11.2 Neither Party shall be liable to the other Party for the loss and/or damages sustained by such other Party arising from any events referred to in this clause or delays arising from such event.

11.3 The term "*Force Majeure*" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, wars, insurrection, pandemics, epidemics, landslides, earthquakes, storm, lightning, floods, civil disturbances, explosions, and any other similar event not within the control of either Party and which by the exercise of due diligence neither Party is able to overcome.

12.0 SUPERVENING EVENTS

12.1 Each Party reserves the right for reasons of national security, national interests, public order or public health to suspend temporarily, either in whole or in part, the implementation of this Agreement which suspension shall take effect immediately after notification has been given to the other Party, within 14 within fourteen (14) days after such occurrence.

12.2 Notwithstanding sub-clause 12.1, should any other event occur which hinders or restricts the implementation of this Agreement, the parties shall use their best endeavour to agree upon such action, as may be necessary and equitable, to remove the cause of such event.

13.0 PUBLIC STATEMENT

The Parties agree that no public statement shall be made on the Project, or in relation to any products, processes or inventions developed as a result of the Project unless approved first by the Parties.

14.0 ASSIGNMENT

This Agreement shall not be assigned in whole or in part by either Party without the prior written consent of the other.

15.0 WAIVER

15.1 The waiver by a Party in respect of any breach of a term of this Agreement by the other party shall not be deemed to be a waiver in respect of any other term or of any subsequent breach of that term.

15.2 The failure of a Party to enforce at any time any term of this Agreement shall in no way be interpreted as a waiver of such term.

16.0 APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of Malaysia.

17.0 COMPLIANCE WITH THE LAW

The Parties shall comply with all applicable laws and with all directions, orders, requirements and instructions given to the Parties by any authority competent to do so any applicable law.

18.0 ENTIRE AGREEMENT

The terms of the Agreement between the Parties are those set out in this Agreement and the Schedules and no written or oral agreement or understanding made or entered into prior to the date of this Agreement shall in any way be read or incorporated into this Agreement.

19.0 SUCCESSORS-IN-TITLE

This Agreement shall be binding on the respective heirs, personal representatives, receivers, successors-in-title and assigns of the Parties hereto.

20.0 AMENDMENT OR MODIFICATION

Any provision of this Agreement may be amended or modified by mutual consent between the Parties and such amendment/modification shall be in writing by way of Supplementary Agreement and signed by the duly authorized representative of the Parties.

21.0 SETTLEMENT OF DISPUTES

Any difference or disputes between the Parties concerning the interpretation and/or implementation and/or application of any of the provisions of this MoA shall be settled amicably through mutual consultation and/or negotiations and upon the failure of the same; each Party is at liberty to refer the said matter for legal redress between the Parties without reference to any third party.

22.0 TIME

Time whenever mentioned shall be of the essence of this Agreement.

23.0 SCHEDULES, ATTACHMENTS, ANNEXURES, APPENDIXES

All schedules, attachments, annexures and appendices hereto shall be read, construed and formed part of this Agreement.

24.0 STAMP DUTY AND COSTS

24.1 The stamps duty, if any, on this Agreement, shall be borne by **UUM.**

24.2 The Parties shall bear its own costs and expenses for preparing approving and completing this Agreement.

25.0 NOTICES

25.1 Any communication under this Agreement shall be in writing in the English language and delivered by registered mail to the address or sent to the electronic mail address or facsimile number of **UUM** or **UAD**, as the case may be, shown below or to such other address or electronic mail address or facsimile number as either Party may have

notified the sender and shall, unless otherwise provided herein, be deemed to be duly given or made when delivered to the recipient at such address or electronic mail address or facsimile number which is duly acknowledged :

To	:	**UNIVERSITI UTARA MALAYSIA**
Address	:	06010 UUM Sintok, Kedah Darul Aman, Malaysia
Attn. To	:	Vice-Chancellor
Tel. No.	:	+604-9283000
Fax No.	:	+604-9283005
E-mail	:	vc@uum.edu.my
To	:	**UNIVERSITAS AHMAD DAHLAN**
Address	:	Jl. Kapas No. 9, Semaki, Umbulharjo, Yogyakarta 55166
Attn. To	:	Rector
Tel. No.	:	+62274-563515, 511830, 379418, 371120
Fax No.	:	+62274-564604
E-mail	:	info@uad.ac.id

25.2 It shall be the duty of the Parties to notify the other if there is a change of address or entity by giving a written notice within fourteen (14) days

The foregoing record represents the understandings reached between the Parties upon the matters referred to therein.

The rest of this page is intentionally left blank

IN WITNESS WHEREOF this MoA has been duly signed in duplicate in _____ on _____ in the year 2020 in four (4) original texts in the English language, all texts being equally authentic.

Signed for and on behalf of
UNIVERSITI UTARA MALAYSIA

PROF. DR. AYOIB BIN CHE AHMAD
Deputy Vice-Chancellor
(Research and Innovation)

In the presence of

ASSOC. PROF. DR ROHANA ABDUL RAHMAN
Dean
School of Law

Signed for and on behalf of
UNIVERSITAS AHMAD DAHLAN

DR. MUCHLAS, M.T.
Rector

In the presence of

RAHMAT MUHAJIR NUGROHO, S.H., M.H.
Dean
Faculty of Law

[1] Refer item 8 in Application Guideline Research Collaboration between UUM and External Party (Including Matching Grant)

[2] If Dean of School/Director of CoE is the leader/a member, witness is Assistant Vice-Chancellor

Schedule A

THE RESEARCH AND COLLABORATION PROJECT
(shall be formed as part and parcel of the Agreement)

Project Details

Project Title: A Comparative Analysis of Equity Crowdfunding Regulation in Malaysia and Indonesia

NO.	ITEM	DESCRIPTION
1.	Project Description	Crowdfunding is a way how to raise money through small contributions from a large number of investors using the internet platform (Bradford, 2012). This research will focus to equity crowdfunding (ECF). Equity crowdfunding (also known as crowd-investing or investment crowdfunding) is a method of raising capital used by startups and early-stage companies. Essentially, equity crowdfunding offers the company's securities to a number of potential investors in exchange for financing. Each investor is entitled to a stake in the company proportional to their investment. The preliminary findings show that there is a different legal framework of ECF in Malaysia and Indonesia. There are many legal issues pertaining to ECF in Malaysia and Indonesia; (1) registration procedures and its difficulties; (2) privacy and personal data protection; (3) cybercrimes; (4) compliance of public offerings rules and guidelines; and (5) the contract between the issuers and investors;

		and issuers and Recognized Market Operator. Further, the legal issues of scope and jurisdiction of enforcement authority and ECF from the Islamic perspective. This is a doctrinal study and will adopt the conventional legal method. Findings of the research will benefit the Malaysian Securities Commission, Indonesian Financial Authority, the parties to the contract of ECF (issuers, recognized market operator, investors) and future investors. The expected output of this research is the enhance ECF legal framework from the aspect of conventional law and Shariah law.
2.	Project Objectives	The objectives of the research are: 1. To compare the legal framework of equity crowdfunding business in Malaysia and Indonesia. 2. To analyse the legal issues and protection to the issuers, RMO and investors in equity crowdfunding business in Malaysia and Indonesia. 3. To study the scope and role of the enforcement authority in Malaysia and Indonesia in monitoring and enforcing the law and regulations of equity crowdfunding. 4. To examine the Shariah perspective on equity crowdfunding. 5. To make recommendation based on the findings in strengthening the equity crowd funding regulations of Malaysia and Indonesia.

Schedule B

GROUP OF RESEARCHERS

(shall be formed as part and parcel of the Agreement)

UUM Researchers:

NO.	RESEARCHERS	POSITION
1.	PROF DR ASMAH LAILI BINTI YEON	Leader
2.	ASSOC PROF DR CHE THALBI BINTI MD ISMAIL	Member
3.	ASSOC PROF DR NURLI BINTI YAACOB	Member
4.	ASSOC PROF DR MOHAMMAD AZAM BIN HUSSAIN	Member
5.	ROOS NIZA BINTI MOHD SHARIFF	Member

UAD Researchers:

NO.	RESEARCHERS	POSITION
1.	DR. FITHRIATUS SHALIHAH, S.H., M.H.	Leader
2.	DESLAELY PUTRANTI, S.H., M.H.	Member
3.	MUHAMMAD FARID ALWAJDI, S.H., M.KN	Member

4.	UNI TSULASI PUTRI, S.H., M.H.	Member
5.	MUHAMMAD HABIBI MIFTAKHUL MARWA, S.HI., M.H.	Member

Schedule C

THE PROGRESS OF WORKS
(shall be formed as part and parcel of the Agreement)

Activity/Month	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
Literature Review												
Data Collection (library search), online survey and expert interview (if necessary)												
Data Analysis: Legal data analysis												
Final Report Writing												
Submission of Final Report												
Publication												

Schedule D

INFORMATION FOR FUND TRANSFER

UNIVERSITI UTARA MALAYSIA

Recipient Name	:	**UNIVERSITI UTARA MALAYSIA**
Bank Account No.	:	02093010000010
Bank's Name & Address	:	Bank Islam Malaysia Berhad (BIMB) UUM Branch Varsity Mall, Universiti Utara Malaysia 06010, Sintok Kedah
SWIFT Code	:	BIMBMYKL
Reference	:	Research Fund for Prof Dr Asmah Laili binti Yeon
Bank ID No.	:	GB0000071E
Bank Tel. No.	:	604-9246271 / 6272

UNIVERSITAS AHMAD DAHLAN

Recipient Name	:	**UNIVERSITAS AHMAD DAHLAN**
Bank Account No.	:	7507505575
Bank's Name & Address	:	Bank Syariah Mandiri Jl. Jend. Sudirman No. 42, Yogyakarta
SWIFT Code	:	BSMDIDJA
Reference	:	Research Fund for Dr. Fithriatus Shalihah, S.H., M.H.
Bank ID No.	:	451
Bank Tel. No.	:	+62274-555022

8879910013

BANK ISLAM

Bank Islam Malaysia Berhad (No 98127-X)

BORANG PERMOHONAN KIRIMAN WANG
REMITTANCE APPLICATION FORM

Tarikh / *Date:* 24/12/2020

Cawangan/*Branch* 02093

No. Ruj./*Ref No.* 02-093-01-000001-0

No. Instrumen / *Instrument No.*

NO. B 0272106

PERMOHONAN UNTUK / *APPLICATION FOR* : Sila tanda / *Please Tick*

- [ ] **TEMPATAN / *LOCAL***
- [x] **LUAR NEGARA / *FOREIGN***
- [ ] Cek Jurubank / *Banker's Cheque (BC)*
- [ ] Saham Terbitan Bumi / *Bumi Share Issue*
- [ ] Interbank GIRO (IBG) / Sistem RENTAS *Interbank GIRO (IBG) / RENTAS System*
- [ ] Draf Permintaan / *Demand Draft (DD)*
- [x] Pindahan Telegraf / *Telegraphic Transfer*
- [ ] Jualan / Belian Mata Wang Asing *Foreign Currency Sale / Purchase*
- [ ] Lain-lain *Others*

MATA WANG / *CURRENCY*	AMAUN / *AMOUNT*
IDR IDR	****16,393,442.62

Pembayaran di / *Payable at* :

(*) Akan tertera pada penyata penerima.
(*) *Will appear in payee's statements.*

UNTUK KEGUNAAN BANK SAHAJA/ *FOR BANK USE ONLY*

KADAR / *RATE* 0.000305	RM *****5,000.00
Komisen / *Commission*	**********2.00
Duti Setem / *Stamp Duty*	
Caj Kabel / *Cable charge*	**********24.00
Caj-caj lain / *Other Charges*	
JUMLAH / *TOTAL*	*********5,026.00
Kadar Khas oleh / *Special Rate by*	
Kod Kelulusan / *Approval Code*	

Butir-butir PENERIMA / *BENEFICIARY'S Particulars*

Nama / *Name*
UNIVERSITAS AHMAD DAHLAN
~~UNIVERSITAS AHMAD DAHLAN~~

Alamat / *Address*
JI. KAPAS NO.9, SEMAKI, UMBULHARJO, YOGYAKARTA 55166

Negara / *Country*

No. KP / *NRIC No.* / No. Pasport / *Passport No.*

No. Tel / *Tel No.* :

No. Pendaftaran Perniagaan/Syarikat / *Business/Company Registration No.*

- [ ] Pemastautin / *Resident*
- [x] Bukan Pemastautin/ *Non - Resident*

Butir-butir PEMOHON / *APPLICANT'S Particulars*

Nama / *Name**
UNIVERSITI UTARA MALAYSIA (UUM)

Tarikh Lahir / *Date of Birth*

Pekerjaan / *Occupation*

Alamat / *Address*
PEJABAT BENDAHARI
UNIVERSITI UTARA MALAYSIA
06010 SINTOK

Negara / *Country*
KEDAH DARUL AMAN

No. KP / *NRIC No.* / No. Pasport / *Passport No.*
A8000071E

No. Tel / *Tel No.*:

Nama Majikan / Jenis perniagaan Sendiri (Jika ada)
Name of Employer / Nature of Self Employment Business (If any)

No. Pendaftaran Perniagaan / Syarikat
Business / Co. Registration No.

Butir-butir BANK PENERIMA / *BENEFICIARY BANK Particulars*

Nama Bank / *Bank's Name* / Kod BIC / *BIC Code*
BANK SYARIAH MANDIRI

No. Akaun Penerima / *Bene. Acc No.* / No. IBAN / *IBAN No.*
7507505575 / BSMDIDJA

Alamat (jika ada) / *Address (if any)*
JI. JEND. SUDIRMAN NO 42 YOGYAKARTA INDONESIA

- [x] Pemastautin / *Resident*
- [ ] Bukan Pemastautin / *Non - Resident*
  Sila nyatakan negara asal / *Please state country of origin*

Tujuan Pembayaran atau Rujukan Penerima (wajib untuk IBG) / *Purpose of Payment or Recipient Reference (mandatory for IBG)**
PENYALURAN DANA PENYELIDIKAN

Catatan, Arahan atau Butiran Pembayaran lain untuk IBG (jika ada)*
*Remarks, Instructions or Other Payment Details for IBG (if any)**

UNIVERSITI UTARA MALAYSIA (UUM) / 02-093-01-000001-0 9700 IDR****16,393,442.62 24/12/2020 10:19:20 MTR
bi1089mah 2712 0010 13500 0302 OUR 02093
0272106

CETAKAN KOMPUTER/*COMPUTER VALIDATION*

Perakuan seperti yang dikehendaki di bawah Seksyen 225 dan Jadual 14, Akta Perkhidmatan Kewangan Islam 2013 (Akta 759) / *Declaration as required under Section 225 and Schedule 14 of Islamic Financial Services Act 2013 (Act 759)*

Bagi transaksi kurang daripada RM200,000, sila tanda pada kotak di bawah / *For transaction below RM200,000, please tick the box below:*

- [ ] A. Perjalanan / *Travel*
- [ ] B. Pindahan / *Transfer*
- [ ] C. Perkhidmatan / *Services*
- [ ] D. Perkhidmatan-perkhidmatan lain / *Other Services*
- [ ] E. Barangan / *Goods*
- [ ] F. Pinjaman / *Loans*
- [ ] G. Pelaburan / *Investment*
- [ ] H. Pendapatan Pelaburan / *Investment Income*
- [ ] I. Lain-lain (sila nyatakan) / *Others (please specify)*

Bagi transaksi RM 200,000 dan ke atas, sila nyatakan kod bagi tujuan pembayaran.
For transaction above RM 200,000, please state the code for purpose of payment.

- Saya/Kami mengaku dan mengesahkan bahawa semua maklumat adalah benar dan betul dan mematuhi Peraturan Pentadbiran Pertukaran Asing yang dibuat menurut Akta Perkhidmatan Kewangan Islam 2013 dan Bank Negara Malaysia 2009. Saya/Kami akan bertanggungjawab sepenuhnya terhadap sebarang maklumat yang tidak tepat, tidak benar atau tidak lengkap yang disediakan dalam borang ini.
  I/We declare and confirm that all the information herein is true and correct and in compliance with the Foreign Exchange Administration Rules made pursuant to the Islamic Financial Services Act 2013 and the Central Bank of Malaysia 2009. I/We shall be fully responsible for any inaccurate, untrue or incomplete information provided in this form.
- Saya/Kami telah membaca dan memahami Terma dan Syarat yang dinyatakan di halaman sebelah. Oleh itu, saya/kami akan menanggung apa-apa risiko, tanggungjawab atau liabiliti terhadap permohonan ini. Sila keluarkan draf bank anda/laksanakan pindahan seperti yang ditetapkan dan pembayaran akan dibuat menurut Cara Pembayaran.
  I/We have read and understood the Terms and Conditions set forth on the reverse. Therefore, I/we shall bear any risk, responsibility or liability on this application. Please issue your draft/effect the transfer as specified and payment is to be made in accordance to Mode of Payment.
- Berdasarkan perkara di atas, saya/kami dengan ini mengikat kontrak pertukaran mata wang di bawah kontrak Bai' Sarf dengan Bank Islam bagi jumlah yang di nyatakan di atas.
  Based on the above, I/we hereby enter into currency exchange contract under the contract of Bai' Sarf with Bank Islam, the currency amounted as stated above.
- Berdasarkan perkara di atas, saya/kami dengan ini memohon untuk kemudahan perkhidmatan yang ditawarkan di atas di bawah kontrak Ijarah, dan sehubungan dengan itu, saya/kami bersetuju untuk membayar kepada pihak Bank apa-apa fi serta perbelanjaan yang akan dikenakan oleh pihak Bank berkaitan dengan perkhidmatan tersebut.
  Based on the above, I/we hereby apply for the service stated above under the contract of Ijarah and in addition thereto, I/we agree to pay the Bank any fee as well as expenses incurred by the Bank in connection with the service.
- Dengan ini saya/kami mengesahkan bahawa saya/kami telah diberikan penjelasan dan faham bahawa maklumat yang saya/kami berikan adalah selaras dengan Notis Privasi Bank Islam.
  By signing this form, I/we hereby confirm that I/we have been made aware and understand that the information provided by me/us is in accordance to Bank Islam's Privacy Statement.

Cara Pembayaran / *Mode of Payment*

- [ ] Wang Tunai / *Cash*
- [ ] No. Cek / *House Cheque No.*
- [ ] Bagi pembayaran di atas, saya/kami memberi kuasa kepada pihak Bank untuk mendebitkan jumlah dan/atau kos daripada akaun saya/kami.
  For payment of the above, I/we authorise the Bank to debit the total and/or cost to my/our account.
- [ ] Biometrik disahkan / *Biometric Verified*
- [ ] Tandatangan disahkan / *Signature Verified*

Bendahari Universiti Utara Malaysia
CIA NO : 0209301000010

Tandatangan Pemohon / *Applicant's Signature*

DITERIMA DAN DIKENDALIKAN OLEH / *RECEIVED AND ATTENDED BY*	DISEMAK OLEH / *VERIFIED BY*	DILULUSKAN OLEH / *AUTHORISED BY* :	**SALINAN PELANGGAN / *CUSTOMER'S COPY***
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PUSAT PENGURUSAN PENYELIDIKAN DAN INOVASI
RESEARCH AND INNOVATION MANAGEMENT CENTRE (RIMC)
Universiti Utara Malaysia
06010 UUM SINTOK
KEDAH DARUL AMAN
MALAYSIA

Tel.: 604-928 4771
Faks (Fax): 604-928 4756
Laman Web (Web): www.rimc.uum.edu.my

File Ref./No : UUM/RIMC/P-30/4/6
Date : 17 November 2020

Rector
Universitas Ahmad Dahlan
Jl. Kapas No. 9, Semaki, Umbulharjo
Yogyakarta 55166
Indonesia

Dear Sir/Madam,

TRANSFER OF RESEARCH FUND TO UNIVERSITI UTARA MALAYSIA (UUM)

We refer to the above matter.

2. This transfer of research fund arrangement from Universitas Ahmad Dahlan to UUM is to ensure there is international fund move to UUM and vise versa so that the research can be deemed as an International Research.

3. Hence I would be obliged to inform you that the transfer of research fund of **RM5,000.00 (RINGGIT MALAYSIA: FIVE THOUSAND ONLY)** for the research shall be effected as follows:

Recipient Name	:	**UNIVERSITI UTARA MALAYSIA**
Bank Account No.	:	02093010000010
Bank's Name & Address	:	Bank Islam Malaysia Berhad (BIMB) UUM Branch Varsity Mall, Universiti Utara Malaysia 06010, Sintok Kedah
SWIFT Code	:	BIMBMYKL
Reference	:	Research Fund for **Prof. Dr. Asmah Laili binti Yeon**
Bank ID No.	:	GB0000071E
Bank Tel. No.	:	+604-9246271 / 6272

I would be very pleased if you can send us proof of payment once the payment has been made so that we can inform the researcher to start the project. Upon receiving, the money will be channelled to researcher's trust based account without any additional administrative fees to be charged to your institution.

Thank you.

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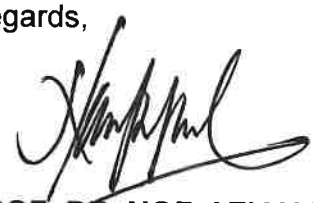
Regards,



PROF. DR. NOR AZIAH BINTI ABD MANAF
Director
Research and Innovation Management Centre
Universiti Utara Malaysia

Tel. : 04-928 4770/4771 H/P. : 012-4015200
Faks : 04-928 4756 E-mel : aziah960@uum.edu.my

Siti/taufiq/letter fund transfer (prof. asmah)

Kod Rujukan	

(Diisi oleh RIMC)

MATCHING GRANT APPLICATION FORM
Borang Permohonan Geran Padanan

Research and Innovation Management Centre (RIMC),
Universiti Utara Malaysia,
06010 UUM Sintok,
Kedah Darul Aman
04-928 4771/04-928 4777

A.	***TITLE OF PROPOSED RESEARCH****/*TAJUK PENYELIDIKAN YANG DICADANGKAN
	A Comparative Analysis of Equity Crowdfunding Regulations in Malaysia and Indonesia.
B.	***DETAILS OF RESEARCHER****/*MAKLUMAT PENYELIDIK
(i)	***Name of Project Leader*** Nama Ketua Projek 1. Prof Dr Asmah Laili Yeon (School of Law, Universiti Utara Malaysia) 2. Dr. Fithriatus Shalihah (Faculty of Law, Universitas Ahmad Dahlan)

Staff ID/No.Per. 485 (Prof Dr Asmah Laili Yeon) 60391183 (Dr. Fithriatus Shalihah)	***I/C No./***No. Kad Pengenalan Prof Dr Asmah Laili Yeon (650330086228) Dr. Fithriatus Shalihah (60191183)
Status/Status (***Please Tick/***Sila Tanda (/) ***Permanent/***Tetap: / ***Contract/***Kontrak:	***School***/Pusat Pengajian 1. School of Law, Universiti Utara Malaysia, Malaysia 2. Faculty of Law, Universitas Ahmad Dahlan, Indonesia

(ii)	***Position (Please tick √)*** Jawatan (Sila tanda √) / ***Professor/***Profesor ☐ ***Associate. Prof./***Prof. Madya

	☐ ***Senior Lecturer/****Pensyarah Kanan* ☐ ***Lecturer/***Pensyarah	
(iii)	***Handphone No./***Tel. Bimbit	0194100666 (Prof Dr Asmah Laili bt Yeon)
	Office no./Tel. Pej.	***04-9288554***
	Fax/Faks	***04-9288107***
	Email/E-mel	***asmah485@uum.edu my***

or

Research Category (Please Tick √)
Kategori Penyelidikan (Sila tanda √)

	Science and Technology	/	*Non Science and Technology*

Niche Area (Please tick √)
Bidang Tujahan (Sila tanda √)

	Leadership and Institutional Building	/	*Law and Governance*
	Business Innovation and Entrepreneurship		*International Relations and Regional Cooperation*
	Creative and Media Management		*Smart Digital Opportunities*
	Economic and Financial Analysis and Policy		*Community Development and Social Harmony*

Field of Research (FOR) and Socio-Economic Objective (SEO) Code
Kod Lapangan Kajian (FOR) dan Objektif Socio-Economi (SEO)
****Please refer to /*** Sila rujuk ***https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Ascds%3AUS%3A84e01e34-e8f1-40f3-9756-c1c95a044ad2***

FOR : F | | | | | | | | *e.g*/cth : F | 1 | 0 | 2 | 0 | 1 | 0 | 4

SOE : S | | | | | | | | *e.g*/cth : S | 2 | 0 | 1 | 0 | 2 | 0 | 0

Duration of this research (Maximum : 1 year/12 months):
Tempoh masa penyelidikan ini (Maksimum : 1 tahun/12 bulan):

Duration/Tempoh	:	**12 bulan**
From/Dari	:	**1 September 2020**
To/Hingga	:	**31 Ogos 2021**

Proposed journal (Scopus/WOS) for publication of this research
Cadangan jurnal (Scopus/WOS) yang akan diterbitkan hasil penyelidikan ini

Journal of Financial Crime atau lain-lain Journal yang berindex SCOPUS atau WoS

Other Researchers
Ahli-ahli penyelidik yang lain

NO. **BIL.**	***NAME*** NAMA	***STAFF ID*** NO. PER.	***SIGNATURE*** TANDATANGAN
1.	School of Law, UUM (Malaysia) 1. Associate Prof Dr Che Thalbi Md Ismail 2. Associate Prof Dr Nurli Yaacob 3. Associate Prof Dr Mohammad Azam Hussain 4. Mdm Roos Niza Mohd Shariff	 1048 1059 2371 1514	

2.	Faculty of Law, Univesitas Ahmad Dahlan (Indonesia) 1. Deslaely Putranti 2. Muhammad Farid Wajdi 3. Uni Tsulatsi Putri 4. Muhammad Habibie Miftakhul Marwa	 60181152 60191202 60191237 60191181	

PUBLICATION INFORMATION/ MAKLUMAT PENERBITAN

*(Should be filled by **Project Leader's only**)/*(Diisi oleh **Ketua Penyelidik sahaja**)

Research projects that have been completed or ongoing by researchers for the last three years. Please provide title of research, grant name, role, year of commence, year ending and status of research progress

Sila sediakan maklumat termasuk tajuk, jenis geran, keahlian, tarikh mula, tarikh tamat dan status penyelidikan bagi penyelidikan yang sedang/telah dijalankan oleh penyelidik di dalam tempoh tiga tahun terakhir

NO. **BIL.**	***TITLE OF RESEARCH*** TAJUK PENYELIDIKAN	***GRANT NAME*** JENIS GERAN	***ROLE*** KEAHLIAN (KETUA/AHLI)	***START DATE*** TARIKH MULA	***END DATE*** TARIKH TAMAT	***STATUS*** STATUS
1.	Formulation of Enhanced Business Judgement Rule Integrity Model of Government Link Investment Companies	FRGS	Member	01/09/2019	30/11/2021	In Progress
2.	Positioning the UUM Journal of Legal Studies as a High Impact Law Journal in Southeast Asia (ASEAN)	APIQ Grant	Project Leader	01/07/2019	30/06/2020	In Progress (Final Report)
3	Smart Home in Malaysia: Towards Developing Its Legal and Regulatory Framework	TRGS	Project Leader	01/02/2015	01/02/2018	Completed
4	Law and Governance of Youth Development.	NRGS	Project Leader	15/12/2013	14/11/2016	Completed
5	Pembentukan Model Baharu Perjanjian Kolektif melalui Pemerkasaan Komitmen Ahli Kesatuan Sekerja	FRGS	Member	01/07/2014	30/06/2016	Completed
6	Assessment of Private Retirement Scheme Legal Framework using a Comparative Approach.	FRGS	Member	01/07/2014	30/06/2016	Completed

Please furnish information on academic publications that has been published by the researchers for the last three years. (Example : Journals, Books, Chapters in books, etc.)

Sila kemukakan maklumat berkaitan penerbitan akademik yang telah diterbitkan oleh penyelidik dalam tempoh tiga tahun terakhir. (Contoh : Jurnal, buku, bab dalam buku, dll.)

NO. **BIL.**	***TITLE OF PUBLICATION/*** TAJUK PENERBITAN	***NAME OF JOURNAL/BOOKS*** NAMA JURNAL/BUKU	***YEAR OF PUBLICATION/*** TAHUN DITERBITKAN
1.	The Law on Business Judgment Rule In Malaysia: A Review	Journal of Critical Reviews (SCOPUS)	2020
2.	The Issue of Sovereignty, National Interest And Security In Bilateral Investment Treaties Of Malaysia	Journal of International Studies (ESCI, WOS)	Accepted/2020
3.	Legal Challenges of Creditor Protection against Unfair Terms in a Personal Loan Contract in Iraq	Journal of Advanced Science and Technology (SCOPUS)	2020
4.	Environmental Protection and the Bilateral Investment Treaties of Malaysia and Netherlands: A Comparison	European Energy and Environmental Law Review. (SCOPUS)	2019
5.	Sovereignty, National Interest & Security and the Bilateral Investment Treaties of Bangladesh and the Netherlands: a Comparison	African Journal of Legal Studies(SCOPUS)	2019
6.	Suara Belia Pemangkin Pembangunan Belia	Program Pembangunan Belia: Isu Dan Cabaran, UUM Press (Chapter in Book)	2020
7.	Employment Benefits of Academics in Malaysian Universities	The Journal of Social Sciences Research (SCOPUS)	2018
8.	Smart Home Users Perception on Sustainable Urban Living and Legal Challenges in Malaysia	The Journal of Social Sciences Research (SCOPUS)	2018
9.	The Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS): The Case of Malaysia	International Journal of Law, Government & Communication (Global Academic Excellence)	2018
10.	Smart Home Assisted Living For The Elderly: The Needs For Regulations	The Journal of Social Sciences Research (SCOPUS)	2018
11.	An Analysis of Consumer Protection in the Financial Service in Iraq: Consumer Loan Contract	Journal of Law, Policy and Globalization	2018
12.	Designing a Legal Framework of Green Environment in Smart Home Project	International Journal of Supply Chain Management (SCOPUS)	2018
13.	Smart Home' in The Statutory Housing Sale Agreements in Malaysia?	The European Proceedings of Social & Behavioural Sciences (WoS)	2018
14.	The Web of Liability In Smart Home – Are We Ready For A Home To Be A 'Person'	The European Proceedings of Social & Behavioural Sciences (WoS)	2018
15.	Workload of Academic Staff in Malaysian Public University: Perspectives Of Top Management	The European Proceedings of Social & Behavioural Sciences (WoS)	2018

16.	A Comprehensive Smart Home Legal Framework in Malaysia: A Necessity	The European Proceedings of Social & Behavioural Sciences (WoS)	2018
17.	Business Crimes At Stake	UUM Press (Edited Book)	2018
18.	Non-Compliance of Listing Requirements of Bursa Malaysia Disclosure Policy and its Sanctions	UUM Press (Chapter in Book)	2018
19.	Analysis of False Trading and Market Rigging Offences in Malaysian Securities Industry Law	UUM Press (Chapter in Book)	2018
20.	The Application of Corporate Disclosure Policy Among Public Listed Companies in Properties Business.	International Journal of Economics, Business and Management Research. (SCOPUS)	2017
21.	The Private Retirement Scheme as a Financial Protection of Old-Age in Malaysia from Perspective of PRS Providers.	International Journal of Innovation And Business Strategy (SCOPUS)	2017
22.	Smart Home Users' Information in Cloud System: A Comparison between Malaysian Personal Data Protection Act 2010 and European Union General Data Protection Regulations.	Malaysian Construction Research Journal. (SCOPUS)	2017
23.	Relevance of the Current Electoral System in Malaysia: Time for Change?	The International Journal of Arts and Sciences. (SCOPUS)	2017
24.	Compliance of Audit Requirements by Public Listed Companies in Malaysia Capital Markets.	Sintok International Conference on Social Science and Management 2017 Proceedings	2017
25.	Compliance to the International Trade Rules: In Case of Malaysia's Environmental Protection Measures.	Sintok International Conference on Social Science and Management 2017	2017
26.	Smart Home and Legal Safeguard Against Cyber Threat: A review.	Sintok International Conference on Social Science and Management 2017	2017
27.	Privacy Concerns in Smart Home Environment.	Sintok International Conference on Social Science and Management 2017	2017
28.	Preservation of Green Environment in Smart Home Project: Formulation of Sustainable Legal Framework.	Proceedings of The International Conference on E-Commerce	2017
29.	Collective Agreement as An Instrument To Regulate Terms and Conditions of Employment	International Business Management Conference	2017
30.	Relevance of the Current Electoral System in Malaysia: Time for Change?	The International Journal of Arts and Sciences (SCOPUS)	2017
31.	Democratic Process In Malaysia: The Future of Malaysian Electoral System	Journal Man In India	2017

32.	Responsibilities of Private Retirement Scheme Providers Under The Capital Markets and Services Law In Malaysia	Journal Man In India	2017
33.	The Private Retirement Scheme as a Financial Protection of Old-Age in Malaysia from Perspective of PRS Providers	International Journal of Innovation And Business Strategy	2017
34.	Sumber Pengetahuan Jawatankuasa Kemajuan Dan Keselamatan Kampung (Jkkk) Berkaitan Akta Pertubuhan Belia Dan Pembangunan Belia 2007: Satu Analisa	Journal of Global Business and Social Entrepreneurship	2016
35.	Governance and Youth Development: Experiences of the Village Development and Security Committees.	Journal of Governance and Development	2016
36.	Philosophy and Theory of Law	UUM Press (Edited Book)	2016
37.	Ethical and Legal Theory of Insider Dealing	UUM Press (Chapter in Book)	2016
38.	Faculty Workload and Employment Benefits in Public Universities	International Review of Management and Marketing (SCOPUS)	2016
39.	Framework of Malaysian Private Retirement Scheme under Capital Markets and Services Act 2007	International Journal of Economics and Financial Issues (SCOPUS)	2016
40.	Investors Perception on Civil Remedies and Civil Action under the Capital Markets and Services Act 2007	International Journal of Economics and Financial Issues (SCOPUS)	2016
41.	Framework of Malaysian Private Retirement Scheme under Capital Market and Services Act 2007	International Journal of Economics and Financial Issues (SCOPUS)	2016
42.	Trade-Related Environmental Measures under the World Trade Organization (WTO) in Malaysia: The Analysis of it's Application.	Journal of International Studies. (ESCI, WoS)	2016
43.	Building Union Commitment: Challenges and Reality.	The Social Sciences (SCOPUS)	2016
44.	Malaysian Law of Youth development in Global Challenges.	UUM Journal of Legal Studies.	2016
45.	Private Retirement Scheme in Malaysia: Legal Analysis	International Journal of Economics and Financial Issues (SCOPUS)	2016
46.	Providers' Perception on the Legal Framework of Malaysian Private Retirement Scheme under CMSA 2007	The European Proceedings of Social & Behavioural Sciences (WoS)	2016

DETAILED OF RESEARCH PROJECT/MAKLUMAT PENYELIDIKAN SECARA TERPERINCI

(a) ***Research background including Hypothesis/Research Questions and Literature* Reviews**
Keterangan latar belakang penyelidikan termasuk kenyataan hipotesis/persoalan penyelidikan dan kajian literatur

(1) Introduction

Crowdfunding is a way how to raise money through small contributions from a large number of investors using the internet platform (Bradford, 2012). It is stated by Bradford (2012) in the United States, crowdfunding sites such as Kiva, Kickstarter and IndieGoGo have proliferated, and the amount of money raised through crowdfunding has grown to billions of dollars in just a few years. Schwienbacher and Larralde (2010) and Mollick, (2014) stated that is a novel method for funding various new ventures, allowing individual founders of for-profit, cultural, or social projects to request funding from multiple individuals, often in return for future products or equity, typically through the Internet.

The top Malaysian companies involve in equity crowdfunding (ECF) are ATA PLUS Sdn Bhd, Netrove Ventures Group, and Alix Global Sdn Bhd. In Malaysia, the ECF statistics as of 31 December 2019 shows the distribution by fundraising amount RM500,000 and below is 50%, >RM500,000 and up to RM1.5 million is 27% and >RM1.5 million and up to RM3 million is 23%. It consists of 80 successful campaigns, RM73.74 million amount were raised and involved 77 successful issuers (Securities Commission Malaysia, 2020). It shows that the ECF businesses becomes one of the new sources of investment in Malaysia.

In order to regulate the ECF, the Malaysian Securities Commission has introduced new rules in ECF platform registration and provision of good governance for ECF platform operators through Section 377 of Capital Market Services Act 2007 (CMSA) read together with CMSA Subdivision 4, Division 2, Part II and the publication of Guidelines on Recognized Market (GRM) (Item 1.01 GRM). Section 15 (g) of Malaysia Securities Commission Act 1993 clarifies that the function of these regulations is to regulate the ECF's activities and protect the interests of the parties involved, especially investors. ECF platform operators need to satisfy the criteria in the GRM before Securities Commission can issue ECF licenses (Item 2.01 GRM). Since the launch of ECF regulation, Liz (2015) reported that countless efforts have been done by Securities Commission together with registered ECF platform to educate people and entrepreneurs on the company's alternative financing.

In Indonesia, crowdfunding has sprung up in 2012 namely Wujudkan.com, a reward based-crowdfunding engaged in the creative industry, Kitabisa.com, Ayopeduli.com, Patungan.net which are donation based-crowdfunding and Gandengtangan.com which is a debt based-Crowdfunding (Nugroho & Rachmaniyah, 2019). The emergence of start-up companies in Indonesia is one of the catalysts in the development of alternative funding industries. In the financial services industry, one of the technological innovations that can be used by the public is the fund contribution service through share offers based on an information technology. Funds contribution service is one of the products in financial technology (fintech) that brings together stock issuers with investors through electronic systems or information technology. At present the crowdfunding business is growing rapidly until new innovations emerge related to equity offering (*equity crowdfunding)* (Rosadi, 2015: 91).

The regulations in Indonesia related to financial technology still refer to Indonesian Civil Code (*Burgerlijk Wetboek*), Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 21 of 2011 concerning the Financial Services Authority. The regulation and supervision of fintech business in Indonesia is carried out by two independent state institutions namely Bank Indonesia (BI) and the Financial Services Authority (hereinafter as referred to as OJK). BI has the duty to regulate and supervise financial technology-based payment system services (*SP-Tekfin*), while OJK has the authority to regulate and oversee the fintech business outside of monetary and payment systems. OJK is an independent institution that has great authority in the regulation and supervision of financial services (Santi et al., 2017).

Equity crowdfunding categorized as business-aimed crowdfunding. Equity crowdfunding is an offer and sale of equity shares for all investors. Equity means ownership, an investor who buys equity shares becomes the owner

of the shares in the company that issues the shares. Such offers can only be made through intermediaries or Service Providers (Freedman & Nutting, 2015; Norita & Harahap, 2018). The concept is the same as shares where the money deposited will become equity or part of ownership of the company in return for dividends. OJK currently only regulates crowdfunding that promises benefit rewards which regulated in Law number 21 of 2011 concerning OJK. Non-investment crowdfunding is regulated in Law number 9 of 1961 concerning the Raising of Funds or Goods. The rapid development of fintech needs to be regulated by law for the development of the industry itself as well as to provide protection to the community as users. The government through the OJK as the body that is authorized to regulate fintech according to its category, has issued technical regulations related to equity crowdfunding fintech namely The Regulation of Financial Services Authority (POJK) No.37 / POJK-04/2018 concerning Fund Contribution Services through Share Offers Based on Information Technology (Equity Crowdfunding) on 31 December 2018. This regulation aims to support startup companies in getting access to alternative sources of funds by selling shares to the public without triggering the requirements of the Initial Public Offering (IPO) rules. After the issuance of POJK No. 37 / POJK-04/2018, per December 2019, OJK issued three approvals to three equity crowdfunding platforms: Santara, Bizhare, and Crowddana.

(2) Problem Statement

Today, there are new ways to access capital, of which crowdfunding is one of them. Crowdfunding is a way to raise money not only for people, but also businesses and charities. It works through individuals or organisations who invest in (or donate to) crowdfunding projects in return for a potential profit or reward. However, investing this way has potential risks although it calculates some benefits as well. Crowdfunding can offer many benefits for micro small Medium entreprenuers (SMEs), but it is not suitable for everyone. Although this type of business is exciting, some might find it time consuming in profiling a project, securing supporters and then implementing ideas.

In the United States for example, crowdfunding poses two issues under federal securities law (Bradford, 2012). First, crowdfunding sometimes involves the sale of securities, triggering the registration requirements of the Securities Act of 1933. Registration is prohibitively expensive for the small offerings that crowdfunding facilitates and none of the current exemptions from registration fit the crowdfunding models. Second, the web sites that facilitate crowdfunding may be treated as brokers or investment advisers under the ambiguous standards applied by the Securities Exchange Commission (SEC). Social networks have been used as a medium for financing films and other performing arts, as well as for charitable solicitations. Crowdfunding can also be used to finance small business entreprises, which, in contrast to other crowdfunding efforts, is a highly regulated activity by virtue of the securities laws. Securities laws are designed to provide investor protection. The same issues also faced by the ECF in Malaysia because it is regulated through Section 377 of the CMSA 2007 and Guidelines on Recognized Markets where according to section 34 of the CMSA, the Recognized Market Operator are required to register their business with the SC. Therefore, the question to be considered is to what extend the regulation of ECF in Malaysia provide a sufficient protection to investors and business owner? In Indonesia, rapid development of fintech arises concerns about the legal protection of its users because there is no clear regulation governing fintech. Whether it's related to privacy protection issues or data privacy of users who register themselves in the online platform. Therefore, the issue of privacy protection and data privacy has become an urgent agenda. Various countries have made provisions regarding privacy and data privacy protection, but this is not the case with Indonesia. (Rosadi, 2015)

Another aspect to be concerned is the existence of cybercrimes in internet based transaction. Whether the CMSA 2007 and the enforcement authority, Securities Commission is competent to combat cybercrime in relation to ECF. Businesses that choose to raise funds through crowdfunding especially equity crowdfunding, sell a share of their company to investors. As part of this ownership, some investors expect to have a say in how the business is run. This can be of value to teams looking for expert guidance and advice, however it can be shackling if it holds up progress or takes the business in a different direction to that sought by the original owners. Crowdfunding is not immune to fraud. Scammers are always on the look to scam people in the internet. Fake sites are springing up across the internet, with projects, particularly in the charitable sector and ECF, being copied and funds diverted to fraudsters. Whether the offences as stated in the CMSA 2007 (section 175 – 181 and section 188) covered the *modus operandi* used by scammers to manipulate the stock markets?

In Indonesia, there are loopholes that allow unclear legal protection for the users. Article 6 of the OJK Law states that one of the regulations and supervision by OJK is in financial service activities in the capital market sector. The definition of capital markets based on the OJK Act is also narrowly regulated and refers to the provisions in Indonesian Capital Market Act (Law Number 8 Year 1995 concerning the Capital Market, 1995: Art. 6(2)). However, there is a gap in OJK Regulation Number 37/POJK-04/2018 with the Capital Market Act, where equity crowdfunding activities are included as financial service activities within the capital market sector. This raises further questions related to ECF arrangements, which should have not be included in the definition of the capital market according to the Capital Market Act and the OJK Act, but are included as financial services activities in the capital market sector (Norita & Harahap, 2018).

In Indonesia, referring to capital market regulations, ECF cannot be qualified as an activity in the capital market. Capital Market is defined as activities related to public offering and trading of securities, public companies related to the securities issued, and institutions and professions related to Securities (Capital Market Act, art. 1 (13)). With such regulation, ECF certainly cannot be called as part of the capital market because they are not conducting a public offering as in the Indonesia Stock Exchange (IDX). With such arrangement, OJK's legal standing should be questioned in its capacity to manage the ECF that is developing in Indonesia today. If OJK oversees ECF because it is another Financial Services Institution then this is *contra legem* with qualifications made by OJK itself which places ECF as a financial service activity in the capital market sector. Whether the same arguments can be applied in the Malaysian context, is another aspect to be considered further. According to section 2 of the CMSA 2007, capital market means the securities and derivatives markets and the capital market products means (a) securities; (b) derivatives; (c) a private retirement scheme; (d) a unit trust scheme; (e) any product or arrangement which is based on securities or derivatives or combination; and (f) any other product which the Minister may prescribed as a capital market product. In terms of the validity of jurisdiction of SC in enforcing the law to ECF is not an issue in Malaysia. However, as the ECF operators, they have to comply with the securities offering rules and regulations as other public companies. Looking at the profile of the ECF operator, they are SMEs and no doubt in terms of their financial position is not so strong as the public listed companies or public companies. Compliance of law and regulations means their business need to be equipped with good facilities especially the high end technology because ECF is all about e-investment and e-trading. Therefore, to what extend the ECF operator manage to comply with the public offering rules and regulations?

Equity crowdfunding deals with securities trading, which in this case is stock. Equity crowdfunding uses an electronic system to match investors and entrepreneurs. The service provider provides a way through which the issuing company can collect funds from investors to expand their business. Investors receive equity in return for their funds and when they buy an existing equity or stock, securities or capital market laws govern the transaction. Equity crowdfunding is related to securities trading (stocks). While OJK included it as a financial service activity in the capital market sector in POJK No.37 / POJK-04/2018. Thus, of course is an inconsistencies phenomenon between existing regulations, because if the definition of the capital market in the Capital Market Act as reiterated in the OJK Act, then it should be a reference to POJK No.37 / POJK-04/2018 (Norita & Harahap, 2018). The point is, POJK No.37 / POJK-04/2018 is trying to meet the current legal needs of the public for equity crowdfunding, but it is not in line with the higher provisions that previously governed this activity such as the Capital Market Act or the OJK Act itself. The concepts and definitions contained in the Capital Market Act are no longer relevant to the development of today's increasingly complex and diverse legal needs of society. The slowness of the availability of law that accommodates the needs of the society will raise the issue of legal certainty.

Other gaps in the POJK Number 37 / POJK-04/2018 are stipulated in article 45 paragraph (3) and article 54 paragraph (2) of POJK No. 37 / POJK-04/2018. Article 42 paragraph (3) stated as follows:
“The agreement as referred to in paragraph (1) may contain provisions concerning the granting of power of attorney to the Service Provider to represent the Investor as the shareholder of the Issuer, including in the general meeting of the Issuer's shareholders and the signing of the deed as well as other related documents.”

Previously in Article 42 paragraph (1) was clearly stated that, “The Agreement on the arrangement of Fund Contribution Services between the Service Provider and Investor is set forth in the form of a standard agreement.” If such agreement is valid as a law for the parties involved, according to the Pacta Sunt Servanda principle, the

law should contain all the things that should be contained in a contract or agreement. In addition to the need for legal certainty, strictly speaking is that laws are made in order to create a balance between the parties conducting legal relations in order to realize justice. Justice is the final destination of such agreement. Because justice is a goal that must be upheld so that no party feels disadvantaged. According to Munir Fuadi (1994: 184) legal protection means protection by law. Further, Rita Herlina (2017: 26) stated that legal protection can be done by: 1) Making rules, which aim to; a) Guarantee the rights of legal subjects, b) Give rights and obligations; 2) Enforce regulations.

In these legal relations, investors are legal subjects in their capacity as consumers. It has been explicitly regulated in the Consumer Protection Act that consumer rights are as follows: (Law Number 8 Year 1999 concerning Consumer Protection, 1999: Art. 4)

a. Consumers are entitled to compensation;
b. Consumers are entitled to security, safety and comfort;
c. The consumer has the right to obtain correct information;
d. Consumers are entitled to get consumer education;
e. Consumers are entitled to protection, advocacy and dispute resolution;
f. Consumers have the right to fairness and non-discrimination.

The gap in article 45 paragraph (3) POJK No. 37 / POJK-04/2018 concerning Fund Contribution Services through Share Offers Based on Information Technology (Equity Crowdfunding) mentioned above, the regulation of Equity Crowdfunding in terms of agreements as the basis for legal relations as referred to is not clearly regulated about the minimum things that should be contained in the contents of the agreement. The minimum things are as follows:

a. Agreement number
b. Agreement date
c. Identity of the parties
d. Rights and obligations of the parties
e. The amount of funds contributed and the amount of shares to be owned
f. Term or termination of the agreement
g. Provisions regarding fines (sanctions)
h. Dispute resolution mechanism
i. And also the mechanism in the event that Service Provider cannot continue its operational activities.

There is also loophole which allow disadvantages to the Investors, which stated in article 54 paragraph (2) POJK No. 37 / POJK-04/2018 as follows, “The information provided in paragraph (1) is placed on the Service Provider’s website”

Meanwhile in the Consumer Protection Act, it has also been explicitly stated that the right to clear, honest and truthful information about the conditions and guarantees of the goods and / services used (Law Number 8 Year 1999 concerning Consumer Protection, 1999: Art. 4(3)). This means that the Service Provider in providing an up-to-date information about the Fund Contribution Service only regulates the provision of the latest information regarding the Fund Contribution Service that is placed on the Service Provider's website only, whereas for Investors who have registered is not regulated regarding providing the latest information directly via telephone or email so that the provisions have the potential to cause legal uncertainty for Investors. Thus, some of the legal gaps that have been presented about legal uncertainty in POJK No.37 / POJK-04/2018 by itself are contrary to the purpose of legal protection.

In regards to the Shariah issues of ECF in Malaysia, Mohd Thas Thaker and Pitchay (2016), proposes a viable alternative model for *waqf* institution as a source of financing by using crowdfunding. This method of crowfdunding-*waqf* model is able to provide *waqf* institution in Malaysia to meet their liquidity constraint in developing *waqf* land. However, Abdullah and Oseni (2017) identified several Shariah issues pertaining to crowdfunding. Among them is regarding sources of funds for *halal* Small Medium Enterprises (SMEs) which is questionable in term of *Shariah*-compliant. This is because, though there are specific regulations in investment

in securities relating to purification of funds and relevant screenings for *Shariah*-compliant investments, there is no regulation of interest-bearing loans taken by Halal SMEs from conventional banks. They also suggest the respective authority to introduce the new legal framework for equity crowdfunding, and propose potential *Shariah*-compliant equity crowdfunding model based on existing modes of financing commonly used in the Islamic financial services industry.

Based on Global Religious Future data in 2020 the number of Muslim population reached 229.6 million or around 87.0% of the total population of Indonesia. In the construction of Islam the consequence of a Moslem is to implement Islamic teachings which include aqeedah, morals, and sharia which consist of worship and mu'amalah (Ali, 2007: 32). Moslem awareness level to meet the teachings of religion in the field of muamalah Maliyah (property) began to increase in the last few decades, especially in Muslim countries. It was proven by the rapid development of the halal industry, especially the sector of Islamic financial institutions where Indonesia at the world level occupies the 6th position after Malaysia, Iran, Saudi Arabia, United Arab Emirates, and Kuwait (Saparini, Susamto, & Faisal, 2018: 31). Especially in the era of the industrial revolution 4.0 began to appear digital lifestyles such as the rise of sharia-based financial technology. Investment-based crowdfunding in its development has the driving force towards the progress of the halal industry in Indonesia (Abdullah & Susamto, 2019: 289). The positive value from this phenomenon is, the community began to be interested in earning income by doing investment in accordance with sharia regulations.

OJK Regulation Number 37 / POJK.04 / 2018 concerning Fund Contribution Services through Share Offers Based on Information Technology, has set the mechanisms and a sense of security for the public who want to make sharia equity crowdfunding as one of the investment instruments for small and medium investors. However, the POJK has not yet regulated in detail what kinds of business are permitted and prohibited, the source of funds used by investors for investment is halal or haram, and needs to be reaffirmed the model of commission distribution, so as not to harm the parties. Therefore, to see its compliance with the principles of sharia, equity crowdfunding must be ensured in line with the principles of Islamic law sourced from the Qur'an and Al-Hadith, as well as fatwas that have been issued by the competent authorities in the field of sharia.

Based on some of the explanation above, related to POJK regulation NO.37 / POJK-04/2018 to Capital Market Act, Consumer Protection Act and equity crowdfunding in relation to the concept of shariah, the researchers conclude that there is a need for more in-depth research regarding this matter.

(3) Research Question

Based on the above, there are four questions of the research:-

1. What is the legal framework of equity crowdfunding in Malaysia and Indonesia?
2. Whether the law and regulation of equity crowdfunding in Malaysia and Indonesia are sufficient to protect the business owner and the investors whom participate in the equity crowdfunding?
3. Whether the scope and role of the enforcement authority in Malaysia and Indonesia in monitoring and enforcing the law and regulations of equity crowdfunding is sufficient?
4. Whether the equity crowdfunding is in accordance with the Shariah principles?

(4) Literature Review

(a) The Law and Regulations governing Equity Crowdfunding in Malaysia

Introduction

In recent years, crowdfunding has emerged and is steadily gaining popularity as an alternative source of financing for various ventures. What in the beginning may seem like a trend embraced only by start-ups desperate for cash. The youth for example, this mechanism is one of the sources of alternative funding in assisting them to pursue pre-start-up capitals (Mokhtarrudin, Masrurah & Muhamad, 2017).

In general, crowdfunding can be divided into four categories, namely; (i) donation crowdfunding; (ii) reward crowdfunding; (iii) lending crowdfunding; and (iv) equity crowdfunding (Mohd Thas Thaker & Pitchay, 2018). Equity-based crowdfunding enables the funders to receive compensation in the form of fundraiser's equity-based or revenue, or profit-sharing arrangements. Meanwhile, in lending-based crowdfunding, the funders receive fixed periodic income and expect repayment of the original principal investment. The donation-based crowdfunding is when the funders make donations without any expectation to gain anything such as a social cause; and lastly is the reward-based crowdfunding, where the funders fund a project to gain a non-financial reward (Abdullah & Oseni, 2017). Despite being the first ASEAN country to have its own legal framework on crowdfunding, Malaysia focusses merely on equity based crowdfunding (Mokhtarrudin, Masrurah & Muhamad, 2017).

Legislations Governing Crowdfunding in Malaysia
In Malaysia, the crowdfunding is regulated by the Capital Markets and Services Act 2007 (CMSA 2007), the Capital Markets and Services (Amendment) Act 2015 (CMSA 2015) and the Guidelines on Recognized Markets 2016.

Equity Crowdfunding
Section 34 of the Capital Market and Services Act 2007 introduce new requirements for the registration of equity crowdfunding ("ECF") platforms and provide governance arrangement for the operators of such platforms. The Guidelines require the operator's board of directors to be fit and proper and have the ability to operate an orderly, fair and transparent market. As the operator plays a critical role in ensuring confidence in the ECF platform, the Guidelines entrust the operator with obligations to ensure issuers' compliance with platform rules. The operator may deny an issuer access to its platform if it is of the view that the issuer or the proposed offering is not suitable to be hosted on the platform. The operator is also required to ensure that funds obtained from investors are safeguarded in a trust account until the funding goal is met.

Section 36 of the CMSA 2015 provides that on the duties of recognized market operator. It states that a recognized market operator shall- (a) comply with any direction issued by the Commission, whether of a general or specific nature, and the recognized market operator shall give effect to such directions; and (b) provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires.

While section 36 A provides on the withdrawal of registration. The provision states that, (1) Subject to subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investors, in the public interest or for the maintenance of an orderly and fair market, the Commission may, by notice in writing, withdraw the registration with effect from a date that is specified in the notice. (2) Such notice referred to in subsection (1) shall state the grounds in support of the withdrawal. (3) Notwithstanding the withdrawal under subsection (1), the Commission may permit the person to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of– (a) closing down the operations of the recognized market to which the withdrawal relates; or (b) protecting the interest of the investors or the public interest. (4) Where the Commission has granted a permission to a person under subsection (3), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 34. (5) The Commission shall not exercise its power under subsection (1) in relation to a recognized market operator that has been registered under subsection 34(1) unless it has given the recognized market operator an opportunity to be heard. (6) Any withdrawal of registration made under this section shall not operate so as to– 9 (a) avoid or affect any agreement, transaction or arrangement entered into by the recognized market operator whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration under subsection (1); or (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

There is also power of Commission to appoint statutory manager. Section 40D provides, (1) Without prejudice to any provision in this Part, for the purposes of mitigating and managing systemic risk in the capital market or where the Commission considers it is— (a) in the public interest; (b) for the protection of investors; (c) for the proper regulation of a relevant person; or (d) necessary in the exercise of its powers under section 30.

Section 316A of CMSA 2015 also provides a significant law on Islamic Capital Market Products. It provides that, (1) An Islamic capital market product is a capital market product for the purposes of securities laws. (2) The

Commission may specify in the guidelines made under section 377 on the following: (a) any model agreement or documentation relating to a transaction or arrangement in respect of Islamic capital market products; (b) the duties and responsibilities of the different parties involved in a transaction or arrangement in respect of Islamic capital market products; and (c) any other matter as may be deemed appropriate, in giving full effect to the principles of Shariah in relation to a transaction in respect of Islamic capital market products.
While section 316B provides on Islamic securities. It provides, (1) Islamic securities are securities for the purposes of securities laws. 41 (2) Any proposal, scheme, transaction, arrangement, activity, product or matter relating to Islamic securities shall comply with the relevant requirements under securities laws and guidelines issued by the Commission.

Section 49 of the CMSA 2015 provides on the registered electronic facility deemed to be recognized market. The section states that, (1) An electronic facility registered under subsection 34(1) of the principal Act before the effective date shall, from that date, be deemed to be a recognized market under this Act. (2) Any condition or restriction imposed on such electronic facility shall be deemed to be a condition or restriction to its registration under subsection 34(1) as introduced by this Act. (3) Unless otherwise notified in writing by the Commission, an application for registration as an electronic facility that is pending immediately before the effective date shall be deemed to be an application for a registration as a recognized market operator

General Legal Issues of Crowdfunding

Sullivan and Ma (2012), Galwin (2012) and Sigar (2012) in their works highlighted their concern for fraud and the risk of their idea being stolen by better funded investors or large corporations. Hence the legal protection should be taken into consideration by the regulator to avoid the future conflict in this regard. Meanwhile Gobble (2012) opines that, loosens regulatory requirements for small businesses in various ways and it can become a precondition for fraud via crowdfunding. In addition, some businesses might even be created as fraud – companies can be started in order to take funding, pay it all as salary and then shut down.

Meanwhile Sigar (2012) expresses his opinion that whilst implementing rules, regulator should carefully consider the ways to protect investors, especially vulnerable ones, who lack “financial sophistication”. According to him, weaker investor protection and potential for fraud in this article is considered as a weakness, because, the ongoing legislative changes are solely subject to crowdfunding, they are not applicable to other means of raising capital.

Valanciene and Jegeviciute (2013) in their work using SWOT analysis highlighted the strength, weakness, opportunities and threat pertaining to crowdfunding. They found that among the strengths of crowdfunding are that it allows entrepreneurs to retain control and make decisions, improves accessibility to capital, and provides a channel to test marketability. Meanwhile the weaknesses aspects include administrative, governance and accounting challenges, lack of advice or handholding from funders, theft of ideas, weak investor protection and potential for fraud. They also identify the opportunities of crowdfunding including the prevalence of an information society, and addressing of a funding gap. Finally the current legal restrictions and the risky nature of small businesses were identified as threats.

These are the additional issues that intent to be examined by the researchers.

(b) The Law and Regulations governing Equity Crowdfunding in Indonesia

The regulations in Indonesia related to financial technology still refer to Indonesian Civil Code (Burgerlijk Wetboek), Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 21 of 2011 concerning the Financial Services Authority. The regulation and supervision of fintech business in Indonesia is carried out by two independent state institutions namely Bank Indonesia (BI) and the Financial Services Authority (hereinafter as referred to as OJK). BI has the duty to regulate and supervise financial technology-based payment system services (SP-Tekfin), while OJK has the authority to regulate and oversee the fintech business outside of monetary and payment systems. OJK is an independent institution that has great authority in the regulation and supervision of financial services (Santi et al., 2017).

Equity crowdfunding categorized as business-aimed crowdfunding. Equity crowdfunding is an offer and sale of equity shares for all investors. Equity means ownership, an investor who buys equity shares becomes the owner of the shares in the company that issues the shares. Such offers can only be made through intermediaries or Service Providers (Freedman & Nutting, 2015; Norita & Harahap, 2018). The concept is the same as shares where the money deposited will become equity or part of ownership of the company in return for dividends. OJK currently only regulates crowdfunding that promises benefit rewards which regulated in Law number 21 of 2011 concerning OJK. Non-investment crowdfunding is regulated in Law number 9 of 1961 concerning the Raising of Funds or Goods. The rapid development of fintech needs to be regulated by law for the development of the industry itself as well as to provide protection to the community as users. The government through the OJK as the body that is authorized to regulate fintech according to its category, has issued technical regulations related to equity crowdfunding fintech namely The Regulation of Financial Services Authority (POJK) No.37 / POJK-04/2018 concerning Fund Contribution Services through Share Offers Based on Information Technology (Equity Crowdfunding) on 31 December 2018. This regulation aims to support startup companies in getting access to alternative sources of funds by selling shares to the public without triggering the requirements of the Initial Public Offering (IPO) rules. After the issuance of POJK No. 37 / POJK-04/2018, per December 2019, OJK issued three permission to three equity crowdfunding platforms: Santara, Bizhare, and Crowddana.

There are several reasons behind the emergence of this equity crowdfunding in Indonesia. Firstly, the development of information technology enables business actors to access business financing alternatives. Secondly, micro, small and medium enterprises (MSMEs) find it difficult to access financing through banks or capital market. Third, the investors want to get benefit from their money rather than only saved in a bank. It should be noted that this MSME in 2017 has a market share of around 99.99% of the total business operators in Indonesia and is able to absorb around 97% of the national workforce (Haryanti, Dewi Meisari, Hidayah, 2018). This means that even though MSME sector seems small, in fact it has a huge impact on the Indonesian economy. Therefore, with the advent of the equity crowdfunding platform, MSMEs can easily access alternative funding for their businesses to grow (scale-up). The opportunity to get fresh funds from the community is certainly at risk. One risk is the failure of a business funded from public money, while funding passes through this equity crowdfunding without any guarantee from the Issuer.

The existence of OJK regulation Number 37/POJK-04/2018 does not necessarily become a comprehensive legal solution for the legal needs of the Indonesian people who are fond of business breakthroughs with equity crowdfunding. Because there are loopholes that allow unclear legal protection for the users. Article 6 of the OJK Law states that one of the regulations and supervision by OJK is in financial service activities in the capital market sector. The definition of capital markets based on the OJK Act is also narrowly regulated and refers to the provisions in Indonesian Capital Market Act (Law Number 8 Year 1995 concerning the Capital Market, 1995: Art. 6(2)). However, there is a gap in OJK Regulation Number 37/POJK-04/2018 with the Capital Market Act, where equity crowdfunding activities are included as financial service activities within the capital market sector. This raises further questions related to equity crowdfunding arrangements, which should have not be included in the definition of the capital market according to the Capital Market Act and the OJK Act, but are included as financial services activities in the capital market sector (Norita & Harahap, 2018: 10).

Therefore, the role of the state through the OJK is to oversee and regulate the implementation of equity crowdfunding in order to minimize all existing risks. The role of the OJK here is indeed not as a guarantor of a particular business but as supervisors and regulators. Based on its article 4 section (1), POJK No. 37/POJK.04/2018 qualifies the Equity Crowdfunding as a financial service activity in the capital market sector. In Law Number 21 of 2011 concerning the Financial Services Authority (OJK), financial institutions are defined as institutions that carry out activities in the sector: (1) Banking; (2) Capital Market; (3) Insurance; (4) Pension Funds; (5) Financial Institutions and (6) Other Financial Services Institutions.

Generally speaking, the concept of crowdfunding in Indonesia is not a new conception. For over the years, Indonesian societies have been recognizing the term of “urunan” (fund contribution) or “patungan” in (Javanese) in their daily life. This means that it is easy for Indonesian societies to accept the concept of crowdfunding as

they consider the concept is in line with the soul of Indonesian societies, which usually called as “gotong royong” (mutual cooperation). President Soekarno once said in his speech before Investigating Committee for Preparatory Work for Independence meeting that the (core) feeling of Pancasila as Indonesian basic principle is Gotong-Royong (Soekarno, 2018: 25).

Gotong Royong means helping or giving assistance for each other (KBBI Online, (n.d.)). It could be in any form, including in the field of economy. Article 33 section (4) of 1945 Indonesian Constitution established that, “the organization of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy. This article becomes the basis that gotong royong is the principle for economic organization in Indonesia.

Crowdfunding may able to interpret Indonesian constitution mandate which instruct the organization if national economy to be based on the principle of togetherness. By using crowdfunding principle, people can conduct gotong royong in funding a project for a certain purpose, either social or profit-based purpose.

The term “crowdfunding” is the derivation of “crowdsourcing” (Gerber et al., 2012:1). It is an unlimited involvement of people, disregard their education background, citizenship, religion or occupation, who willing to contribute or provide a solution to any individual or company’s problem, either being paid or for free (Andriansyah et al., 2016: 2). Crowdsourcing has many forms, one of them is crowdfunding (Kleemann et al., 2008).

Crowdfunding is rooted from two words: crowd and funding. Crowd means “a large group of people who have come together” or a large number of persons especially when collected together . “Funding” is rooted from the word “fund” which means, “a sum of money or other resources whose principal or interest is set apart for a specific objective” (Merriam-Webster. (n.d.). Thus, “crowdfunding” can be defined as the collection of a sum of money (funding) from a large number of people which is derived from the concept of gotong royong. Kleemann (2008) stated that crowdfunding is:
“Crowdfunding is defined as an open call over the internet for financial recources in the form of a monitary donation, sometimes in exchange for a future product, service, or reward. Crowdfunding uses web technologies and existing online payment systems to facilitate transactions between creators (people who request fund) and funders (people who give money).”

Furthermore, Belleflame mentioned that, “Crowdfunding is defined as the request for financial resources on and offline in exchange for a reward offered by the creator, such us an acknowledgment, an axprerience, or a product.” In another sense, it is mentioned that crowdfunding is an activity where individuals, organizations, and companies can raise funds by utilizing the internet (or other media that facilitates a very large number of masses) to finance their respective businesses (United Kingdom Financial Conduct Authority & Authority, 2015).

The existence of Equity Crowd Funding as a phenomenon that develops in the community certainly must be addressed wisely. As the rule of law state (1945 Indonesian Constitution, Art. 1(3)), Indonesian can realize the rule of law the 1945 Constitution if the entire process of governing the government or the state is truly based on the rules contained in the constitution itself (Simamora, 2016). The 1945 Constitution of the Republic of Indonesia as the highest law of the state of Indonesia states that every person has the right to recognition, guarantee, protection, and certainty of law that is fair and the same treatment before the law. (1945 Indonesian Constitution, Art 28 (1)). The role of the state is how to create regulations that can guarantee certainty and fairness for the parties involved in it. The role of the state in creating legal certainty towards ECF activities is manifested through POJK No. 37/POJK.04/2018.

According to Sudikno & Pitlo (2013:2), legal certainty is a protection against arbitrary actions, which means that someone from understanding the rule of law will be able to obtain something that will be expected under certain conditions. Humans need signs about what is and is not allowed. These signs will create legal certainty. The law is in charge of creating legal certainty because legal certainty will guarantee public order. Basically, the law of the nature of the law exists (raison d‘etre) because there is a conflict of interest between people (Mertokusumo, 2010: 39).

The embodiment of legal certainty in the POJK a quo is at least realized in regulating the obligations and limitations that can be done by the parties involved: (1) Organizer, (2) Issuer and (3) Investors. For example, in one of the arrangements, the organizer is required to obtain permission from the OJK before starting its activities (POJK No. 37/POJK.04/2018, Art.5(1)(a)). Publishers are subject to rules about the maximum number of shareholders and the amount of paid-up capital (POJK No. 37/POJK.04/2018, Art.6). Whereas investors are limited to the maximum number of shares purchased per year based on the amount of income. POJK No. 37/POJK.04/2018, Art.42(2)). Of these limitations and obligations, of course, in addition to guaranteeing legal certainty, also guarantees legal protection for the parties involved.

Crowdfunding is one of the financial technology products that gives solution to economic problem. Financial technology itself is a novel financial service model as a development of information technology innovation (Nugroho, et.al., 2019). Hsueh & Kuo (2017) divided financial technology into three kinds: (1) Third party payment systems; (2) Peer to peer (P2P) lending; (3) Crowdfunding. The former means a payment system using the third-party services, such as bank payment services. The second one, P2P lending is a platform to meet the excess of fund party and the lack of funds party through internet. The last is a concept of program published on the internet, where the societies can give a financial support to a certain purpose, and possible to receive a reward or benefit in accordance with the initial agreement.

Crowdfunding is a form of cooperation to raise money in support of businesses initiated by people or organizations. Article 1 number 1 of Indonesian Financial Services Authority Regulation No. 37/POJK-04/2018 states that, “Fund Contribution Services through Equity Crowdfunding, hereinafter referred to as Fund Contribution Services, is a stock offering service carried out by the issuer to sell shares directly to investors through an open electronic system network.” This innovation can be an alternative capital source for small businesses or startups. The public can give the money to the company and exchange it as ownership of shares (Kulsum, 2018).

Users of equity crowdfunding are Issuer and Investor. Issuer is an Indonesian legal entity in the form of a Limited Liability Company offering shares through the provider. Issuer shall not be a company that is directly or indirectly controlled by a business group or conglomerate, it is not a public company or a publicly listed subsidiary, and not a company with an asset of more than Rp 10.000.000.000,00 excluding land and buildings.

Investors are parties who purchase shares of the Issuer through the provider. Investors are legal entities or parties who have experience of investing in the capital market as proven by the ownership of a securities account at least two years before the offering of shares. Investors with an income of Rp 500.000.000,00 per year can only own shares of up to 5% per year, while income of more than Rp.500,000,000.00 per year can own shares of up to 10% per year.

Equity crowdfunding provider is an Indonesian legal entity that provides, manages and operates equity crowdfunding that is registered with the Financial Services Authority of the Republic of Indonesia and is registered as an electronic system organizer at the ministry that organizes government affairs in the field of communication and informatics. Stock offering on equity crowdfunding is conducted through the provider with the total amount of fund through share offering of at most Rp 10.000.000.000,00, provided that the agreement on equity crowdfunding activities is conducted between the provider and the issuer as well as the agreement between the provider and investor.

In simple explanation, the mechanisms of crowdfunding system are as follows: (Jayatiputri, 2019:5)

a. Business actors who need capital or costs for their business activities register themselves to with crowdfunding companies through the provided website or platform (portal).
b. Then, the business actor submits a proposal whose contents describe the type of business activity or project being carried out.
c. A crowdfunding company will bridge investors or business actors by publishing their business plans or projects through a portal accessible by the community as potential investors.

Article 6 of the Financial Services Authority Act states that one of the regulatory and supervisory duties of OJK is in financial service activities in the capital market sector. Previously, this duty was belong to Capital Market and Financial Institutions Supervisory Agency (BAPEPAM-LK). After the issuance of Financial Service Authority Act, in its article 55 section (1) of Transitional Provision mentions, “as of December 31, 2012, the functions,

duties, as well as regulatory and supervisory authority of financial services activities in the sectors of Capital Markets, are transferred from the Minister of Finance and the Capital Market and Financial Institutions Supervisory Agency (BAPEPAM-LK) to OJK". Furthermore, article 70 of OJK Act established that at the time the Act comes into force, the Law Number 8 Year 1995 concerning the Capital Market remain valid as long as it does not contradict to and have not been replaced by OJK Act. Since the Capital Market Act is still applicable now, thus, the duties and authority of OJK within the field of capital market shall be based on the Capital Market Act, unless there is no other rules issued to replace.

In another issue, based on the definition of capital markets in capital market laws, it appears that capital market laws only provide a narrow definition of capital markets. Public offering activities seem to be the main focus in capital market law. Whereas, the definition of a capital market is a place or system for fulfilling the needs of funds for the capital of a company, a market for buying and selling securities that have just been issued (Fuady, 1996:10). In another definition it is also explained that the capital market is an institution where long-term funds, both debt and equity, are traded. Therefore, the place for securities trading should not only refer to the public offering activities, as regulated in the capital market (Purba, 2000). However, article 4 POJK NO 37 / POJK-04/2018 states that this equity crowd funding activity is included as a financial service activity in the capital market sector. This gives rise to a contradiction where equity crowdfunding activities should not be included in the definition of the capital market according to the OJK law, but rather are included as financial service activities in the capital market sector (Norita & Harahap, 2018).

The capital market deals with securities trading. Capital markets provide a way through which companies can raise funds to expand their business or build new ones by issuing securities owned by companies (Norita & Harahap, 2018). Munir Fuady (1996) defines the capital market as a place or a system to meet the needs of funds for the capital of a company, as well as a market where people buy and sell newly issued securities. Meanwhile, according to Victor Purba (2000), the capital market is an institution where long-term funds both debt and equity are traded. Long-term funds are debt usually in the form of bonds, while long-term funds which are their own capital are usually in the form of shares.

The capital market brings together owners of funds with users of funds for investment purposes. Both parties buy and sell capital in the form of securities. Capital or funds traded on the capital market are manifested in the form of commercial paper or securities in the form of shares, bonds or certificates of shares or in the form of other securities or derivatives traded on the capital market (Norita & Harahap, 2018; Nasarudin et.al., 2008)

Table 1 below shows the advantages and disadvantages of business crowdfunding in general.

Table 1: The advantages and disadvantages of crowdfunding

No	Advantages of crowdfunding	Disadvantages of crowdfunding
1	Businesses set a target amount that they want to raise for their project. If this is hit they get every penny.	"Crowdfundable projects are visible, finite and understandable. If your project isn't all three, it's unlikely to succeed." Anne Strachan, Crowdfund UK
2	Successfully crowdfunded projects can get huge amounts of attention, on social media and elsewhere, which can help them grow beyond what the money raised alone could have done.	If the target amount isn't reached, potential investors get their money back and the business goes away empty handed
3	Pitching a project or business through crowdfunding can be a valuable form of marketing	Failed projects risk damage to the reputation of the business and people who have pledged money to them
4	Some businesses raise £100,000s in just a few days, giving them almost instant access to funds	Such a public display of an idea risks others copying it

5	As part of the crowdfunding process the business can get feedback about their idea and how to improve it	Businesses need the time and money to gear up the community, publish their project and bring in investors before any money is raised
6	Crowdfunding is great for niche ideas that wouldn't otherwise have access to a receptive audience or funds	A strong, established existing network is vital to the success of a project. Without it, even the best ideas don't get backing
7	As a result of the crowdfunding process, a business's audience becomes its most loyal customers	Getting the rewards or returns wrong can mean giving away too much of the business to investors
8	"A successful crowdfunding campaign can serve as a positive signal for other funders and can help you attract more funding or funding at better terms." Liam Collins, Nesta.	"A company that has a limited network, no digital or social media presence, or a very complicated product will find it harder to crowdfund." Jude Cook, ShareIn
9	"Feedback from the crowd, such as comments on the characters in the videogame you are developing or changes to the colour options for the watch you want to design can help you refine and develop your product to be even more successful as you are running your campaign." Liam Collins, Nesta.	In order to raise funds through crowdfunding, a business must first find the crowdfunding website (or platform) on which they want to pitch their project. With so many platforms to choose from, this is no easy task.

Source: Premierline Business Insurance Broker, (2014).

(c) Equity Crowdfunding according to the Shariah Perspectives

In the realm of Islamic law, equity crowdfunding activity is included as *muamalah maliyah* activities. The basic principle of *muamalah* is that all forms of *muamalah* are permissible unless there is a postulate forbidding it (Z. Ali 2008: 69). This means that, in the realm of *muamalah*, every Moslem is free to do whatever is desired as long as there is no prohibition rule or Allah does not forbid it based on the Qur'an and Al-Hadith. Islamic law has provided a vast opportunity for the development of forms and types of *muamalah* in accordance with the development of the needs of people's lives, including economic activity in financial institutions. According to Fathurrahman Djamil, to determine the permissibility of a form of *muamalah*, it is not necessary to look for a legal basis in the Qur'an and Al-Hadith, because the original law is "permissible" and not "haram". Therefore, the thing that must be done when doing *muamalah* is to research and search for arguments that forbid, not the argument that allows (Djamil, 2015).

The basic concept of equity crowdfunding is mutual cooperation. In Islam, this concept is termed as *at-ta'awun* or helping each other. As the word of Allah Almighty, "…And please help you in doing righteousness and piety, and do not help in sinning and breaking the law …". (QS. Al-Maidah (5):2). Helping one another in the context of crowdfunding is interpretable to helping each other within the limit of halal activities, while those which violate the provisions of God are prohibited from cooperation.

Sharia crowdfunding is defined as a small nominal fund collection service obtained from the public to fund a business through sharia-compliant online (Prestama, Iqbal, & Riyadi, 2019). Sharia equity crowdfunding is a fund collection service system that is adjusted to sharia principles. The principle of sharia is based on the Al-Qur'an, Al-Hadith, and fatwas issued by the authority that has the authority to determine fatwas in the sharia field, namely DSN MUI. The fatwa issued by DSN MUI was used as a guide in sharia financial transaction activities. The concept of equity crowdfunding is technically the same as providing financial services based on sharia principles by bringing together investors with financing recipients through electronic system providers (Fatwa Dewan

Syariah Nasional-Majelis Ulama Indonesia No: 117/DSN-MUI/II/2018 Tentang Layanan Pembiayaan Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah, 2018).

The suitability of equity crowdfunding to sharia principles can be viewed from aspects that are prohibited, and which are ordered to do. In addition, to paying attention to halal and haram provisions in business, crowdfunding equality must also meet the parameters of the *maqasid al-sharia*, namely the realization of benefit (Yuningsih & Muhammad, 2020: 75). Benefit in business is determined by the contract used and the project funded with the aim of maintaining and meeting the needs for assets owned by everyone (*hifdzul mal*) (Sahroni & Karim, 2015).

The order to obey consists of: First, the contract of the parties must be in accordance with sharia. The validity of the contract depends on the fulfillment of the terms and requirements of agreement. In Chapter III Article 22 of the Compilation of Islamic Economic Law (KHES), the terms of agreement are the subject of the contract, the object of the contract, the purpose of the contract, and consent (*ijab* and *qabul*). The fulfillment of the terms of the contract does not necessarily means the contract be valid. Valid contract shall fulfill the conditions that the contract is free from usury, *fasid* conditions, and *gharar*. If there is no fulfillment of these legal requirements, the contract becomes *fasid* (Anwar, 2007).

The contract between the parties in equity crowdfunding consists of various kinds of contracts. Investor and business actor contracts with profit sharing concepts can use *mudharabah* and *musyarakah* contracts (Indonesia, 2000)Those who use *mudharabah* agreement in equity crowdfunding assume that this contract is seen as a milestone in the Islamic economy in realizing justice with a profit-sharing system based on the initial agreement at the time of the contract. *Mudharabah* agreement applies where the issuer of shares as *mudharib* (business actors) and *shahibul maal* as investors who deposit their funds through electronic intermediaries. Crowdfunding platforms as intermediaries based on the power of attorney or *wakalah* are only subject to platform usage fees. In order not to violate the sharia provisions, the profit and loss sharing ratio must be agreed from the beginning of the agreement. This is one of the advantages of equity crowdfunding when comparing to the concept of sharia that is using a profit-sharing system and the risk is borne by the parties (Ramadhani, 2019).

Different with *musyarakah* contract, this contract is a collaboration agreement with the concept of capital participation from two or more parties in a business. Through this contract, the investor is also the owner. This type of sharia equity crowdfunding is a more affordable stock market model to small and middle class Tripalupi, 2019: 239-240). A very essential difference between *mudaraba* and *musharaka* lies in the amount of capital contribution made. In *mudharabah,* capital only comes from one party, while *musharaka* capital comes from two or more parties (Karim, 2007). The mechanism for the distribution of commissions was agreed at the beginning of the agreement.

Second. Source of financier funds to be submitted. The concept of wealth in the Islamic view must ensure three things. Assets are obtained by means of halal, used for halal production, and distributed halal (Djamil, 2015). Transactions in Islamic law must be known the source of funds. Certainly originating from a halal source. Must not be from funds that are prohibited by Islamic law. To ensure that the capital used by investors in investment is halal, it must be confirmed at the outset that the capital funds to be invested in the business actors are obtained by halal and *thayyib*. Third. Profit sharing between the two parties. After the capital obtained is guaranteed halal, then it is managed by business actors or publishers in a professional and trustworthy manner in order to gain profit. The principle of profit sharing in Islam in general should not be done by way of *maysir, gharar, usury, haram*, and spiritual. Islam only gives a sign that the profit is based on the willingness of both parties stated at the beginning of the agreement. That is the importance of the contract in Islamic law. All transactions carried out must be based on willingness between each party implemented during the *ijab and qabul* process, including the distribution of profits. In the mechanism of electronic fund collection services. then the agreement statement of the contract is made in writing or by checking the specified column (Wulandari, 2019: 2020).

Islamic Crowdfunding in Indonesia that uses the *musyarakah* contract of profit-sharing model is done by applying the profit-sharing ratio (ratio) based on the proportionality principle carried out at the beginning of the agreement (Fatwa Dewan Syariah Nasional No. 08/DSN-MUI/IV/2000 tentang Pembiayaan Musyarakah, 2000). In a *musyarakah* contract that a cooperation agreement between two or more parties to conduct a business (project) aims to obtain profits divided according to the agreed ratio. Cooperation between the parties in sharia

crowdfunding gains and losses is shared. Profit is divided according to the proportion agreed in advance, and the risk of loss is borne by both parties according to the contribution (Roro, Hernoko, & Anand, 2019)..

Fourth. Halal-funded businesses. Islam prohibits transactions that are carried out in an unlawful manner, for example trading *khamer*, pigs, gambling, and unclean objects. Islam also prohibits investment in companies that mix halal and haram goods. Investing in an unlawful place means doing help in sinning and breaking the law. Therefore, crowdfunding must be ensured to be involved in the halal business. Investment with *mudharabah* or *musyarakah* agreements that are also practiced in crowdfunding must be based on the principle of real based economy which requires every monetary activity to be related and run in balance with the real sector. Because financial assets can only grow proportionally to growth in real economic activity. Funding can only be done for certain projects, trade, economy and commercial transactions (Sahroni & Karim, 2015).

Fifth. Platform used. Sharia equity crowdfunding as an intermediary to bring investors together with business actors must ensure that fundraising activities through online are not used to promote business activities that are prohibited from Islamic teachings. Security mechanisms are needed to ensure the legality of transactions in order to provide legal protection for users. The organizer is required to provide honest information in delivering the fund collection service so that users are not disadvantaged. Therefore, the crowdfunding platform must be monitored by the sharia board to ensure that the platform is active according to the sharia concept. This is part of Islamic business ethics which must also be applied in crowdfunding platforms. (Apriliani, Ayunda, & Fathurrochman, 2019).

REFERENCES

Abdullah, S. & Oseni, O.A. (2017). Towards a Shariah compliant equity-based crowdfunding for the halal industry in Malaysia. *International Journal of Business and Society,* 18(S1), 223-240. CROWDFUNDING FOR HALAL MSMEs: EVIDENCE FROM INDONESIA. *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah*, *11*(2). https://doi.org/10.15408/aiq.v11i2.13623

Ali, Z. (2008). *Hukum Ekonomi Syariah*. Sinar Grafika.

Andriansyah, M., Oswari, T., & Prijanto, B. (2016). *Crowdsourcing : Konsep Sumber Daya Kerumunan dalam Abad Partisipasi Komunitas Internet*. 1–6.

Anwar, S. (2007). *Studi Hukum Islam Kontemporer* (Pertama). RM Books.

Abdullah, Z., & Susamto, A. A. (2019). THE ROLE OF INVESTMENT-BASED ISLAMIC

Apriliani, R., Ayunda, A., & Fathurochman, S. F. (2019). Kesadaran Dan Persepsi Usaha Mikro Dan Kecil Terhadap Crowdfunding Syariah. *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah*, *3*(2), 267–289. https://doi.org/10.29313/amwaluna.v3i2.4798

Ashshofa, B. (2004). Metode Penelitian Hukum, Jakarta. In *Rineka Cipta*. PT Ghalia Indonesia. Bijkerk, W. (2014). Risks and Benefits of Crowd-funding. AMCC Training Seminar Tokyo 10 April 2014. https://www.iosco.org/research/pdf/20140410. Accessed 27 April 2020.

Bradford, C.S. **(** 2012). Crowdfunding and the Federal Securities Laws. University of Nebraska-Lincoln, sbradford1@unl.edu. Available at **https://digitalcommons.unl.edu/**

Brown, S. & Eisenhardt, K. (1995). Product development: past research, present findings, and future directions. The Academy of Management Review, 20 (1995), pp. 343-378.

Capital Markets and Services Act 2007. (Amendment 2015).

Editor. (2018). The Advantages of Opening a Crowdfunding Company in Malaysia.

Galwin, W. F. (2012). Comment on SEC regulatory initiatives under the JOBS Act: Title III — Crowdfunding. Retrieved from www.sec.gov/comments/jobs-title-iii/jobs-title-iii.shtml

Gobble, M. A. M. (2012). Everyone is a venture capitalist: the new age of crowdfunding. *Research Technology Management*, 4 (55).

Guidelines on Recognized Markets 2016.

Guidelines on Regulation of Markets under Section 34 of CMSA 2015

https://www.homebusinessmag.com. Accessed 29 April 2020.

Indiegogo, Inc. (2016). The Benefits of Crowdfunding. The Essential Guide- Indiegogolearn. https://www.indiegogo.com. Accessed 27 April 2020.

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Liz, L., (2015). Malaysia's securities commission allows 6 players to launch equity crowdfunding services. Deal Street Asia. Available from **https://mymagic.my/news/malaysias-securities-commission-allows-6-players-to-launch-equitycrowdfunding-services-2/.**

Loo Choo Hong. (2018). Crowdfunding: Issues pertaining to financial reporting assurance in Malaysia. *Journal of Wealth Management and Financial Planning*, 5(June 2018).

Mohd Thas Thaker, M.A. & Pitchay, A.A. (2018). Developing waqf land through crowdfunding-waqf model (CWM): the case of Malaysia. *Journal of Islamic Accounting and Business Research*, 9(3), 448-456.

Mokhtarrudin, A., Masrurah, I. M. and Muhamad, S. C. R. (2017). Crowdfunding as a funding opportunity for youth start-ups in Malaysia. *Pertanika Journal of Social Sciences & Humanities*, 25(S), 139-154.

Mollick E. (2014). The dynamics of crowdfunding: An exploratory study. Journal of Business Venturing. Volume 29, Issue 1, January 2014, Pages 1-16.

Money Business Services Act 2011.

Premierline Business Insurance Broker. (2014). The risks of crowdfunding and how to avoid them. https://www.premierline.co.uk. Accessed 27 April 2020.

Rothwell, R., Freeman, C., Horlsey, A., Jervis, V.T.P., Robertson, A.B. & Townsend J. project SAPPHO phase II. Research Policy, 3 (1974), pp. 258-291.

Sigar, K. (2012). Fret no more: inapplicability of crowdfunding concerns in the internet age and the JOBS Act's safeguards. Administrative Law Review, 2 (64), p. 474-505.

Startups.com. (2020). The Benefits of Crowdfunding. The startups.com platform. https://www.fundable.com. Accessed 27 April 2020.

Sullivan, B., Ma, S. (2012). Crowdfunding: potential legal disaster waiting to happen. Retrieved from Forbes.com <https://www.forbes.com/sites/ericsavitz/2012/10/22/crowdfunding-potential-legal-disaster-waiting-to-happen/#36ad4e0a576c>. Access on May 17, 2020.

Djamil, F. (2015). *Hukum Ekonomi Islam : Sejarah, Teori, dan Konsep* (Kedua). Sinar Grafika.

Dr. johnny ibrahim,SH., M. H. (2006). Teori & Metodologi Penelitian Hukum Normatif. In *Teori Metodologi Penelitian a.* Bayu Media. http://staffnew.uny.ac.id/upload/131808346/pendidikan/metodologi-penelitian.pdf

Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia No: 117/DSN-MUI/II/2018 Tentang Layanan Pembiayaan Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah, 14 (2018).

Fatwa Dewan Syariah Nasional No. 08/DSN-MUI/IV/2000 tentang Pembiayaan Musyarakah, (2000).

Febrina Nur Ramadhani. (2019). Equity-based crowdfunding : alternatif penerapan akad mudharabah berbasis non bank. *Imanensi: Jurnal Ekonomi, Manajemen, Dan Akuntansi Islam*, *4*(2), 9–15. https://doi.org/10.34202/imanensi.4.2.2019.9-15

Freedman, D. M., & Nutting, M. R. (2015). *Equity crowdfunding for investors : a guide to risks, returns, regulations, funding portals, due diligence, and deal terms*. John Wiley & Sons, Inc.

Fuady, M. (1996). *Pasar Modal Modern*. Citra Aditya Bakti.

Gerber, E., Kuo, P.-Y. (Patricia), & Hui, J. (2012). Crowdfunding: Why People are Motivated to Post and Fund Projects on Crowdfunding Platform. *Computer Supported Cooperative Work 2012, Workshop on Design Influence and Social Technologies: Techniques, Impacts and Ethics, Seattle, WA.*, *10*, 10. https://doi.org/10.1145/2530540

Haryanti, Dewi Meisari, Hidayah, I. (2018). *Potret UMKM Indonesia Si Kecil yang Berperan Besar UKM Indonesia*. Ukmindonesia.Id. https://www.ukmindonesia.id/baca-artikel/62

Hendri Saparini, Akhmad Akbar Susamto, M. F. (2018). *Bisnis Halal: Teori dan Praktik* (1st ed.). Rajawali Pers.

Herlina, R. (2017). *Tanggung Jawab Negara terhadap Perlindungan Konsumen Ditinjau dari Hukum Perdata*. Puslitbang Hukum dan Peradilan Mahkamah Agung RI.

Hsueh, S.-C., & Kuo, C.-H. (2017). Effective Matching for P2P Lending by Mining Strong Association Rules. In Proceedings of the 3rd International Conference on Industrial and Business Engineering - ICIBE 2017 (pp. 30–33). New York, New York, USA: ACM Press. https://doi.org/10.1145/3133811.3133823

Jayatiputri, I. D. A. P. (2019). *Urgensi Pembentukan Perundang-undangan tentang Equity Based Crowdfunding dalam Upaya Memberikan Perlindungan Bagi Investor*. Universitas Parahyangan.

Juli, E. (2013). Hukum Islam. In *None* (6th ed., Vol. 12, Issue 02). PT. RajaGrafindo Persada.

Kamus Besar Bahasa Indonesia (KBBI Online), (n.d.), Retrieved May 11, 2020 from

https://kbbi.kemdikbud.go.id/entri/gotong%20royong
Karim, A. A. (2008). *Bank Syariah Analisis Fiqih dan Keuangan* (3rd ed.). PT. RajaGrafindo Persada.
Kleemann, F., Voss, G., Rieder, K. M., Aalen, H., & Günter Voß, G. (2008). Un(der)Paid Innovators: The Commercial Utilization of Consumer Work through Crowdsourcing Psychosoziale Folgen entgrenzter und subjektivierter Arbeit View project PiA-Professionalisierung interaktiver Arbeit View project Un(der)paid Innovators: The Commer. *Technology & Innovation Studies*, *4*(1). https://doi.org/10.17877/DE290R-12790
Kulsum, U. (2018). *Fintech Setuju OJK Mengatur Bisnis Equity Crowdfunding di Indonesia*. Kontan Online. https://keuangan.kontan.co.id/news/fintech-setuju-ojk-mengatur-bisnis-equity-crowdfunding-di-indonesia
Law Number 9 Year 1961 concerning the Raises of Funds and Goods, (1961).
Law Number 8 Year 1995 concerning the Capital Market, (1995).
Law Number 8 Year 1999 concerning Consumer Protection, (1999).Law Number 21 Year 2011 concerning Financial Services Authority, (2011).
Merriam-Webster. (n.d.). Crowd. In *Merriam-Webster.com dictionary*. Retrieved May 11, 2020, from https://www.merriam-webster.com/dictionary/crowd
Merriam-Webster. (n.d.). Fund. In *Merriam-Webster.com dictionary*. Retrieved May 11, 2020, from https://www.merriam-webster.com/dictionary/fund
Mertokusumo, S. (2010). *Mengenal Hukum: Suatu Pengantar*. Cahaya Atma Pustaka.
Mertokusumo, S., & Pitlo, A. (2013). *Bab-Bab tentang Penemuan Hukum*. Citra Aditya Bakti.
M*enawaran saham menggunakan layanan*. *8*. https://hkhpm.com/wp-content/uploads/2019/03/Deborah-Harahap_Naomi-Norita_AILRC2019_FH_UniversitasIndonesia.pdf
Nugroho, A. Y., & Rachmaniyah, F. (2019). Fenomena Perkembangan Crowdfunding Di Indonesia. *Ekonika : Jurnal Ekonomi Universitas Kadiri*, *4*(1), 34. https://doi.org/10.30737/ekonika.v4i1.254
PRESTAMA, F. B., IQBAL, M., & RIYADI, S. (2019). Potensi Finansial Teknologi Syariah Dalam Menjangkau Pembiayaan Non-Bank. *Al-Masraf : Jurnal Lembaga Keuangan Dan Perbankan*, *4*(2), 147. https://doi.org/10.15548/al-masraf.v4i2.264
Purba, V. (2000). *Perkembangan dan Struktur Pasar Modal Indonesia Menuju Era Alfa*. Universitas Indonesia.
Raden Roro, F. S., Hernoko, A. Y., & Anand, G. (2019). the Characteristics of Proportionality Principle in Islamic Crowdfunding in Indonesia. *Jurnal Hukum & Pembangunan*, *49*(2), 455. https://doi.org/10.21143/jhp.vol49.no2.2013
Rosadi, S. D. (2015). *Cyber Law: Aspek Data Privasi Menurut Hukum Internasional, Regional, dan Nasional*. PT Refika Aditama.
Sahroni, O., & Karim, A. A. (2015). *Maqashid Bisnis & Keuangan Islam: Sintesis Fikih dan Ekonomi* (1st ed.). Rajawali Pers.
Santi, E., Budiharto, & Saptono, H. (2017). Pengawasan Otoritas Jasa Keuangan Terhadap Financial Technology (Peraturan Otoritas Jasa Keuangan Nomor 77/Pojk.01/2016). *Diponegoro Law Journal*, *6*(3), 1–20. https://ejournal3.undip.ac.id/index.php/dlr/
Simamora, Janpatar. (2016). Considering Centralization of Judicial Review Authority in Indonesia Constitutional System, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Vol. 21, Issue 2, Ver. V (Feb. 2016) PP 26-32.
Soekanto, S., & Mamudji, S. (2004). *Penelitian Hukum Normatif Suatu Tinjau Singkat*. PT Raja Grafindo Persada.
Soekarno. (2018). *Pancasila Dasar Negara: Kursus Pancasila oleh Presiden Soekarno*. Gadjah Mada University Press.
United Kingdom Financial Conduct Authority, & Authority. (2015). *A review of the regulatory regime for crowdfunding and the promotion of non-readily realisable securities by other media (February 2015)* (Issue February).
Wulandari, F. E. (2019). *Transaki Finance Technology Crowdfunding Perspektif Hukum Ekonomi Syariah (Studi Situs Pada Indogiving Jakarta dan Kadang.in Bandung* (Issue April). Institute Agama Islam Negeri Tulungagung.

Valanciene, L., Jegeleviciute, S., 2013. Valuations of crowdfunding: benefits and drawbacks, Economics and Management, 18(1), 39 – 48.

(b) ***Objective (s) of the Research***
Objektif Penyelidikan

This study embarks on the following objectives :

i) To examine the legal framework of equity crowdfunding business in Malaysia and Indonesia.

ii) To analyse the legal issues and protection to the business owner and investors in equity crowdfunding business in Malaysia and Indonesia.

iii) To study the scope and role of the enforcement authority in Malaysia and Indonesia in monitoring and enforcing the law and regulations of equity crowdfunding.

iv) To examine the Shariah perspective on equity crowdfunding.

v) To make recommendation based on the findings in strengthening the equity crowd funding regulations of Malaysia and Indonesia.

(c) ***Research Methodology***
Kaedah penyelidikan

i) Description of Methodology

Research Design

The design of this study is doctrinal research or conventional legal method. In particular, traditional or conventional legal methods can be divided into four, namely the philosophical; historical; comparative; and critical and analytical method. In order to achieve all objectives, two techniques under critical and analytical method will be used in this study. First, the technique of interpretation of statutes which consists of the literal rule, golden rule, mischief rule and purposive approach will be adopted. Here, the provisions relating to crowdfunding legislations will be analyzed. Second, the doctrine of judicial precedent will also be used in this research to analyze cases that are related to crowdfunding. Additionally, a comparative legal method will also be used as this research involves comparative analysis of equity crowdfunding in Malaysia and Indonesia.

Research Scope
The legal documents that will be the scope for this research in the context of Malaysia, are Capital Market and Services Act 2007, Securities Commission's Guidelines on Regulation of Markets, the Companies Act 2016 and other relevant laws. As for Indonesia, the primary legal sources are among others, Indonesian Civil Code, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 21 of 2011 concerning the Financial Services Authority, Law Number 9 of 1961 concerning Fund Raising, Law Number 8 of 1995 concerning Capital Market, Law Number 40 of 2007 concerning Limited Liability Company and Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises.

For both jurisdiction, the court cases that will be analysed from the year 2015 until 2020.

Types of data

This study will use primary data and secondary data. The primary data for this study are the statutes, regulations, rules, guidelines and cases relating to crowdfunding. Secondary data of this study comprises of books, legal documents, and articles from journals and online resources.

Methods of data collection

Method of data collection for this study is library research. Data will be collected from Sultanah Bahiyah Library and Ahmad Dahlan University Library and also from other online database.

Data Analysis

Generally, the primary and secondary data will be analysed using content analysis. Specifically, the provisions relating to ECF under the Malaysian Capital Markets Act 2007, Securities Commission's Guidelines on Regulation of Markets, the Companies Act 2016 and other relevant laws. As for Indonesia, the primary legal sources is the main or binding legal substance, among others are Indonesian Civil Code, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 21 of 2011 concerning the Financial Services Authority, Law Number 9 of 1961 concerning Fund Raising, Law Number 8 of 1995 concerning Capital Market, Law Number 40 of 2007 concerning Limited Liability Company and Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises. Other relevant laws will be analysed by using interpretation of statutes techniques. While, court cases that relate to ECF will be analysed by using the doctrine of judicial precedent.

In analyzing the relevant statutes, the researchers adopted the rules of interpretation of statutes as follows:

(i) The Literal Rule: interpretation based on the plain, literal meaning of the words used because those are the words the draftsman chose to employ.

(ii) The Golden Rule (Purposive Rule): the interpretation based on the general purpose of the provision and the social, economic and political context.

(iii) The Mischief Rule: the interpretation based on the history of the statute or other relevant documents to see what was wrong with the law or mischief of the law and give solutions to the problems.

The descriptive analysis will be carried out with the purpose of stating the rules and principles of the law regarding ECF and analytical analysis is to investigate deeply, and evaluate every aspect of the factual data in the study. This is important because the researchers can criticize, revise and suggest or propose amendments mechanisms to the law, regulations and policies relating to green environment in smart home. In analysing court cases, the researchers will use the *ratio decidendi* technique.

SIGNIFICANCE OF THE STUDY

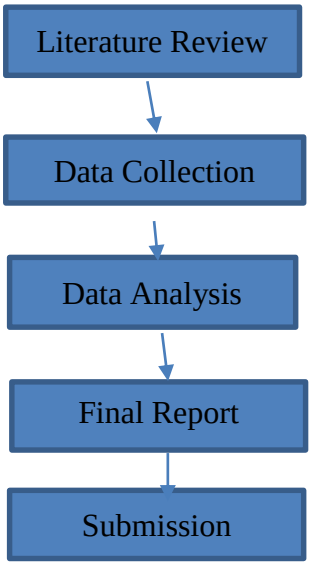
A study on ECF law will benefit several parties such as government, regulators, issuers (entrepreneurs), investors and academics. The findings of this research are hoped to contribute significantly in assisting the government specially the legislatures in creating better legal provisions for the players in crowdfunding.

For regulators like Securities Commissions and OJK, this study might help them to apply just and consistent policies regarding minimum standards, disclosure of material information, the maintenance of corporate governance standards, integrity, accountability, and transparency in dealings. This study might also give benefit to the issuers to ensure that they are abiding the law in the process of raising funds for their businesses through crowdfunding.

For the investors, this study may provide legal solutions and remedies they have been looking for against the practices of crowdfunding. As for the academics, this study will contribute to add to the existing body of knowledge and scholarship on the issue of crowdfunding. The findings of this study may also assist in future research to be conducted in this field.

ii) Flow Chart of Research Activities (Please enclose in the Appendix)

FLOWCHART



iii) Gantt Chart of Research Activities (Please enclose in the Appendix)

ACTIVITIES	START	END
Data Collection	1 November 2020	28 February 2021
Data Analysis	1 March 2021	31 April 2021
Final Report Writing	1 May 2021	31 August 2021
Submission	-	1 September 2021

iv) Milestones and Dates

	2020				2021								
Project Activities	S	O	N	D	J	F	M	A	M	J	J	A	S
Literature Review													
Data Collection (library search), online survey and expert interview (if necessary)													
Data Analysis: Legal data analysis													
Final Report Writing													
Submission of Final Report													
Publication													

(d) ***Expected Results*/Benefits**
Jangkaan Hasil Penyelidikan

i) Novel theories/New findings/Knowledge

New findings on the application of law and regulations of Equity Crowdfunding in Malaysia and Indonesia. It can be a benchmarking to improve the law and regulations in Malaysia and Indonesia.

ii) Research Publications

2 journal articles in index journal

iii) Specific or Potential Applications
Not relevant

iv) Number of PhD and Masters (by research) Students
Not relevant

F	***BUDGET***/BELANJAWAN (SOL, UUM)		
	Please indicate your estimated budget for this research and details of expenditure according to the guidelines attached Sila nyatakan anggaran belanjawan bagi cadangan penyelidikan ini dan berikan butir–butir perbelanjaan dengan lengkap		
	BUDGET DETAILS BUTIRAN BELANJAWAN	***AMOUNT REQUESTED BY APPLICANT*** JUMLAH YANG DIPOHON OLEH PEMOHON	
(i)	**Vote 11000 -** ***Salary and wages*** Upah dan Elaun	*Please specify* Sila nyatakan secara lengkap dengan pecahannya sekali **RM 1500 – Research Assistant (UUM)**	
	BUDGET DETAILS BUTIRAN BELANJAWAN	***AMOUNT REQUESTED BY APPLICANT*** JUMLAH YANG DIPOHON OLEH PEMOHON	
(ii)	**Vote 21000 -** ***Travelling and Transportation*** Perjalanan dan Pengangkutan	*Please specify* Sila nyatakan secara lengkap dengan pecahannya sekali	
(iii)	**Vote 24000 -** ***Rental*** Sewaan	*Please specify* Sila nyatakan secara lengkap dengan pecahannya sekali	
(iv)	**Vote 27000 -** ***Research Materials & Supplies*** Bekalan dan Bahan Penyelidikan	*Please specify* Sila nyatakan secara lengkap dengan pecahannya sekali **RM 500 – Toner and papers for printing documentary data**	
(v)	**Vote 28000 –**	*Please specify*	

	Maintenance and Minor Repair Services Baik pulih kecil dan ubah suai	Sila nyatakan secara lengkap dengan pecahannya sekali	
(vi)	**Vote 29000 -** ***Other Services*** Perkhidmatan ikhtisas, yuran latihan, penerbitan dan percetakan hospitaliti	*Please specify* Sila nyatakan secara lengkap dengan pecahannya sekali **RM 2700 – Publication Fee (2 article journal)** **RM 300 – Kos mesyuarat/bengkel**	
(vii)	**Vote 35000 -** ***Accessories and Equipment*** Aksesori dan Peralatan	*Please specify* Sila nyatakan secara lengkap dengan pecahannya sekali	
TOTAL AMOUNT JUMLAH BESAR		**RM 5000.00**	

Budget Plan (UAD, Indonesia
Total Budget Plan: RM 5000 (± Rp. 17.000.000,-)*
***) 1 RM equals to Rp 3.418,99 (Data per May 16, 2020)**

Type of Item	Item	Unit	Vol	Cost per Unit		Total Cost	
				RM	IDR (±)	RM	IDR (±)
Material Expenditure	Administration	Times	1	146	500.000	146	500,000
Material Expenditure	Stationery	Set	1	147	500.000	147	500,000
Material Expenditure	Translation of the Article	Timer	1	293	1.000.000	293	1,000,000
Material Expenditure	Communication	Package	5	60	200,000	300	1,000,000
Material Expenditure	Preparation of Progress Report	Exemplar	1	147	500,000	147	500,000
Material Expenditure	Preparation of Final Report	Exemplar	1	147	500,000	147	500,000
Travel Transport	Seminar Transport	Person	5	147	500,000	147	2,500,000
Non-Operational Expenditure	Book/Journal Reference	Exemplar	15	30	100,000	450	1,500,000
Non-Operational	Journal Publication	Times	2	585	2,000,000	1.170	4,000,000

Expenditure							
Output Fee	**Analysis Data Free**	**Person**	**5**	**293**	**1,000,000**	**1.465**	**5,000,000**
TOTAL BUDGET PLAN						**5.000**	**17.000.000**

DECLARATION BY PROJECT LEADER
AKUAN KETUA PROJEK

Please tick (√)/Sila tanda (√)

I hereby confess that :
Saya dengan ini mengaku bahawa :

[/] **1.** ***All information stated here are accurate, University has right to reject or to cancel the offer without prior notice if there is any inaccurate information given.*** Semua maklumat yang diisi adalah benar, Universiti berhak menolak permohonan atau membatalkan tawaran pada bila-bila masa sekiranya keterangan yang dikemukakan adalah tidak benar.

[ ] **2.** ***Application of this research is also presented for the other reasearch grants (grant's name and total amount) - (if any)***
Permohonan projek penyelidikan ini juga dikemukakan untuk memohon peruntukan geran penyelidikan dari (nama geran dan jumlah dana) - (jika berkaitan)

_____ _____

Project Leader's Signature/ Date/Tarikh
Tandatangan Ketua Projek

DECLARATION BY DEAN OF SCHOOL / DIRECTOR OF COE/ HEAD OF DEPARTMENT
AKUAN DEKAN PUSAT PENGAJIAN/ PENGARAH COE/ KETUA PTJ

Please tick (√)/Sila tanda (√)

☐ ***Recommended/***Disokong

☐ ***Not Recommended/***Tidak Disokong

***Comments* :**
Ulasan *:*

_____

_____

_____

Dean of School/Director of CoE/Head of Department Signature and Stamp
Tandatangan dan Cop Dekan Pusat Pengajian/Pengarah CoE/Ketua PTJ **:** .....

Date/
Tarikh **:** .....

LAPORAN TEKNIKAL/
TECHNICAL REPORT

MATCHING RESEARCH GRANT

A Comparative Analysis of ECF Regulations in Malaysia and Indonesia

RESEARCHERS
SCHOOL OF LAW
UNIVERSITI UTARA MALAYSIA

PROF. DR. ASMAH LAILI YEON (PI)
PROF MADYA DR CHE THALBI MD. ISMAIL
PROF MADYA DR NURLI YAACOB
PROF MADYA DR MOHAMMAD AZAM HUSSAIN
MADAM ROOS NIZA MOHD SHARIFF

RESEARCHERS
FACULTY OF LAW
UNIVERSITAS AHMAD DAHLAN, INDONESIA

DR. FITHRIATUS SHALIHAH
DESLAELY PUTRANTI
MUHAMMAD FARID WAJDI
UNI TSULATSI PUTRI
MUHAMMAD HABIBIE MIFTAKHUL MARWA

NOVEMBER 2021

CONTENTS

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Prof. Dr. Haim Hilman Abdullah
Deputy Vice Chancellor (Research and Innovation), UUM

Universiti Utara Malaysia and Universitas Ahmad Dahlan for awarding the Matching grant to carry out this research project.

and last but not least

All staff of the Research and Innovation Management Centre, School of Law and Faculty of Law, Universitas Ahmad Dahlan, Indonesia

2.0 EXECUTIVE SUMMARY

Crowdfunding is a way how to raise money through small contributions from a large number of investors using the internet platform (Bradford, 2012). This research will focus to ECF (ECF). ECF (also known as crowd-investing or investment crowdfunding) is a method of raising capital used by startups and early-stage companies. Essentially, ECF offers the company's securities to a number of potential investors in exchange for financing. Each investor is entitled to a stake in the company proportional to their investment.The preliminary findings show that there is a different legal framework of ECF in Malaysia and Indonesia. There are many legal issues pertaining to ECF in Malaysia and Indonesia; (1) registration procedures and its difficulties; (2) privacy and personal data protection; (3) cybercrimes; (4) compliance of public offerings rules and guidelines; and (5) the contract between the issuers and investors; and issuers and Recognized Market Operator. Further, the legal issues of scope and jurisdiction of enforcement authority and ECF from the Islamic perspective. This is a doctrinal study and will adopt the conventional legal method. Findings of the research will benefit the Malaysian Securities Commission, Indonesian Financial Authority, the parties to the contract of ECF (issuers, recognized market operator, investors) and future investors. The expected output of this research is the enhanced ECF legal framework from the aspect of conventional law and Shariah law.

Keywords: *Equity Crowd Funding, Recognized Markets, Internet Platform, Malaysian Securities Commission, Indonesian Financial Authority*

3.0 REPORT

This is a technical report of a Matching research grant which entitled "A Comparative Analysis of ECF Regulations in Malaysia and Indonesia". This is a year project which starts on the 30th November 2020 – 30th November 2021. It includes the discussion on introduction, problem statement, objectives, research methodology, literature review, findings and discussion before it ends with the recommendation and conclusion.

3.1 INTRODUCTION

Crowdfunding is a way how to raise money through small contributions from a large number of investors using the internet platform (Bradford, 2012). It is stated by Bradford (2012) in the United States, crowdfunding sites such as Kiva, Kickstarter and IndieGoGo have proliferated, and the amount of money raised through crowdfunding has grown to billions of dollars in just a few years. Schwienbacher and Larralde (2010) and Mollick, (2014) stated that is a novel method for funding various new ventures, allowing individual founders of for-profit, cultural, or social projects to request funding from multiple individuals, often in return for future products or equity, typically through the Internet.

ECF (ECF) is a new form of fundraising that allows a start-up or other smaller enterprises to obtain capital through small equity investments using online portals to publicise and facilitate such offers to crowd investors (Securities Commission, 2020). The ECF therefore is a framework that enables start-ups and SMEs to access market-based financing through a platform registered with the SC.The top Malaysian companies involve in ECF (ECF) are ATA PLUS Sdn Bhd, Netrove Ventures Group, and Alix Global Sdn Bhd. In Malaysia, the ECF statistics as of 31 December 2019 shows the distribution by fundraising amount RM500,000 and below is 50%, >RM500,000 and up to RM1.5 million is 27% and >RM1.5 million and up to RM3 million is 23%. It consists of 80 successful campaigns, RM73.74 million amount were raised and involved 77 successful issuers (Securities Commission Malaysia, 2020). It shows that the ECF businesses becomes one of the new sources of investment in Malaysia.

It is reported by the SC (Annual Report, 2020), total capital raised through ECF (ECF) in Malaysia grew by a whopping 457% to RM127.73 million last year from RM22.92 million in 2019. According to the SC, 78 issuers had successfully fundraised via 80 campaigns last year, with two issuers fundraising twice within the year. The regulator noted that the majority of issuers are based in Kuala Lumpur or Selangor and that 60% are technology-focused issuers. The campaign sizes in 2020 also shifted towards larger fundraising amounts, with 84% of campaigns raising more than RM500,000. Since 2016, the ECF has fundraised RM199.23 million, benefiting 150 issuers through 159 successful campaigns. The top three sectors in terms of the amount of capital raised in 2020 were the other services activities with RM38.88 million or 31% of the total amount of capital raised. The professional, scientific and technical activities sector saw RM19.96 million (16%), while the information and communication raised RM18.27 million (14%).

In order to regulate the ECF, the Malaysian Securities Commission has introduced new rules in ECF platform registration and provision of good governance for ECF platform operators through Section 377 of Capital Market Services Act 2007 (CMSA) read together with CMSA Subdivision 4, Division 2, Part II and the publication of Guidelines on Recognized Market (GRM) (Item 1.01 GRM). Section 15 (g) of Malaysia Securities Commission Act 1993 clarifies that the function of these regulations is to regulate the ECF's activities and protect the interests of the parties involved, especially investors. ECF platform operators need to satisfy the criteria in the GRM before Securities Commission can issue ECF licenses (Item 2.01 GRM). Since

the launch of ECF regulation, Liz (2015) reported that countless efforts have been done by Securities Commission together with registered ECF platform to educate people and entrepreneurs on the company's alternative financing. In Malaysia there are three types of ECF investors – First, sophisticated investor refers to any person who falls within the categories of investors set out in Part 1, Schedules 6 and 7 of the Capital Markets and Services Act 2007. Second is the angel investor refers to an investor that is accredited by the Malaysian Business Angels Network as an angel investor. And third, retail investor refers to persons who are not sophisticated investors (Securities Commission, 2020).

In Indonesia, crowdfunding has sprung up in 2012 namely Wujudkan.com, a reward based-crowdfunding engaged in the creative industry, Kitabisa.com, Ayopeduli.com, Patungan.net which are donation based-crowdfunding and Gandengtangan.com which is a debt based-Crowdfunding (Nugroho & Rachmaniyah, 2019).

The emergence of start-up companies in Indonesia is one of the catalysts in the development of alternative funding industries. In the financial services industry, one of the technological innovations that can be used by the public is the fund contribution service through share offers based on an information technology. Funds contribution service is one of the products in financial technology (fintech) that brings together stock issuers with investors through electronic systems or information technology. At present the crowdfunding business is growing rapidly until new innovations emerge related to equity offering (*ECF)* (Rosadi, 2015: 91).

The regulations in Indonesia related to financial technology still refer to Indonesian Civil Code (*Burgerlijk Wetboek*), Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 23 of 1999 concerning Bank Indonesia and Law Number 21 of 2011 concerning the Financial Services Authority. The regulation and supervision of fintech business in Indonesia is carried out by two independent state institutions namely Bank Indonesia (hereinafter as referred to as BI) and the Financial Services Authority (hereinafter as referred to as OJK). BI has the duty to regulate and supervise payment system services financial technology (*SP-Tekfin*), while OJK has the authority to regulate and oversee the fintech business outside of monetary and payment systems. OJK is an independent institution that has great authority in the regulation and supervision of financial services (Santi et al., 2017).

ECF categorized as business-aimed crowdfunding. ECF is an offer and sale of equity shares for all investors. Equity means ownership, an investor who buys equity shares becomes the owner of the shares in the company that issues the shares. Such offers can only be made through intermediaries or Service Providers (Freedman & Nutting, 2015; Norita & Harahap, 2018). The concept is the same as shares where the money deposited will become equity or part of ownership of the company in return for dividends. OJK currently only regulates crowdfunding that promises benefit rewards which regulated in Regulation of Financial Services Authority (POJK) No.37 / POJK-04/2018 concerning Fund Contribution Services through Share Offers Based on Information Technology. Non-investment crowdfunding is regulated in Law number 9 of 1961 concerning the Raising of Funds or Goods. The rapid development of fintech needs to be regulated by law for the development of the industry itself as well as to provide protection to the community as users. The government through the OJK as the body that is authorized to regulate fintech according to its category, has issued technical regulation related to ECF fintech namely The Regulation of Financial Services Authority (POJK) No.37 / POJK-04/2018 concerning Fund Contribution Services through Share Offers Based on Information Technology (ECF) on 31 December 2018. This regulation aims to support startup companies in getting access to alternative sources of funds by selling shares to the public without triggering the requirements of the Initial Public Offering (IPO) rules. After the issuance of POJK No. 37 / POJK-04/2018, per December 2019, OJK issued three approvals to three ECF platforms: Santara, Bizhare, and Crowddana.

3.2 PROBLEM STATEMENT AND RESEARCH QUESTION

Problem Statement

Today, there are new ways to access capital, of which crowdfunding is one of them. Crowdfunding is a way to raise money not only for people, but also businesses and charities. It works through individuals or organisations who invest in (or donate to) crowdfunding projects in return for a potential profit or reward. However, investing this way has potential risks although it calculates some benefits as well. Crowdfunding can offer many benefits for micro small Medium entreprenuers (SMEs), but it is not suitable for everyone. Although this type of business is exciting, some might find it time consuming in profiling a project, securing supporters and then implementing ideas.

In the United States for example, crowdfunding poses two issues under federal securities law (Bradford, 2012). First, crowdfunding sometimes involves the sale of securities, triggering the registration requirements of the Securities Act of 1933. Registration is prohibitively expensive for the small offerings that crowdfunding facilitates and none of the current exemptions from registration fit the crowdfunding models. Second, the web sites that facilitate crowdfunding may be treated as brokers or investment advisers under the ambiguous standards applied by the Securities Exchange Commission (SEC). Social networks have been used as a medium for financing films and other performing arts, as well as for charitable solicitations. Crowdfunding can also be used to finance small business entreprises, which, in contrast to other crowdfunding efforts, is a highly regulated activity by virtue of the securities laws. Securities laws are designed to provide investor protection.

The same issues also faced by the ECF in Malaysia because it is regulated through Section 377 of the CMSA 2007 and Guidelines on Recognized Markets where according to section 34 of the CMSA, the Recognized Market Operator are required to register their business with the SC. Therefore, the question to be considered is to what extend the regulation of ECF in Malaysia provide a sufficient protection to investors and business owner?

In Indonesia, rapid development of fintech arises concerns about the legal protection of its users because there is no clear regulation governing fintech. Whether it's related to privacy protection issues or data privacy of users who register themselves in the online platform. Therefore, the issue of privacy protection and data privacy has become an urgent agenda. Various countries have made provisions regarding privacy and data privacy protection, but this is not the case with Indonesia. (Rosadi, 2015)

Another aspect to be concerned is the existence of cybercrimes in internet based transaction. Whether the CMSA 2007 and the enforcement authority, Securities Commission is competent to combat cybercrime in relation to ECF. Businesses that choose to raise funds through crowdfunding especially equity crowdfunding, sell a share of their company to investors. As part of this ownership, some investors expect to have a say in how the business is run. This can be of value to teams looking for expert guidance and advice, however it can be shackling if it holds up progress or takes the business in a different direction to that sought by the original owners. Crowdfunding is not immune to fraud. Scammers are always on the look to scam people in the internet. Fake sites are springing up across the internet, with projects, particularly in

the charitable sector and ECF, being copied and funds diverted to fraudsters. Whether the offences as stated in the CMSA 2007 (section 175 – 181 and section 188) covered the modus operandi used by scammers to manipulate the stock markets?

In Indonesia, there are loopholes that allow unclear legal protection for the users. Article 6 of the OJK Law states that one of the regulations and supervision by OJK is in financial service activities in the capital market sector. The definition of capital markets based on the OJK Act is also narrowly regulated and refers to the provisions in Indonesian Capital Market Act (Law Number 8 Year 1995 concerning the Capital Market, 1995: Art. 6(2)). However, there is a gap in OJK Regulation Number 37/POJK-04/2018 with the Capital Market Act, where equity crowdfunding activities are included as financial service activities within the capital market sector.

This raises further questions related to ECF arrangements, which should have not be included in the definition of the capital market according to the Capital Market Act and the OJK Act, but are included as financial services activities in the capital market sector (Norita & Harahap, 2018). In Indonesia, referring to capital market regulations, ECF cannot be qualified as an activity in the capital market. Capital Market is defined as activities related to public offering and trading of securities, public companies related to the securities issued, and institutions and professions related to Securities (Capital Market Act, art. 1 (13)). With such regulation, ECF certainly cannot be called as part of the capital market because they are not conducting a public offering as in the Indonesia Stock Exchange (IDX). With such arrangement, OJK's legal standing should be questioned in its capacity to manage the ECF that is developing in Indonesia today. If OJK oversees ECF because it is another Financial Services Institution then this is contra legem with qualifications made by OJK itself which places ECF as a financial service activity in the capital market sector.

Whether the same arguments can be applied in the Malaysian context, is another aspect to be considered further. According to section 2 of the CMSA 2007, capital market means the securities and derivatives markets and the capital market products means (a) securities; (b) derivatives; (c) a private retirement scheme; (d) a unit trust scheme; (e) any product or arrangement which is based on securities or derivatives or combination; and (f) any other product which the Minister may prescribed as a capital market product. In terms of the validity of jurisdiction of SC in enforcing the law to ECF is not an issue in Malaysia. However, as the ECF operators, they have to comply with the securities offering rules and regulations as other public companies.

Looking at the profile of the ECF operator, they are SMEs and no doubt in terms of their financial position is not so strong as the public listed companies or public companies. Compliance of law and regulations means their business need to be equipped with good facilities especially the high end technology because ECF is all about e-investment and e-trading. Therefore, to what extend the ECF operator manage to comply with the public offering rules and regulations? Equity crowdfunding deals with securities trading, which in this case is stock. Equity crowdfunding uses an electronic system to match investors and entrepreneurs. The service provider provides a way through which the issuing company can collect funds from investors to expand their business. Investors receive equity in return for their funds and when they buy an existing equity or stock, securities or capital market laws govern the transaction.

Equity crowdfunding is related to securities trading (stocks). While OJK included it as a financial service activity in the capital market sector in POJK No.37 / POJK-04/2018. Thus, of course is an inconsistencies phenomenon between existing regulations, because if the definition of the capital market in the Capital Market Act as reiterated in the OJK Act, then it should be a reference to POJK No.37 / POJK-04/2018 (Norita & Harahap, 2018). The point is, POJK No.37 / POJK-04/2018 is trying to meet the current legal needs of the public for equity crowdfunding, but it is not in line with the higher provisions that previously governed this activity such as the Capital Market Act or the OJK Act itself. The concepts and definitions contained in the Capital Market Act are no longer relevant to the development of today's increasingly complex and diverse legal needs of society. The slowness of the availability of law that accommodates the needs of the society will raise the issue of legal certainty.

Other gaps in the POJK Number 37 / POJK-04/2018 are stipulated in article 45 paragraph (3) and article 54 paragraph (2) of POJK No. 37 / POJK-04/2018. Article 42 paragraph (3) stated as follows: “The agreement as referred to in paragraph (1) may contain provisions concerning the granting of power of attorney to the Service Provider to represent the Investor as the shareholder of the Issuer, including in the general meeting of the Issuer's shareholders and the signing of the deed as well as other related documents.” Previously in Article 42 paragraph (1) was clearly stated that, “The Agreement on the arrangement of Fund Contribution Services between the Service Provider and Investor is set forth in the form of a standard agreement.” If such agreement is valid as a law for the parties involved, according to the Pacta Sunt Servanda principle, the 11 law should contain all the things that should be contained

in a contract or agreement. In addition to the need for legal certainty, strictly speaking is that laws are made in order to create a balance between the parties conducting legal relations in order to realize justice. Justice is the final destination of such agreement. Because justice is a goal that must be upheld so that no party feels disadvantaged.

According to Munir Fuadi (1994: 184) legal protection means protection by law. Further, Rita Herlina (2017: 26) stated that legal protection can be done by: 1) Making rules, which aim to; a) Guarantee the rights of legal subjects, b) Give rights and obligations; 2) Enforce regulations. In these legal relations, investors are legal subjects in their capacity as consumers. It has been explicitly regulated in the Consumer Protection Act that consumer rights are as follows: (Law Number 8 Year 1999 concerning Consumer Protection, 1999: Art. 4) a. Consumers are entitled to compensation; b. Consumers are entitled to security, safety and comfort; c. The consumer has the right to obtain correct information; d. Consumers are entitled to get consumer education; e. Consumers are entitled to protection, advocacy and dispute resolution; f. Consumers have the right to fairness and non-discrimination. The gap in article 45 paragraph (3) POJK No. 37 / POJK-04/2018 concerning Fund Contribution Services through Share Offers Based on Information Technology (Equity Crowdfunding) mentioned above, the regulation of Equity Crowdfunding in terms of agreements as the basis for legal relations as referred to is not clearly regulated about the minimum things that should be contained in the contents of the agreement. The minimum things are as follows: a. Agreement number b. Agreement date c. Identity of the parties d. Rights and obligations of the parties e. The amount of funds contributed and the amount of shares to be owned f. Term or termination of the agreement g. Provisions regarding fines (sanctions) h. Dispute resolution mechanism i. And also the mechanism in the event that Service Provider cannot continue its operational activities.

There is also loophole which allow disadvantages to the Investors, which stated in article 54 paragraph (2) POJK No. 37 / POJK-04/2018 as follows, “The information provided in paragraph (1) is placed on the Service Provider’s website” Meanwhile in the Consumer Protection Act, it has also been explicitly stated that the right to clear, honest and truthful information about the conditions and guarantees of the goods and / services used (Law Number 8 Year 1999 concerning Consumer Protection, 1999: Art. 4(3)). This means that the Service Provider in providing an up-to-date information about the Fund Contribution Service only regulates the provision of the latest information regarding the Fund Contribution Service that is placed on the Service

Provider's website only, whereas for Investors who have registered is not regulated regarding providing the latest information directly via telephone or email so that the provisions have the potential to cause legal uncertainty for Investors. Thus, some of the legal gaps that have been presented about legal uncertainty in POJK No.37 / POJK-04/2018 by itself are contrary to the purpose of legal protection.

In regards to the Shariah issues of ECF in Malaysia, Mohd Thas Thaker and Pitchay (2016), proposes a viable alternative model for waqf institution as a source of financing by using crowdfunding. This method of crowfdunding-waqf model is able to provide waqf institution in Malaysia to meet their liquidity constraint in developing waqf land. However, Abdullah and Oseni (2017) identified several Shariah issues pertaining to crowdfunding. Among them is regarding sources of funds for halal Small Medium Enterprises (SMEs) which is questionable in term of Shariah-compliant. This is because, though there are specific regulations in investment 12 in securities relating to purification of funds and relevant screenings for Shariah-compliant investments, there is no regulation of interest-bearing loans taken by Halal SMEs from conventional banks. They also suggest the respective authority to introduce the new legal framework for equity crowdfunding, and propose potential Shariahcompliant equity crowdfunding model based on existing modes of financing commonly used in the Islamic financial services industry. Based on Global Religious Future data in 2020 the number of Muslim population reached 229.6 million or around 87.0% of the total population of Indonesia.

In the construction of Islam the consequence of a Moslem is to implement Islamic teachings which include aqeedah, morals, and sharia which consist of worship and mu'amalah (Ali, 2007: 32). Moslem awareness level to meet the teachings of religion in the field of muamalah Maliyah (property) began to increase in the last few decades, especially in Muslim countries. It was proven by the rapid development of the halal industry, especially the sector of Islamic financial institutions where Indonesia at the world level occupies the 6th position after Malaysia, Iran, Saudi Arabia, United Arab Emirates, and Kuwait (Saparini, Susamto, & Faisal, 2018: 31). Especially in the era of the industrial revolution 4.0 began to appear digital lifestyles such as the rise of sharia-based financial technology. Investment-based crowdfunding in its development has the driving force towards the progress of the halal industry in Indonesia (Abdullah & Susamto, 2019: 289). The positive value from this phenomenon is, the community began to be interested in earning income by doing investment in accordance with sharia regulations. OJK Regulation Number 37 / POJK.04 / 2018 concerning Fund

Contribution Services through Share Offers Based on Information Technology, has set the mechanisms and a sense of security for the public who want to make sharia equity crowdfunding as one of the investment instruments for small and medium investors. However, the POJK has not yet regulated in detail what kinds of business are permitted and prohibited, the source of funds used by investors for investment is halal or haram, and needs to be reaffirmed the model of commission distribution, so as not to harm the parties. Therefore, to see its compliance with the principles of sharia, equity crowdfunding must be ensured in line with the principles of Islamic law sourced from the Qur'an and Al-Hadith, as well as fatwas that have been issued by the competent authorities in the field of sharia. Based on some of the explanation above, related to POJK regulation NO.37 / POJK-04/2018 to Capital Market Act, Consumer Protection Act and equity crowdfunding in relation to the concept of shariah, the researchers conclude that there is a need for more in-depth research regarding this matter.

Research Questions

1. What is the legal framework of ECF in Malaysia and Indonesia?
2. Whether the law and regulation of ECF in Malaysia and Indonesia are sufficient to protect the business owner and the investors whom participate in the ECF?
3. Whether the scope and role of the enforcement authority in Malaysia and Indonesia in monitoring and enforcing the law and regulations of ECF is sufficient?
4. Whether the ECF is in accordance with the Shariah principles?

3.3 RESEARCH OBJECTIVE

This study embarks on the following objectives :

i. To compare the legal framework of ECF business in Malaysia and Indonesia.

ii. To analyse the legal issues and protection to the business owner and investors in ECF business in Malaysia and Indonesia.

iii. To study the scope and role of the enforcement authority in Malaysia and Indonesia in monitoring and enforcing the law and regulations of ECF.

iv. To examine the Shariah perspective on ECF.

v. To make recommendations based on the findings in strengthening the ECF regulations of Malaysia and Indonesia.

3.3 RESEARCH METHODOLOGY

Research Design

This is a qualitative study and it is focused on doctrinal research or conventional legal method. In particular, traditional or conventional legal methods can be divided into four, namely the philosophical; historical; comparative; and critical and analytical method. In order to achieve all objectives, two techniques under critical and analytical method will be used in this study. First, the technique of interpretation of statutes which consists of the literal rule, golden rule, mischief rule and purposive approach will be adopted. Here, the provisions relating to crowdfunding legislations will be analyzed. Second, the doctrine of judicial precedent will also be used in this research to analyze cases that are related to crowdfunding. Additionally, a comparative legal method will also be used as this research involves comparative analysis of ECF in Malaysia and Indonesia.

Research Scope

The legal documents which are the scope of research in the context of Malaysia Capital: the Market and Services Act 2007, Securities Commission's Guidelines on Regulation of Markets, the Companies Act 2016 and other relevant laws. As for Indonesia, the primary legal sources are among others, Indonesian Civil Code, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 21 of 2011 concerning the Financial Services Authority, Law Number 9 of 1961 concerning Fund Raising, Law Number 8 of 1995 concerning Capital Market, Law Number 40 of 2007 concerning Limited Liability Company and Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises.

For both jurisdiction, the court cases that will be analysed from the year 2015 until 2020.

Types of data

This study uses primary data and secondary data. The primary data for are statutes, regulations, rules, guidelines and cases relating to crowdfunding. Secondary data of this study comprises of books, legal documents, and articles from journals and tertiary data which referred to online resources.

Method of data collection

Method of data collection for this study is library research. Data were collected from Sultanah Bahiyah Library and Ahmad Dahlan University Library and also from other online database.

Data Analysis

Generally, the primary and secondary data were analysed using content analysis. Specifically, the provisions relating to ECF under the Malaysian Capital Markets Act 2007, Securities Commission's Guidelines on Regulation of Markets, the Companies Act 2016 and other relevant laws. As for Indonesia, the primary legal sources is the main or binding legal substance, among others are Indonesian Civil Code, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 21 of 2011 concerning the Financial Services Authority, Law Number 9 of 1961 concerning Fund Raising, Law Number 8 of 1995 concerning Capital Market, Law Number 40 of 2007 concerning Limited Liability Company and Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises. Other relevant laws were analysed by using interpretation of statutes techniques. While, court cases that relate to ECF were analysed by using the doctrine of judicial precedent.

In analyzing the relevant statutes, the researchers adopted the rules of interpretation of statutes as follows:

(i) The Literal Rule: interpretation based on the plain, literal meaning of the words used because those are the words the draftsman chose to employ.

(ii) The Golden Rule (Purposive Rule): the interpretation based on the general purpose of the provision and the social, economic and political context.

(iii) The Mischief Rule: the interpretation based on the history of the statute or other relevant documents to see what was wrong with the law or mischief of the law and give solutions to the problems.

The descriptive analysis was carried out with the purpose of stating the rules and principles of the law regarding ECF and analytical analysis is to investigate deeply, and evaluate every aspect of the factual data in the study. This is important because the researchers critically analysed, revised and proposed amendments mechanisms to the

law, regulations and policies relating to ECF in Malaysia and Indonesia. In analysing court cases, the researchers used the *ratio decidendi* technique.

Significance of Research

A study on ECF law will benefit several parties such as government, regulators, issuers (entrepreneurs), investors and academics. It hope that the findings of this research can contribute significantly in assisting the government specially the legislatures in creating better legal provisions for the players in crowdfunding.

For regulators like Securities Commissions and OJK, this study might help them to apply just and consistent policies regarding minimum standards, disclosure of material information, the maintenance of corporate governance standards, integrity, accountability, and transparency in dealings. This study might also give benefit to the issuers to ensure that they are abiding the law in the process of raising funds for their businesses through crowdfunding.

For the investors, this study may provide legal solutions and remedies they have been looking for against the practices of crowdfunding. As for the academics, this study will contribute to add to the existing body of knowledge and scholarship on the issue of crowdfunding. The findings of this study may also assist in future research to be conducted in this field.

3.4 LITERATURE REVIEW

International History of Crowd Funding

Crowdfunding has a long and rich history. The past decade has shaped modern day crowdfunding and contributed to the recent surge in crowdfunding activity started from 1997 in the United States of America (startup.com, 2021). The first recorded successful instance of crowdfunding occurred in 1997, when a British rock band funded their reunion tour through online donations from fans. Inspired by this innovative method of financing, ArtistShare became the first dedicated crowdfunding platform in 2000. Shortly thereafter, more crowdfunding platforms began to emerge, and the crowdfunding industry has grown consistently each year.

The crowdfunding industry has quickly emerged as a popular option for entrepreneurs to validate their ideas, gain exposure, and gain funding. Crowdfunding revenue tripled from $530 million in 2009 to $1.5 billion in 2011 and is expected to continue rapid growth in the coming four years. Crowdfunding boasts a 74% compounded annual growth rate. It is an incredibly important funding option because other funds (such as Small Business Association loans) have become significantly less available in the past few years.

In April of 2012, President Barack Obama signed the Jumpstart Our Business Startups (JOBS) Act into law. Also known as “the crowdfunding bill,” the JOBS Act aims to lessen regulation burdens on small businesses and has legalized equity crowdfunding. This includes removing the ban on general solicitation that prevents entrepreneurs from publicizing that they’re raising money. Though the JOBS Act was signed into law in April of 2012, the Securities Exchange Commission is still in the process of setting regulations to ensure that both investors and entrepreneurs remain protected. Regulations are anticipated to be finalized in early 2013.

The Fundable platform launched in 2012 to help entrepreneurs fund and grow their business through rewards and equity crowdfunding. Fundable was founded by serial entrepreneurs Wil Schroter and Eric Corl. It can be observed here that, crowdfunding had been paid attention in the United Staes of America long ago. The country further developed the legal protection for both the investors and entrepreneurs. It also recognised several official platform for these crowdfunding activities.

Historical development of Equity Crowdfunding in Malaysia

Previously, entrepreneurs who want to expand their business and need additional capital injections can get the information from various agencies which offer financing facilities. The agencies which offer financing facilities for business expansion are MARA, TEKUN, SME Bank, CGC and others. Raising funds from public started only after 2015 when the 2015 Amendment Act came into force, in which the Securities Commission is empowered to administer this activity.

There are several online platforms registered by the Securities Commission Malaysia. To date, 10 ECF platforms have been registered. ECF allows these small businesses to offer equity in their companies to investors, who in turn invest in the idea

they see potential in. With ECF, investors have the opportunity to diversify their investments beyond the traditional asset classes.

Malaysian ECF platforms have seen significant growth in line with the government's call for financial services providers to embrace technology to develop a more inclusive, innovative and efficient capital market. As of December 2019, RM73.74 million investments was raised, with 80 successful campaigns and 77 successful issuers. The investment demographic revealed that 46% of the participants were below the age of 35 and 52% of the investment came from the retail sector.

In recent years, crowdfunding has emerged and is steadily gaining popularity as an alternative source of financing for various ventures. What in the beginning may seem like a trend embraced only by start-ups desperate for cash.

To have an efficient capital market, several legislations were drafted which govern the management of platform and funds, management of Islamic capital market and so on. Among the laws to be explained are in Capital Markets and Services Act 2007 which governs on the registration of the crowdfunding platform and the management of the funds.

Next, is the Capital Markets and Services Act 2007 which governs the duties of the operators of the platform and provides a significant law on Islamic Capital Market Products. While the Guidelines on Recognized Markets 2021 further strengten the framework for the platforms, their facilities and additional requirements applicable to crowdfunding operators. There are also several other statutes to be analysed such as the Securities Commission's Guidelines on Recognised Markets 2021 (GRM 2021) and the Companies Act 2016 in relation to the roles and duties of the directors of the platform company.

a. Legal issues and protection of ECF in the capital markets

Equity crowdfunding, also called "crowdinvesting", "investment crowdfunding", or "crowd equity".Equity is the financial fuel of the innovation economy. There are two main types of purchasers who fuel startup development through their investment in equity securities: angel investors and venture capitalists (Oranburg, 2015).Equity crowdfunding is a mechanism when investors, in exchange for financing a certain project, get stocks. Investment crowdfunding can be debt based (also called "P2P","marketplace lending" or"crowdlending") or equity-based, or it can follow other models, including profit-sharing and hybrid models. The term equity crowdfunding is

often used to describe crowdinvesting into both debt- and equity-based instruments. Debt-based crowdfunding emerged as an investment vehicle in 2005 in the U.K. (Zopa) and a year later in the U.S. (Lending Club). The debt version of crowdfunding lets individual borrowers apply for unsecured loans (not backed by collateral) and, if accepted by the platform, borrow money from "the crowd", then pay it back with interest (Freedman, 2015).

According to Izwan Partners (2021) there are six key legal issues to consider before starting the ECF campaign. These refers to firstly, fundraising gameplan where it requires more bandwidth in terms of time that needs to be allocated to join publicity and marketing roadshows organised by crowdfunding platforms, duration/timeline of fundraising. The second issue is protection of intellectual property assets and thirdly, is the management of investment accounts. Fourthly, management of capitalization records, fifthly, agreement between the cofounders and key team members and lastly records and filings.

Furthermore it is open to the potential lawsuits. Lawsuits arising from failed business ventures can occur. Project owners can be accused of fraud, breach of contract, or mismanagement. Although each investor contributes a very small amount and it may be cost prohibitive to pursue legal claims, they can file complaints to regulatory agencies that might lead to investigations (Sadzius & Sadzius, 2017).

Different countries' financial market players are monitored by financial regulators or securities regulatory agencies (the Central Bank of the Republic of Lithuanian (LB) in Lithuania, theFinancial Conduct Authority (FCA) in the U.K., the Securities and Exchange Commission (SEC) in the U.S., theAutorité des marchés financiers (AMF) in France, etc.). However, the possibility of fraud always exists due to such problems as fake websites, fictional charities, Ponzi schemes (Šadžius, 2005).Naturally, new market players provoke even bigger competition in certain areas such as payment and small credit, and thus, some of those services are being provided less frequently by banks.Considering the recent surface of this financing method referred to as crowdfunding and keeping in mind that the current EU legislation was not designed having regard to these businesses, it can be asserted that there was a clear risk of varying interpretations of the legislation. Furthermore, because of the novelty and a wide range of business models it was unclear which law to apply or what

potential EU legislation was applicable and the rules or guidelines on how they should be applied (Sadzius & Sadzius, 2017)

b. Data protection and privacy legal issues in relation to ECF

Types of legal violations of personal data and privacy

Legal violations of personal data and privacy are carried out by accessing, storing, and manipulating personal computers connected to the internet (Butarbutar, 2020, Kantaatmadja et al, 2002). The question raised in data protection and privacy study is how personal data should be protected and can only be used for the commercial interests of one party, which is closely related to consumer protection (Mateescu, 2015). Moreover, as a type of alternative finance, peer-to-peer (P2P) lending requires access to personal data (Butarbutar, 2020, Mokhtarrudin et al., 2017). Specifically referring to this matching grant, it focuses on how Malaysian laws protect the abuse of personal data exchange, especially in peer-to-peer (P2P) lending platforms. The public should be made aware of the importance of the regulation of personal rights protection (privacy rights).

Looking at GC & Others v CNIL [2019] EUECJ C-136/17, the court was asked a number of questions, all of which broadly related to the question of how the prohibitions on processing sensitive personal data under the Directive applied to search engines. The claimants wished to have various results from searches of their names dereferenced from Google's search results. The Court concluded that there was no blanket prohibition on the processing of sensitive personal data by search engines under the Data Protection Directive, thus refusing to compel the dereferencing of results.

ECF activities are business activities on the internet, where investors as stakeholders must be considered by the organizer and publisher who sell their shares through online sites. ECF data protection and privacy becoming more essential because advances in information technology have made it possible for personal data to be accessed internationally by anyone. However, the principle of privacy must take precedence over the principles of freedom of information. In connection with the international aspect of transborder data flow (TDF) (Munir, 1999), countries need international regulations on TDF (Kantaatmadja, 2002).

There are many decisions issued by Malaysian commissioners regarding violations of personal data protection and privacy (Chambers & Partners, 2019). In November 2016, the PDPC requested the Malaysian Communications and Multimedia Commission (MCMC) to block websites under Section 130 of PDPA 2010 for the collection of unlawful personal data (Chambers & Partners, 2019).

Further, in 2018, the PDPC imposed a fine of MYR10,000.00 on employment agencies for processing personal data without obtaining a registration certificate from the Commissioner (Chambers & Partners, 2019).

Collection of personal data

As Equity Crowdfunding (ECF) is an online fundraising platform, it is undoubtedly clear that the personal data of the platform users will be collected by the platforms. These platforms will then ensure that the personal data are collected properly, and the privacies of these users are well protected. In order to ensure that the process of the collection of these personal data is lawful, the platforms will collect the data pursuant to the Personal Data Protection Act 2010.

As provided in Section 4 of Personal Data Protection Act 2010 ("the Act"), "personal data" is defined as information concerning commercial transactions which is being processed by means of equipment operating automatically in response to instructions given for that purpose which relates to the data subject, who is identifiable from that information or together with other information which the data user is holding. This section also defines the term "collect" whereby, it stated that it is an act where the personal data comes under the control of the data user. In the context of ECF, the data subject is the investor, while the data user is the controller of the personal data in the ECF platform. Hence, when the investor registers himself as an investor using the online website, the personal data will automatically enter into the hands of the ECF platform controller. At this stage, the personal data is deemed to be collected by the data user.

Generally, the personal data which will be collected from the investors are as follows, details of identifications, addresses, contact information, bank account information, IP address (information of internet browser), financial status, occupation details etc (Privacy Policy c, 2020). The collection of data will be done through a several means. Firstly, the data will be collected from the investors when the investors voluntarily provide his personal data to the ECF platform and thus, it is noted that the

investor had consented to disclose his personal data to the platform. Next, personal data will be collected when the investor contacts or request the platform to contact the investor; when the investor accesses to the website of the online platform; or use or request for services (Privacy Policy c, 2020).

Butarbutar, (2020) mentioned that Malaysia's Personal Data Protection Act 2010 (PDPA 2010) not only protects personal data but also imposes sanctions and this has been implemented since 2013. Therefore, P2P lending platforms operation must be required to comply with the laws and regulations that are relevant to their activities, locations, and legal structures. The increasing growth of P2P lending platforms has given importance to conduct a study regarding personal data protection.

In 2016, the SC had established management responsibilities in dealing with cyber risks, including: (1) maintaining the confidentiality and sensitivity of entity data; (2) protecting information vulnerabilities and operating systems of the entity; (3) preventing existing and future cyber threats (Securities Commission Malaysia, 2016a).

Usage and disclosure of personal data

The personal data of the investors collected by the ECF platform during the subscription or registration of the services can be used for some lawful purposes such as to provide and maintain services, to notify the investors about changes to the services, to gather analysis or useful information for improvement, to inform the investors about the information, special offers and news of the goods and services offered by the platform (Privacy Policy c, 2020) and any other purposes for business especially for marketing. Generally, the investors are deemed to have consented to the usage of their personal data when they register or subscribe the services given by the platform (Privacy Notice-LEET Capita, (n.d.)). However, the word "use" defined under Section 4 of Personal Data Protection Act 2010 does not include the act of collecting or disclosing the personal data. Thus, it can be noted that the consent given by investors for usage of the data does not means that they consented to the collection and disclosure of their personal data by the ECF platform.

The personal data of investors shall be kept private and confidential and cannot be disclosed by the ECF platform to any third party (Privacy Policy c, 2020) unless the purpose of disclosure is in pursuant to the Personal Data Protection Act 2010. According to Section 8 of the Act, the ECF platform can disclose the personal data for the purpose stated during the collection of the said data or any other purpose directly

related to it. It includes the disclosure of data to some third party such as the platform's trustee, banks, financial institutions, issuers, agent, contractor, associated companies and other related parties (Privacy Notice-LEET Capita, (n.d.)). They cannot disclose the data for any purpose other than what they specify during the collection of data unless the investors have given their consent to the disclosure.

For instance, one of the ECF platforms in Malaysia, MyStartr platform had set out some clauses in privacy policy where they will disclose their investors' personal data if they are required or permitted by the law to do so; or they are authorized by the court's order or law enforcement agencies to disclose the information (Privacy Notice-LEET Capita, (n.d.)). Although these clauses does not fall under the disclosure principle stated under Section 8 of the Act, but they came within the exceptional circumstances which allowed such disclosure to be done under Section 39 of the Act.

Storage and retention of personal data

Any personal data that has been collected and used as part of the ECF activity shall be protected and keep privately and confidentially, to prevent any misused or unlawful disclosure of data for wrongful purpose. The retention of data shall be acknowledged and informed by the ECF operator to the platform users and investors at the beginning stage as for their knowledge on such retention. Such retention of personal data can be stored electronically or in paper form (Privacy Notice-LEET Capita, (n.d.)). Depending on the nature of the platform, either in Malaysia or other countries outside Malaysia. For instance, MyStartr Platform mentioned that the personal data may be stored in places other than Malaysia due to where some of their digital storage facilities and server providers might be located in such other countries other than Malaysia (Privacy Policy c, 2020).

As mentioned, each platform must carefully evaluate the risks associated with privacy rights and balance the protection of personal credit information. Hence, each platform shall be taken sufficient security measures in all circumstances to ensure the personal data and any other sensitive information are well protected when being stored. According to Section 9(1) of the Act, when processing personal data, data users should take practical steps to protect personal data from any loss, modification, unauthorized access or disclosure, by taken into account on the nature of personal data and potential damage that may cause to the owner of the personal data. Equipment for the retention and places where personal data is stored should also

include sufficient security measures. These measures are to ensure the security of personal data, as well as the integrity, reliability and ability of personnel to have access to collected personal data. The platform operator shall be responsible for any loss or damage occurs to the owner of the personal data due to the improper retention of the data.

Securities of Personal Data Provided by the ECF Platforms

ECF platforms take reasonable measures to safeguard the personal data security whether in electronic or physical form. The measures are taken to avoid your personal data from improper or unauthorized access, disclosure, use, appropriation, destruction, modification and loss. For the security of personal data and sensitive information collected, security measures to keep them confidential may be held by the ECF platform through implementation of industry standard SSL or SET protocols (Privacy Policy a, 2020).

However, it is important to note that the transfer of personal data is at his or her own sole risk once the investor has acknowledged or consented that communications through the web are inherently insecure. ECF usually does not warrant, guarantee, represent or otherwise reassure that the provided personal data will not be accessed, used, copied or disposed in circumstances of breach of security measures. The ECF or any of its affiliates cannot be held liable for any damage or loss as a consequence of the breach. As far as reasonably possible, all the affected persons will be promptly notified in the case of such a breach. Any damage or loss, misuse, theft or other personal data compromise due to the direct or indirect of unauthorized use or access to any electronic devices used to access or use the service website, the ECF will not hold the responsibilities.

c. Cybercrimes legal issues and protection which are related to ECF

Cybercrime is the word that are common nowadays. However, there is still no precise and clear definition of cybercrime in academic parlance (Sarre, Lau & Chang, 2018). Sometimes, it is called ‘electronic crime,’ ‘computer crime,’ ‘computer-related crime,’ ‘hi-tech crime,’ ‘technologyenabled crime,’ ‘e-crime,’ or ‘cyberspace crime’ (Chang, 2012). According to Britannica Dictionary, computer crime or cybercrime can be defined as the use of a computer as an instrument to further illegal ends, such as committing fraud, trafficking in child pornography and intellectual property, stealing

identities, or violating privacy. Meanwhile, Merriam-Webster dictionary defined cybercrime as criminal activity (such as fraud, theft, or distribution of child pornography) committed using a computer especially to illegally access, transmit, or manipulate data. According to Aghatise (2006) cybercrime is defined as crimes committed on the internet using the computer as either a tool or a targeted victim. While Arora (2016) said that cybercrime is referred to the act of performing criminal act using cyberspace as the communication medium.

Generally, cybercrimes can be of type I and type II. Type I cybercrime is generally a single event from the perspective of the victim. Type II cybercrimes, on the other hand refers to on-going series of events, involving repeated interactions with the target (Harpreet, 2013). These activities are such as computer related frauds, cyber defamation, cyber harassment, child predation, identity theft, extortion, travel scam, stock market manipulation, complex corporate espionage, planning or carrying outterrorist activities, health care, insurance/bonds frauds, auction frauds, fake escrow scams, blackmail, non-delivery of merchandize, newsgroup scams, credit card frauds, email spoofing, salami attacks, data didling, sabotage web jacking, spamming, DoS, software piracy, forgery etc (Arora, 2016).

In Malaysia, the legal framework which is related to cybercrimes consists of the Computer Crimes Act 1997 (CCA 1997), Communication and Multimedia Act 1998 (CMA 1998), Penal Code, Personal Data Protection Act 2010 (PDPA 2010), Defamation Act 1957 (DA 1957), Sedition Act 1948 (SA 1948), Copyright Act 1987 (CA 1987) Strategic Trade Act 2010 (STA 2010) and Digital Signature Act 1997 (DSA 1997).

For example, according to Yik (2018), CCA 1997 captures hacking activities such as creating viruses or malware for the purpose of hacking; hacking into Wi-Fi connections or credit card information by using hacking tools; denial of service attacks (this is where hackers attempt to prevent users from accessing the network service, which could be motivated by business interests or blackmailing); and electronic theft (where hackers or misusers steal a business-sized, company-sized, or even industrial-sized database). The punishments, depending on the type of offence committed, ranges from a fine of RM25,000 to RM150,000, or imprisonment of 3 to 10 years, or both.

CMA 1998 was an enactment intending to regulate the granting of licenses for the network service providers. Malaysia Communications and Multimedia

Commission (MCMC) has the power to direct its licensees to deny access of netizens to websites in order to prevent the commission or attempted commission of an offence under the CMA 1998. Section 233 of the CMA is one of the notable provisions against making offensive statements online which are *'… obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person'.* Sections 231, 232, 234 and 235 of the CMA against hacking, including communication interception and tamper with network facilities or Wi-Fi, and Section 236 against possession devices/software used to commit cybercrimes (e.g. network/ Wi-Fi hacking devices, stealing of credit card information from devices (Yik, 2018).

Phishing is a form of identity theft or fraud. It often happens by emails as communication from purported government agencies, banks or reputable companies in order to induce individuals to reveal personal information, such as passwords and credit card numbers. Despite the obvious wrong by committing phishing or identity theft or fraud, in Malaysia, there is no specific provision against such crime. However, according to Yik (2018) Section 416 of the Penal Code, which provides against 'cheat by impersonation', or rather, pretending to be someone else with intention to cheat, serves to counter such crime.

Section 9 of the PDPA 2010 imposes a strict liability on data user who processes personal data in a commercial context, such as banks, telecommunication companies, ISPs or application service providers, to take practical steps to protect the personal data from any loss, unauthorized or accidental access or disclosures, alteration or destruction (Yik, 2018). Failing which may expose the data user to prosecution under the PDPA 2010 and subject to criminal penalty with a maximum fine of RM500,000 or up to three years in jail, or both.

Among the literature regarding cybercrime is by Sarre, Lau, & Chang (2018) who had written on current trends to cybercrime. In this article, the definition, classification and ways how to curb the spread of cybercrime has been discussed. While Arora (2016). explore internet crimes and its behaviours. This article also analyzed categories of cybercrimes, various internet crime scheme and behaviour of criminals to perform the cybercrimes.

Ajayi (2016) discussed on the challenges to enforcement of cyber-crimes laws and policy. He focuses his writing to motivations for cybercrime, cybercrime statutes, and challenges to enforcement of cybercrime. Furthermore, Appudurai & Ramalingam,

(2007) wrote on computer crimes as a case study of what Malaysia can learn from others. This article focuses on hacking as a criminal act, and compares the Malaysian CCA 1997 with legislation from other countries. This article also touches on current computer crime situation in Malaysia and the obstacles in enforcing the Act. The paper concludes with recommendations for Malaysia in terms of policy, practices and penalties.

Pavlik (2017) focuses his writing on cybercrime, hacking, and legislation. In this article, the definition of hacker, overview of the evolution of cybercrime and its influence on current legislation has been discussed. Finally Yik (2018) had written on legal framework of cyber security law and also its enforcement agencies in his writing. As a conclusion it can be said that so far there is no writing that can be found regarding ECF and cybercrime per se.

d. Contractual legal Issues and protection which are related to ECF

In Malaysia, there is still no specific act on ECF. However, Securities Commission has introduced new rules in ECF platform registration and provision of good governance for ECF platform operators through Section 377 of Capital Market Services Act 2007 (CMSA) read together with CMSA Subdivision 4 Division 2 Part II and the publication of Guidelines on Recognized Market (GRM) (Item 1.01 GRM) (Wan Haniff, Ab Halim & Ismail, 2019).

The general rule regarding ECF contract in Malaysia is governed by the Contract Act 1950 which deals with the general elements of contract like offer, acceptance, consideration, intention, certainty and capacity to contract. Besides Contract Act 1950, these ECF contract are also governed under Capital Market and Services Act 2007 (CMSA, 2007) and Guidelines on Recognised Market 2021 by Securities Commission as stated above.

Among the literature that touches on ECF is Sadzius & Sadzus (2017) when he wrote on existing legal issues for crowdfunding regulation in European Union. This article analyzed crowdfunding legal regulation in some European Union Member States. The aim of this writing was to analyze the problems associated with crowdfunding regulation seeking to optimally satisfy the interest of all three parties: investors, project owners, and crowdfunding platform operators .It also examines the concept of crowdfunding, its origin, and different types as well as advantages and

disadvantages of this alternative financing method compared to other methods of funding projects. Meanwhile, Li (2016) discussed about current practice and important legal issues regarding ECF in China. This article focuses on the review of literature on crowdfunding, China's ECF industry, two case studies and comments on the crowdfunding measures. Both articles indirectly discuss about some legal issues relating to ECF contract.

Halberstam (n.d.) in his writing focuses on how to set up and run a crowdfunding platform – legal, financial, fiscal and exit issues. In this article, crowd funding models, platform uses rights, intellectual properties, branding, legal exposure, business structure, data protection, financial regulatory compliance were discussed. Khan & Khan (2020) wrote about crowdfunding in India and its regulation. It further analyses the proposals of SEBI on regulating crowdfunding in India through its consultation paper. Another article from Wan Haniff, Ab Halim, & Ismail, (2019) discussed about ECF industry in Malaysia, legal challenges in ECF transactions & Syariah challenges in ECF transactions.

e. Enforcement Body

Crowdfunding activities need rules to enable eligible companies to offer and sell securities. As such, an enforcement body is also necessary to enforce these rules. In the United States, the Division of Enforcement (Commission) was created in August 1972 to consolidate enforcement activities that previously had been handled by the various operating divisions at the Commission's headquarters in Washington. The Commission's enforcement staff conducts investigations into possible violations of the federal securities laws, and litigates the Commission's civil enforcement proceedings in the federal courts and in administrative proceedings. The Commission also can bring a variety of administrative proceedings, against any person who violates the federal securities laws (US Securities & Exchange Commission, 2021). Similarly in other countries including Malaysia and Indonesia, to control the activities of crowdfunding, the governments established this type of enforcement bodies for such purpose.

The Commission's mandate is to protect investors. While in some cases, ill-gotten gains disgorged by defendants are returned to defrauded investors, the Commission is not authorized to act on behalf of individual investors. The enforcement body also will provide channel about reporting fraud (fraudulent stock offerings, manipulations,

or other conduct in violation of the securities laws). In addition, investors can quickly and easily check whether people selling investments are registered by using mechanism provided by the commission.

In short, the enforcement body is established to advise the Finance Minister on all matters relating to the capital market, to regulate all matters relating to the capital market and to ensure that the provisions of the securities laws are complied with.(Malaysian Securities Commission, 2021)

f. ECF According to Shariah

Crowd Funding in the form of donations, rewards, debt and equity represent a new mode of financing for entrepreneurial activities and small enterprises overcoming the funding gap and risk implications faced by financial institutions. Thus, Shariah-compliant Crowd Funding provides an opportunity for investors, donors and entrepreneurs for the socioeconomic development of the micro and small enterprises sector in Islamic countries. (Marzban, Asutay & Boseli, 2014).

Taha and Macias (2014) as cited in Afroz et. al. (2019) stated that Islamic finance and crowdfunding conceptualize clients as investors and can potentially provide investment opportunities with higher returns. They concluded that since most crowdfunding platforms charge a percentage fee to funds paid to fundraisers, they already apply the Profit-Lose Sharing formula. Besides, they both pay great attention to transparency, mutual participation, and trust. The PLS formula of Islamic finance can be equated to the category of crowdfunding based on stocks, and zakat - to crowdfunding based on donations. Crowdfunding based on remuneration, although not unique to Islamic finance, does not dispute its principles, since money is exchanged for non-financial rewards. On the other hand, lending-based crowdfunding must be interest-free to comply with Sharia.

Equity-based crowd funding represents a significant opportunity to deliver the essential expectations from Islamic finance by combining the benefits of social development and investment opportunities for a wide range of entrepreneurs and investors. (Marzban, Asutay & Boseli,2014). Based on Asutay and Marzban (2012) as cited in Marzban, Asutay and Boseli (2014), the advantages of equity-based crowd funding from an Islamic finance perspective include: (a) Equity-based crowd funding is based on a profit and loss sharing basis (*Musharakah*), as characterized in the original

form of Islamic finance; (b) Providing access to capital to a wide range of entrepreneurs thus reducing the funding gap; (c) Opening up a new asset class for small and medium investors; (d) Minimizing risk through splitting limited capital across multiple start-ups; (e) Promoting innovation and keeping the talent local; (f) Creation of jobs through the established start-ups; (g) Supporting the growth of ventures to enterprises and possible future IPOs in new sectors such as the technology and health sector which are almost non-existing in the public equity markets in Muslim countries and thus increasing diversification for fund managers.

Further, according to them, to ensure Shariah-compliance, Islamic equity-based crowd funding has to ensure the following criteria: (a) The platform has to be governed by a Shariah board or Shariah advisory; (b) Investments have to be socially responsible; (c) Start-ups have to operate in Shariah-compliant businesses and thus not to be generating income from none Shariah-compliant sources; (d) Due to the fact that the crowd funding service provider and the backed investors collectively represent a significant equity ownership in the start-up, clear legal restrictions have to be defined to ensure that the start-up does not raise interest based debt, deposit cash, invests in non-compliant instruments, or extends the product and service portfolio to include non-compliant activities in the future; (e) The typical shareholder structure enforced legally by venture capital firms in terms of granting preferential rights for the investors are deemed non-compliant. Therefore the shareholder structure and investor protection requirements have to be designed to adhere to Shariah principles.

In relation to Shariah-based instrument for Islamic ECF, the *Musyarakah* arrangement is suitable for small enterprises and startups. Meanwhile *Musyarakah Mutanaqisah* (Diminishing *Musyarakah*) is more appropriate to be employed for small enterprises. (Marzban, Asutey & Boseli, 2014).

3.5 RESEARCH RESULTS/FINDINGS

3.5.1 Legal Framework of ECF in Malaysia and Indonesia

a. Malaysia

Crowdfunding is getting the world's attention due to the fact that it is particularly useful to support the development of new ideas and initiatives that cannot be funded by traditional mode of financing such as financing from financial institutions. Being globally recognized as the next best alternative for entrepreneurs to raise funds, it is highly

important to discover the laws regulating to the management of raising funds through this mechanism. Based on the analysis of the law and regulations both in Malaysia and Indonesia, this research critically address the issues associated with crowdfunding and presents the issues of cyber crimes and data protection in the crowdfunding platforms. Apart from enriching the literature in crowdfunding, this research is expected to spur awareness on the importance of the regulators and roles of governing bodies in the Malaysian capital market.

In Malaysia, crowdfunding has emerged and is steadily gaining popularity as an alternative source of financing for various ventures. What in the beginning may seem like a trend embraced only by start-ups desperate for cash. Hence, for laws of the management of raising funds, there are a few legislations in Malaysia which will be focused in this study. Among them to be analysed are in the Capital Markets and Services Act 2007, the Capital Markets and Services (Amendment) Act 2015 and the Guidelines on Recognised Markets 2020. While to look at the role of governing bodies, the research will concentrate Securities Commission as provided under the Securities Commission Act 1993.

The activities of crowdfunding are done in the digital and cyber world. Hence, they are vulnerable to cyber crime offences which are increasing in Malaysia. According to a report the crimes jumped by 88 per cent in 2011 with 15,218 cases compared with 8090 in 2010. This report has caused a lot of concern from the Government and the public. At a glance, these crimes are like ‘diseases’ spreading throughout the country and causing damage to people, the economy and the country. Although various efforts have been taken and some are still ongoing, total prevention of cybercrime is very difficult. Combating the threat is very challenging since Malaysia is still lacking in many of the tools required including manpower and technology. (Duryana, 2012)

In discussing these cybercrime offences in crowdfunding, other types of relevant statutes will be analysed such as the Penal Code, Companies Act 2016, Communication and Multimedia Act 1998 (CMA 1998), Defamation Act 1957 (DA 1957), Sedition Act 1948 (SA 1948), Computer Crimes Act 1997 (CCA 1997), Personal Data Protection Act 2010 (PDPA 2010), Copyright Act 1987 (CA 1987) and the Strategic Trade Act 2010 (STA 2010)

b. Indonesia

ECF was first given a legal umbrella on December 31, 2018, with the establishment of POJK Number 37/POJK.04/2018 on Crowdfunding Services through An Information Technology-Based Stock Offering (Equity Crowdfunding) by OJK and set on the same date by the Minister of Law and Human Rights. After two years, the regulation was amended by POJK Number 57/POJK.04/2020 concerning Securities Offering through Information Technology-Based crowdfunding services established by OJK on December 10, 2020, and came into force on the date of enactment, namely on December 11, 2020. POJK No. 57/POJK.04/2020 provides an extension of the Securities Offering, which previously on POJK 37/POJK.04/2018 only regulates the Stock Offering (equity securities) into an offer of securities that are not limited to equity securities but also debt and Sukuk securities. Therefore, the term used in the latest POJK is Securities Crowdfunding.

Equity Crowdfunding and Securities Crowdfunding arrangements both at POJK Number 37/POJK.04/2018 and POJK 57/POJK.04/2020 list Law No. 8 of 1995 on Capital Market and Law No. 21 of 2011 on Financial Services Authority on weighing points. The Law on Capital Markets and the Law on Financial Services Authority do not explicitly regulate equity crowdfunding or securities crowdfunding. Article 2 paragraph (1) of POJK Number 57/POJK.04/2020 states that crowdfunding service activities are financial services activities in the capital market sector. Therefore, it is stated in paragraph (2) that the party conducting crowdfunding activities is considered as the party that conducts financial services activities in the capital market sector. While article 1 number 13 of Law No. 8 of 1995 concerning Capital Market states that "capital market" is an activity concerned with: (1) Public Offering and Securities trading, (2) Public Companies related to the securities issued, as well as (3) institutions and professions related to Securities.

3.5.2 Legal Issues and Protection of ECF in the Capital Markets of Malaysia and Indonesia

a. Malaysia

The main objective of the ECF law introduced by the SC is to protect the integrity of the Malaysian capital markets and to ensure adequate protection for retail investors. Malaysia is the first country in Southeast Asia with distinct regulations for ECF and P2P financing platforms. Through these regulations, ECF platforms adhere to

registration requirements, clear and defined terms, and conditions as well as platform obligations that must be upheld as approved Regulated Market Operators. Additionally, SC set fundraising limits, platform status review, matters of compliance, termination or cancellation matters and reporting and transparency standards. ECF operators are allowed by SC to charge a percentage on the raised funds as platform fees. Additionally, investors are put into three categories – sophisticated, angel and retail investors, each carrying investment limits and required to self-declare the category that they belong to prior to investing accordingly.

The new rules in governing ECF pertaining to platform registration has been introduced by the SC as stipulated in section 377 of CMSA 2007. Such section 377 to be read together with Subdivision 4, Division 2, Part II of CMSA 2007 and the publication of GRM 2020 (Item 1.01 GRM). Section 377 of CMSA 2007 stipulates:

> "(1) The Commission may, generally in respect of this Act or in respect of any particular provision of this Act, issue such guidelines and practice notes as the Commission considers desirable.
> (2) The Commission may revoke, vary, revise or amend the whole or any part of any, guidelines and practice notes issued under this section.
> (3) Subject to this Act or unless the contrary intention is expressly stated, a person to whom the guideline or practice note referred to in subsection (1) apply, shall give effect to such guideline or practice note within such period as may be specified by the Commission.
> (4) Where a person referred to in subsection (3) contravenes or fails to give effect to any guideline or practice note issued by the Commission, the Commission may take any one or more of the actions set out in section 354, 355 or 356 as it thinks fit."

The above provision grants the power to the SC to issue guidelines and practice notes in relation to ECF. The SC may take necessary action including to revoke, to vary, to revise or to amend the issued guidelines and practice notes wholly or partly. The parties involved should always comply with the provision. SC has right to take any one or more legal action to those fail to comply to such guideline or practice note as set out in sections 354, 355 (only for derivatives exchange and clearing house) and 356.

In discussing the legal issues and protection to players of ECF as provided by the capital markets and services law, it can be divided to three elements: (i) requirement of registration; (ii) specification of duties and responsibilities; and (iii) penalty and remedy.

Registration

The basic requirements regarding the business entity of the ECF operator is that the company must be established in Malaysia. This is in accordance with GRM 2020. Similarly, the issuer must be a registered entity under the Companies Act 2016. Only locally incorporated private companies and limited liability partnerships (excluding exempt private companies) are allowed to be hosted on the ECF platform. The following entities are prohibited from raising funds through an ECF platform namely; a commercially or financially complex structures (i.e. investment fund companies or financial institutions); public-listed companies and their subsidiaries; companies with no specific business plan or its business plan is to merge or acquire an unidentified entity (i.e. blind pool); companies other than a micro fund that propose to use the funds raised to provide loans or make investment in other entities; companies other than a micro fund with paid-up share capital exceeding Ringgit Malaysia 5 million; and any other type of entity that is specified by the SC (GRM 2020).

As for ECF operator, new requirements for the purpose of registration has been inserted to section 34 of the CMSA 2007. The same pertaining to governance arrangement for the operators of such platforms as follow:

> "34. (1) For the purposes of paragraph 7(1)*(e)*, the Commission may upon application by a person, register the person as a recognized market operator subject to any terms and conditions as the Commission considers necessary.
>
> (2) The Commission may, from time to time, add, vary, amend or revoke any terms and conditions imposed under subsection (1)."

In relation to the duties of ECF operator in this context, section 36 of the CMSA 2007 provides that a ECF operator shall:

> " (a) comply with any direction issued by the Commission, whether of a general or specific nature, and the recognized market operator shall give effect to such directions; and (b) provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires."

While section 36A provides on the withdrawal of registration. The provision states that:

> "(1) Subject to subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investors, in the public interest or for the maintenance of an orderly and fair market, the Commission may, by notice in writing, withdraw the registration with effect from a date that is specified in the notice".

The notice referred to in subsection (1) shall state the grounds in support of the withdrawal. The Commission shall not exercise its power under subsection (1) in relation to a recognized market operator that has been registered under subsection 34(1) unless it has given the recognized market operator an opportunity to be heard. Any withdrawal of registration made under this section shall not operate so as to (a) avoid or affect any agreement, transaction or arrangement entered into by the recognized market operator whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration under subsection (1); or (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

The SC has exercise different sanctions in enforcing the law with regards to the non compliance of registration as the RMO. This scenario is seen in the case of unregistered RMO, Binance. In July 2021, the SC has enforced actions against Binance for illegally operating a Digital Asset Exchange (DAX). Under Sections 7(1) and 34(1) of the Capital Markets and Services Act 2007, all DAX operators must be registered as Recognized Market Operators (RMO) by the SC. Accordingly, the SC has issued a public reprimand against Binance for continuing to operate illegally in Malaysia despite being included in the SC's Investor Alert List in July 2020. In this regard, the public reprimand was issued against Binance Holdings Limited (Registered in the Cayman Islands), its CEO Zhao Changpeng, as well as three other Binance entities, namely Binance Digital Limited (Registered in the UK), Binance UAB (Registered in Lithuania) and Binance Asia Services Pte Ltd (Registered in Singapore). All four Binance entities have been ordered by the SC to:

a. disable the Binance website (www.binance.com) and mobile applications in Malaysia within 14 business days from 26 July 2021;
b. immediately cease all media and marketing activities, including circulating, publishing or sending any advertisements and/or other marketing material, whether via emails or otherwise, to Malaysian investors; and
c. immediately restrict Malaysian investors from accessing Binance's Telegram group.

Zhao, as the CEO of Binance Holdings Limited, has also been specifically ordered to ensure that the above directives are carried out. Investors are advised to stop dealing with and investing through illegal DAX. Those who currently have accounts with

Binance are strongly urged to immediately cease trading through its platforms and to withdraw all their investments immediately. The public is reminded to alert the SC if they come across any suspicious websites or receive any unsolicited phone calls or e-mails offering investment advice and opportunities, especially those that claim to offer high returns with little or no risks.

The requirement of registration also apply to the registered electronic facility. Section 49 of the Capital Markets and Services (Amendment) Act 2015 emphasis on the registered electronic facility deemed to be recognized market. The section states that:

> "(1) an electronic facility registered under subsection 34(1) of the principal Act before the effective date shall, from that date, be deemed to be a recognized market under the CMSA 2007;
>
> (2) any condition or restriction imposed on such electronic facility shall be deemed to be a condition or restriction to its registration under subsection 34(1) as introduced by the CMSA 2007; and
>
> (3) unless otherwise notified in writing by the SC, an application for registration as an electronic facility that is pending immediately before the effective date shall be deemed to be an application for a registration as a recognized market operator."

The reseachers are of opinion that the registration requirement for the issuer and ECF operator as a protection to the investors who invest their money in the ECF business. The SC can easily trace these entities if the act of cybercrime or illegal activities is committed by them. As for registration of ECF operator will also benefit the issuer because the ECF operator must fulfil the standard requirement of the CMSA 2007 and GRM 2020 before been approved as an ECF operator by the SC. Therefore, only reliable and recognized RMO will be active in the industry and strenghtening investors confidence to the markets.

Duties and Responsibilities

The second element of protection is the statutory duties and responsibilities of the players of ECF i.e. ECF operator, issuer and investor. The GRM 2020 require the operator's board of directors to be fit and proper and have the ability to operate an orderly, fair and transparent market. As the operator plays a critical role in ensuring confidence in the ECF platform, the GRM entrust the operator with obligations to ensure issuers' compliance with platform rules. The operator may deny an issuer

access to its platform if it is of the view that the issuer or the proposed offering is not suitable to be hosted on the platform. The operator is also required to ensure that funds obtained from investors are safeguarded in a trust. The GRM 2020 provides the obligations of ECF operator, operation of trust account, managing conflict of interest, permitted or non-permitted issuers, limitation to fund raised on ECF platform, disclosure requirements and investment limits.

An ECF operator must carry out a due diligence exercise on prospective issuers planning to use its platform; ensure the issuer's disclosure document lodged with the ECF operator is verified for accuracy and made accessible to investors through the ECF platform; inform investors of any material adverse change to the issuer's proposal; ensure that the fundraising limits imposed on the issuer are not breached; and ensure that the investment limits imposed on the investor are not breached. The scope of the due diligence exercise by an ECF operator shall include taking reasonable steps to conduct background checks on the issuer to ensure fit and properness of the issuer, its directors, senior management and controller; and verify the business proposition of the issuer.

A system for maintaining accurate and up-to-date records of investors' monies held must be established by ECF operator. The ECF operator must ensure that investors' monies are properly safeguarded from conversion or inappropriate use by its officers. The ECF operator also shall establish and maintain one or more trust accounts designated for the funds raised by an issuer hosted on its platform. The operator also must ensure that the trust accounts are administered by an independent registered trustee; and only release the funds to the issuer after certain conditions are met. With the well-organised technology system, cybercrime activities can be detected effectively by the authority in charge.

For example, there should be no material adverse change relating to the offer during the offer period. A material adverse change concerning the issuer, may include the discovery of a false or misleading statement in any disclosures in relation to the offer; and the discovery of a material omission of information required to be disclosed in relation to the offer.

An ECF operator must disclose to the public on its platform if it holds any shares in any of the issuers hosted on its platform; or it pays any referrer or introducer, or receives payment in whatever form, including payment in the form of shares, in

connection with an issuer hosted on its platform. An ECF operator's shareholding in any of the issuers hosted on its platform shall not exceed 30 percent and it is prohibited from providing direct or indirect financial assistance to investors, to invest in shares of an issuer hosted on its platform.

In enforcing the market Integrity provisions, the GRM, paragraph 13.32 provides a guidelines in the trading operations where an ECF operator must–

(a) disclose the order execution rules and any cancellation procedures and

ensure they are applied fairly to all its users;

(b) establish a robust operational framework with appropriate systems, policies, procedures and controls to manage and monitor trading activities on the ECF platform;

(c) have in place adequate arrangements and processes to manage error trades;

(d) have in place adequate arrangements and processes to manage systems error, failure or malfunction;

(e) have in place adequate arrangements and processes to manage excessive volatility of its market which may include circuit breakers, price limits and trading halts;

(f) have in place adequate arrangements and processes for trading halts in relevant securities, which should include the length of the trading halt and how it will resume trading on its market after the trading halt;

(g) have in place adequate arrangements and processes to manage investors' assets in the event of any suspension or outages of the platform, including transfer or withdrawal procedures;

(h) have in place adequate arrangements and processes to deter manipulative activities on the platform and ensure proper execution of trades; and

(i) have clearly defined operational reliability objectives and have policies in place that is designed to achieve those objectives.

In order to foster the market transparency an ECF operator must (paragraph 13.33) –

(a) ensure trading information, both pre-trade and post-trade, is made publicly available on a timely or real-time basis, as the case may be;

(b) make available in a comprehensive manner and on a timely basis, material information or changes to the tradable securities;

(c) ensure all information relating to the trading arrangements and circumstances arising thereof where relevant, are made publicly available; and

(d) ensure timely and accurate disclosure of all material information necessary for informed investing and take reasonable steps to ensure that all investors

enjoy equal access to such information.

In the process and procedure of clearing and settlement, an ECF operator must ensure there are orderly, clear and efficient clearing and settlement arrangements. Additionally, the ECF operator must provide clear and certain final settlement, at a minimum by the end of the value date, intra-day or real time (paragrpah 13.34 and 13.35 of GRM 2020).

The next layer of protection is the requirement to be observed by an issuer. According to paragraph 13.19 of GRM 2020, an issuer may only raise, collectively, a maximum amount of Ringgit Malaysia 10 million through ECF platforms in its lifetime, excluding the issuer's own capital contribution or any funding obtained through a private placement exercise. This requirement is not applied to a microfund hosted on an ECF platform. The limit of fund raising value is a good mechanism where any abnormality activities in this context can be spotted by the authority.

In regards to the disclosure requirement, paragraph 13.21 of GRM 2020 states that an issuer proposing to be hosted on an ECF platform shall submit the relevant information to the ECF operator, including information that explains key characteristics of the company; information that explains the purpose of the fund raising and the targeted offering amount; information relating to the business plan of the company; and financial information relating to the company for example audited financial statements of the company or certified financial statements or information by the issuer's management where applicable. An issuer proposing to be hosted on an ECF platform shall ensure that all information submitted or disclosed to an ECF operator is true and accurate and shall not contain any information or statement which is false or misleading or from which there is a material omission.

Further, in paragraph 13.23 of GRM 2020 expresses an ECF operator must disclose and display prominently on its platform, information–

(a) relating to the issuer as specified under paragraph 13.21; and

(b) details on how the platform facilitates the investor's investment including providing communication channels to permit discussions about issuers hosted on its platform.

It is the obligation of the issuer that has successfully completed its fundraising exercise on an ECF platform must ensure that there is effective, transparent and regularcommunication with its shareholders including providing regular updates on theprogress of the business of the issuer and the issuer's financial position.

In Malaysia there are three types of ECF investors – First, sophisticated investor refers to any person who falls within the categories of investors set out in Part 1, Schedules 6 and 7 of the CMSA 2007. Second is the angel investor refers to an investor that is accredited by the Malaysian Business Angels Network as an angel investor. And third, retail investor refers to persons who are not sophisticated investors (Securities Commission, 2020). For sophisticated investors, there is no restrictions on investment amount while for angel investors, a maximum of RM500,000 within a 12-month period can be invested. For retail investors, the limitation is RM5,000 per issuer with a total amount of not more than RM50,000 within a 12-month period. According to paragraph 13.26 of GRM 2015, the investment limits as above are applicable to local and foreign investors. The category of registered investors as specified in the GRM 2020, can prevent unregistered or the criminal of cybercrime to manipulate the markets of ECF.

Recently, there are amendments, effected through changes made to Schedules 6 and 7 of the CMSA, have widened the categories of sophisticated investors, to include among others, individuals with investments of RM1 million in capital market products, either on their own or through joint accounts with their spouse; CEOs and directors of licensed or registered persons under the CMSA; and corporations that manage funds of their related companies with assets of more than rm10 million. This amendment to the Capital Markets And Services Act 2007, which come into force on 1 july 2021. This will allow more investors to expand their investment options while issuers can now tap into a larger pool of sophisticated investors.

The CMSA 2007 also states the responsibility of the statutory manager in the recognized markets. Section 40D provides the SC has power to appoint a statutory manager to deal with mitigating and managing systematic risk. In this regard, for the

purposes of mitigating and managing systemic risk in the capital market or where the SC considers it is—

(a) in the public interest;

(b) for the protection of investors;

(c) for the proper regulation of a relevant person; or

(d) necessary in the exercise of its powers under section 30, the SC may appoint a statutory manager.

The appointment of a statutory manager is to—

(A) exercise, perform and discharge with respect to the relevant person, all the powers, duties and functions conferred or imposed on, or assigned to, the relevant person, by or under any written law or the articles of association of the relevant person; and

(B) take possession of, and use any such movable or immovable property as was used by the relevant person, for the purpose of carrying on the business or operations of the relevant person.

After the SC has appointed a statutory manager under subsection (2) of section 40D, the SC may make all or any of the following orders in writing to—

(a) grant access to the property of the relevant person to a statutory manager;

(b) transfer control of the whole or part of the business or affairs of the relevant person and management of the whole or such part of the business and affairs of the relevant person, to a statutory manager; or

(c) issue any direction to any person including a statutory manager in relation to the management of the whole or part of the business or affairs of the relevant person.

During the period of appointment the SC can issue an order under this section is in force, suspend the functions, rights and privileges of any

directors, chief executive officer or senior officer of the relevant person, and for such period, as the Commission may determine.

Penalty and Remedy

The third legal issues and protection is related to the penalty and remedy. According to section 354 of CMSA 2007, the SC has power to take action against the person who has committed a breach of guideline and practice note. Such provision stipulates:

"354. (1) Where a person–

(a) contravenes the provisions of this Act other than the provisions of Part V and Division 2 of Part VI or any securities laws; or
(b) fails to comply with, observe, enforce or give effect to–
  (i) the rules of a stock exchange, approved clearing house or central depository;
  (ii) any written notice, guidelines issued or condition imposed, by the Commission; or
  (iii) any rule of a recognized self-regulatory organization, in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules, written notice, guidelines or conditions,

that person has committed a breach.

(2) …

(3) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:

(a) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition or guideline;
(b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding fi ve hundred thousand ringgit;
(c) reprimand the person in breach;
(d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach;
(e) in the case of a breach of Part VI or guidelines issued pursuant to Part VI, refuse to accept or consider any submission under Part VI;
(f) in the case of a promoter or a director of a corporation, in addition to the actions that may be taken under paragraphs (a)

to (e) above, the following actions may be taken by the Commission:

(i) impose a moratorium on, or prohibit any trading of or any dealing in, the corporation's securities or in any other securities which the Commission thinks fi t by the promoter or director or any persons connected with the promoter or director; or

(ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest."

In this context, based on the above provision, any breach of GRM 2020 under this section enable the SC to take any one or more action of the following, i.e. direct the person in breach to comply or observe the GRM 2020; impose penalty in proportion to the severity or gravity of the breach on the person in breach but not exceeding one million ringgit; to remedy or mitigate including making restitution to any other person aggrieved by such breach; refusal to consider any submission and in the case of promoter or director of the company, impose a moratorium or issue a public statement. Further SC can take any one or more actions against the person who breach the conditions of licence granted by the SC as clearly stated in the section 356 (2):

"If a licensed person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that licensed person, the Commission may take any one or more of the following actions:

(a) direct the person in breach to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, any guidelines, written notice, any condition of, or restriction on, a licence granted under or pursuant to this Act, as the case may be;

(b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but which in any event shall not exceed fi ve hundred thousand ringgit;

(c) reprimand the person in breach;

(d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach."

Based on the above legal sanction, it can be summarized that, the types of actions in section 356(2) are; direct the person in breach to comply or observe the GRM; impose penalty based on severity of the breach not exceeding one million; reprimand; and to remedy or mitigate including making restitution to any other person aggrieved by such

breach. The determination of whether restitution is to be made by a person in breach based on the: (i) profits that have accrued to such person in breach; or (ii) whether any any person has suffered loss or been otherwise adversely affected as a result of the breach.

The remarkable findings of the study denote that breach of any provision in the GRM 2020 which related to ECF will amount to several actions as prescribed in section 354 and 356 of the CMSA 2007. These two sections is under the Administrative and Civil Actions Part XI. In the GRM 2020 there is no provisions which describe the offences of cybercrimes despite the ECF trading are using internet platform. Although, there are provisions in the CMSA 2007, Part V concerning market misconduct and prohibited conduct but these provisions are applicable to the approved markets where the business entities are public companies. Whether the recognized markets such as ECF markets where only locally incorporated private companies and limited liability partnerships (excluding exempt private companies) are allowed to be hosted on the ECF platform, are covered by Part V is something to be studied in the future.

Additionally, section 15(g) of Malaysia SCA 1993 clarifies that the function of these regulations is to regulate the ECF's activities and protect the interests of the parties involved, especially investors.

ECF platform operators need to satisfy the criteria in the GRM before SC can issue ECF licenses (GRM 2020, Item 2.01). Since the launch of ECF regulation, Liz (2015) reported that countless efforts have been done by SC together with registered ECF platform to educate people and entrepreneurs on the company's alternative financing.

In ensuring the market integrity, the GRM 2020 specify the provisions in relation to trading operations (paragraph 13.32). Similarly with promoting the market transparency, paragraph 13.33, it is the requirement for the ECF operator to:

> "(a) ensure trading information, both pre-trade and post-trade, is made publicly available on a timely or real-time basis, as the case may be;
> (b) make available in a comprehensive manner and on a timely basis, material information or changes to the tradable securities;
> (c) ensure all information relating to the trading arrangements and circumstances arising thereof where relevant, are made publicly available; and
> (d) ensure timely and accurate disclosure of all material information necessary for informed investing and take reasonable steps to ensure that all investors enjoy equal access to such information."

The ECF market integrity and transparency policy drafted by the SC will ensure that trading operations conducted by the ECF operator following the prescribed guideline and can curb the cybercrime activities in the markets.

b. Indonesia

Protection of Publishers and Investors in Equity Crowdfunding in Indonesia

The existence of equity crowdfunding in Indonesia is expected to provide funding effectively in addition to conventional means. With a platform, equity crowdfunding can create new opportunities to raise funds in business activities and allow nonprofessional investors to enter their capital without financial system intermediaries. The term investor protection is a general term that refers to legal protection provided by a state whose function is to prevent prohibited and sanctioned [8].

Legal protection is a protection given to legal subjects, both individuals and non-individuals, in a preventive or repressive device, so legal protection is a concept to realize the existence of justice, certainty, and benefit for the subject of the law [9].

Special legal protection in the capital market sector, especially the Implementation of Equity Crowdfunding involves the parties of capital market actors, especially issuers, investors, and institutions supporting capital market activities where the parties are dominated by legal subjects in the form of legal entities in the form of limited liability companies. Legal subjects in civil law have two legal subjects: the legal subject of a private person and the legal subject of a legal entity. According to the law, the legal subject of a private person or natuurlijkpersoon is a person or human being considered capable. Furthermore, the legal subject in civil law is a legal entity or rechtspersoon. A legal entity is a collection of persons, or it can also be a collection of legal entities. The division of legal entities there is two forms, namely public legal entities or Publiek Rechtspersoon and private legal entities or Private Rechtspersoon [10].

According to Satjipto Rahardjo, the law protects one's interests by allocating power to him to act in a measured manner. Interest is the object of rights because rights contain elements of protection and recognition. So, it can be concluded that legal protection is an activity to maintain or maintain the community to achieve justice. Then legal protection is constructed as; a) Form of service; this service is provided by law enforcement officials and security forces, b) Protected subjects [11].

Before the birth of POJK Number 57 of 2020 ("POJK 2020"), ECF was first regulated in OJK Regulation Number 37 /POJK.04/2018 ("POJK 2018"). In addition to being the organizer of equity crowdfunding platforms, they are also obliged to maintain the confidentiality of data from these investors. Financial Services Authority (OJK), as an institution that has the authority in conducting supervision in the implementation of activities by Fintech type equity crowdfunding, provides protection efforts to parties involved in fintech, one of which is investors as parties who put their capital into the platform.

The new POJK POJK No. 57 of 2020 in article 27 has also accommodated the protection that can be provided to investors through a statement of the Organizer, which is considered as one of the risk notifications for Investors or Investors, with the following sounds:

a. OJK does not give consent to the Publisher and does not give a statement approving and does not agree to this securities, nor does it state the correctness or adequacy of the information in this crowdfunding service. Any act contrary to this is unlawful;
b. The information in this crowdfunding service is essential and needs immediate attention. If there is any doubt on the Actions to be taken, it is best to consult with the Organisers; and
c. Publishers and Organisers, either individually or jointly, are solely responsible for releasing all information contained in this crowdfunding Service.

Then, It is necessary to look again at the explanation of the obligation of publishers to submit their annual report; regulated publishers are only required to provide an Annual Report only which based on POJK 2020 article 51 paragraph 5 mentions the Publisher in its Annual Report contains information about at least:

a. realization of the use of funds from the offering of debt or Sukuk through crowdfunding services; and
b. the development of the Project, including its obstacles, if there are obstacles.

In this regulation, it is explained that ECF activities are implementing securities offering services performed by issuers to sell securities directly to investors through a network of open electronic systems [5].

The latest regulation of POJK 2020 on the principle of openness refers only to publishers' reports with few additional details. Article 50 (1) of the annual report to the

organizer no later than six months after the publisher's financial year ends. Article 50 (2) requires the organizer to post the Publisher's annual report on the Organizer's website. At the same time, the submission of reports periodically every 3 (three) months, in March, June, September, and December, to the Organizer. The rule change of the previous report is only 1 (one) report; now, it becomes 3 (three) times the annual report as the mid-year, annual, and incidental report. Article 53 explains that the financial statements contained in the annual report, as referred to in Article 50 paragraph (1), shall use the lowest financial accounting standards for entities without public accountability.

In POJK 2020 concerning Publishers, there is no obligation or condition of the Publisher to submit or at least attach the original documents; every incident of the Publisher's company becomes interesting when the Publisher provides documents that are not by the reality or the original.

Furthermore, OJK stipulates that the organizer and users of equity crowdfunding platforms must maintain the confidentiality of data in the platform, both information data about stock issuers and data related to investors. The organizer is also obliged to provide a security system, as stated in article 70 of POJK No. 57 of 2020. All security systems required by the OJK are inseparable from efforts to protect anyone who uses the fund-raising service platform in financial transactions.

Given that the investor's profit in the form of dividend distribution depends on the success rate of the issuer who purchased the shares. So it can be possible that investors do not get dividend distribution if the issuing company does not experience profit.

However, it is necessary to underline that equity crowdfunding investor protection is not as systematic in the capital market because the securities trading system in the capital market protects its investors through information transparency mechanisms or information disclosure (full disclosure principle) and market manipulation prevention rules, including insider trading bans. Inaccuracies or vagueness of information submitted in the prospectus as a form of information disclosure in the capital market sector causes legal consequences. Article 81 paragraph (1) of Law No. 8 of 1985 on Capital Market ("UUPM") reads,

> “Any party that offers or sells securities using the prospectus or by other means, whether written or oral, that contains incorrect information about the Material Facts or does not contain information about the Material Facts and

the party knows or should know about it shall be liable for any losses arising from the act."

As a reference also to protect ECF investors based on the formulation of the Organization for Economic Corporation and Development (OECD), which has formulated 4 (four) GCG principles, namely [12] :

1. Transparency is openness or disclosure of information, starting from the decision-making process to disclose relevant material information openly, timely, and concerned with the company's state, whether it is the financial state, the management of the company, its finances, and ownership of the company. Meanwhile, the burden of submission of the report that must be submitted between the Organizer consisting of annual, mid-year, and incidental reports. While the Issuer is only in the form of annual reports and *insendentiil* addressed to ECF organizers to be published to the public, especially investors without any direct rules to report it to the supervisory agency, this situation does not adequately reflect the principle of transparency (Article 50 POJK No. 57 / POJK.04 / 2020).
2. Fairness guarantees the protection of the rights of its shareholders, including the rights of minority shareholders, all of whom have equal rights. It means that the ECF must pay attention to fairness to granting investor rights, both from access to correct information.
3. Accountability is to clarify the function, structure, and accountability of the company's organs so that the management of the company's management can be carried out effectively and efficiently to guarantee the interests of shareholders. The application of ECF activities review itself has not been mentioned in the new regulation of ECF implementation; this is increasingly a question of accountability of the report given because it mentions the obligation to involve the independent professional to verify the truth / or clarity of information about the material facts submitted by the Publisher in its prospectus. It should also be understood that the ECF prospectus is not just a promotional proposal for publishers looking for investors. Even the new POJK mentions publishers no longer meet the criteria of net worth as Issuers are allowed to make the lowest reports of financial accounting standards for entities without public accountability (Article 53 POJK No. 57/POJK.04/2020).
4. Responsibility is to ensure that the company must comply with the laws and regulations and carry out responsibilities to the community and the environment. ECF

activities in this regard relating to the disclosure of information, as well as the protection of personal data as stated in the Organizer shall:

a. maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data managed by the Organizer from the moment the data is obtained until the data is destroyed;

b. ensure the availability of authentication, verification, and validation processes that support the reliability of accessing, processing, and executing personal data, transaction data, and financial data managed by the Organizer;

c. guarantee that the acquisition, use, utilization, and disclosure of personal data, transaction data, and financial data obtained by the Operator based on the consent of the owner of personal data, transaction data, and financial data, unless otherwise provided by the provisions of the laws and regulations;

d. provide communication media other than Electronic System Crowdfunding services to ensure the continuity of Financier services that can be in the form of electronic mail, call centers, or other communication media; and

e. notify in writing to the owner of personal data, transaction data, and financial data, in case of failure to protect the confidentiality of personal data, transaction data, and financial data managed by the Organizer (Article 70 POJK No. 57/POJK.04/2020).

Regarding the rule that the role of the organizer becomes central to the weak regulation only at the level of OJK Regulation only, because the implementation of ECF itself using electronic system everyone can access the platform and even do hacking of the ECF Platform site. Although the Ministry of Communication and Informatics of the Republic of Indonesia requires the Organizer to have permission to implement electronic systems but this rule is only a form of effort to collect data from the government, not a system device for cybersecurity, meaning it is not a form of real protection from the Government against the protection of investor's data. Moreover, ECF organizers themselves have been ongoing. However, the legal certainty of personal data protection in the state of the Law is still not available or has not been ratified.

The Organizer must maintain the confidentiality and security of the data. Explicitly, the Organizer in charge of providing this ECF service is in complete control of the data of both publishers and investors. In Singapore, it has specifically regulated financial

technology (Fintech) companies to protect customers' data stipulated in "The Personal Data Protection Act (PDPA)," i.e., every fintech company must have a personal data privacy policy that can be accessed by the public upon approval of the use of data and build safeguards for the misuse of customer data. Fintech companies must also comply with the provisions of "Anti-Money Laundering &Counter Financial Terrorism Controls to know and verify their customer profiles to monitor account reviews and report every financial transaction of their customers. One of the risks of using fintech-based fund-raising transactions is the risk of data security (cybersecurity) [13].

As a protection for ECF investors the SCF 2020 FSA Regulation also recognizes administrative sanctions for those who violates or who *causes* the violation of the articles concerning, *among others,* the obligation of the operator to have a business license from the FSA (art. 5), to have the human resources experts on Information Technology and experts on the assessment of the Issuer (art. 12(1)), obligation concerning the assessment of the Issuer (art. 16), obligation of the operator to load information on its website following the presence of the material change concerning documents and/or information (art. 17), the obligation of operator to inform the FSA following alteration of Electronic System for developments (art. 20), and some other relevant articles as stated in article 85 section (1). The form of sanctions are: (a) written warning; (b) penalty or an obligation to pay an amount of money; (c) limitation of business activity; (d) freezing of business activity; (e) revocation of business license; (f) annulment of the approval; and/or (g) annulment of the registration. Other than the administrative sanctions, article 87 governs that FSA may take certain measures towards the infringer of the SCF 2020 FSA Regulation.

c. Comparative Analysis between Malaysia and Indonesia

Based on the above discussion, the law of ECF in the capital markets are different between the two jurisdiction in terms of the governance, process and procedure, types of investors and issuers, penalty and compensation. Table 1 below shows the comparative analysis between Malaysia and Indonesia in relation to the law of ECF in the capital markets.

Table 1: Law of ECF in Capital Markets – Malaysia vs Indonesia

Country	Governance	Process & Procedures	Investors	Issuers	Penalty	Compensation
Malaysia	*Securities Commission is the main regulator *Companies Commission *Recognized Market Operator *Issuers *Investors	*Trading in the Recognized Market *RMO Must be established in Malaysia *Issuer must be registered under the Companies Act 2026 *Sanctions for unregistered issuers/RMO *Registered Electronic Facility *Each entities has their own responsibilities according to the law.	*Sophiscated – unlimited investments *Angel – max RM500,000 within a 12 month period *Retail – RM5,000 per issuer with total amount of RM50,000 within a 12 month period	*Private Companies and Limited liability Partnership *Raise/Collection limit <RM10 million	*Directive *Penalty -< RM500,000 *Reprimand *Refusal to accept submission *Moratorium or Prohibition of trading (promoter or director) * issue of public statement or *Retention of Office (promoter or Director)	*Restitution *Compensation
Indonesia						

3.5.3 Data Protection and Privacy Legal Issues in relation to ECF

a. Malaysia

During the past decade, ECF has emerged as an alternative funding channel for startup firms. For example in Germany, the Small Investor Protection Act became binding in July 2015, with the legislative goal to protect investors engaging in this new asset class. Since then, investors pledging more than 1,000 EUR now must self-report their income and wealth. Investing more than 10,000 EUR in a single ECF issuer is only possible through a corporate entity. Goethnerab, et al., (2021) examine how the Small Investor Protection Act has affected investor behavior at Companisto, Germany's largest ECF portal for startup firms. The results show that after the new law

became binding, sophisticated investors invest less on average while casual investors invest more. Moreover, the signaling capacity of large investments has disappeared.

There are two types of privacy, namely informational privacy and autonomous privacy. Informational privacy includes the right of individuals to determine which personal information will be conveyed to others, whether confidential or sensitive. Meanwhile, autonomy privacy guarantees individuals' rights and freedom to carry out activities without interference from other parties (Garner, 2004).

In Malaysia, The Central Bank of Malaysia (BNM) and Securities Commission (SC) are the main regulatory bodies that govern licensing and marketing requirements for fintech companies (Kandiah, 2019). There are two reforms to the regulation of fintech businesses in Malaysia. First, through the Financial Technology Enabler Group, BNM launched a Regulatory Sandbox in 2016. Second, it is based on the 2007 Capital Market and Services Law (Section 377 CMSA 2007) regarding digital asset guidelines (Butarbutar, 2020). Therefore, digital currencies and tokens will be regulated by the SC so that they can eventually be used (Kandiah, 2019). The SC can conduct periodic assessments on the compliance of the IEO operator on any of its regulatory obligations and request documents and assistance (Securities Commission Malaysia, 2020).

Even though there are many ways to collect the personal data of the investors, the personal data of the investors shall not be collected through unlawful means or any fraudulent practices. According to Section 130 of the Act, it is an offence if a person knowingly or recklessly collects personal data held by the data user without the consent of the data user. As such, the ECF platforms must not collect the personal data of the investors from other data user who possesses the data of the said investors as such act will be regarded as an unlawful act and will be liable under Section 130 of the Act for a fine not more than RM500,000 or imprisonment of a period not more than 3 years or both.

In Lloyd v Google LLC [2019] EWCA Civ 1599, the data protection class action against Google found that they are permissible in the case of DPA breaches for the Safari Workaround. The case sets a precedent for representative opt-out style class actions for data protection breaches under UK law.

The police's use of facial recognition software was lawful was decided in R (Bridges) v Chief Constable of South Wales Police and Others [2019] EWHC 2341.

The case applied the UK's pre-existing data protection framework to determine the lawfulness of the software, a precedential exercise.

Generally, the personal data will be retained as long as necessary for the fulfilment of the purpose mentioned above, or for the legal and accounting requirements, subject to the privacy protection policies of each operator (Novia & Nahdlotul F,2020). This can be shown in MyStartr Platform, where in the privacy policy, it mentions that the platform will only retain the personal data for so long thereafter as is necessary for them to fulfil the purposes as set out in the privacy policy (Privacy Policy c, 2020). However, if it is necessary for the platform to comply with their legal obligations, they may need to keep your personal data for a longer period of time, in order to respond to any disputes, claims or complaints related to the platform users.

In respect to web-related information, ECF uses cookies which is a text file a webpage stores in users' local browse cache, to operate the website (necessary cookies), analyse the ways users' access or browse the website, to recognize and customize users' experience (functionality cookies) and store the visits and movement on the website in showing advertisements relevant to one's interests. ECF however, does not have control over cookies from third parties which are used for performance or targeting. One may refuse any cookies while accessing the website by changing browser setting but it might affect the features or functionalities of the website. In such any damage or loss by deletion or rejection of cookies, ECF shall not be responsible nor held liable.

Alternatively, protection as confidential information under common law in Malaysia is also available, depending on the nature of the business model. Software is generally protected by copyright under the Copyright Act 1987, with no requirements for registration. Kandiah (2021) further clarified that fintech business models and related software can be protected by various intellectual property rights, namely copyright and patent.

Since January 25, 2019, the PDPC has investigated massive data breaches resulting in the leakage of 1,164,540 students' data and alumni records from leading Malaysian universities. This includes MyKad numbers, student names, email addresses, home addresses, campus codes, campus names, program codes, course levels, student IDs, and mobile numbers (Chambers & Partners, 2019).

Earlier, in May 2017, the commissioners reported that they had sued and fined private tertiary institutions, hotels, and employment agencies. The fines imposed reached MYR20,000.00 (around USD5,000) (Chambers & Partners, 2019). Whereas in November 2017, the MCMC also blocked the microsite sayakenahack.com due to data privacy issues following an application from PDPC (Chambers & Partners, 2019).

Accessing and manipulating personal data are serious offences. Chambers & Partners (2019) referred to a Singaporean case where the matter was investigated under section 50(1) of the Singapore Personal Data Protection Act 2012 for breach of the protection obligation by Novelship. Singapore Personal Data Protection Commission referred the case as “In the matter of an investigation under section 50(1) of the Personal Data Protection Act 2012 And Novelship Pte. Ltd.” Case No. DP-1905-B3820, 24 Nov 2020.

Referring to this case, the Personal Data Protection Commission (the “Commission”) received information that a registered seller (“User”) was able to gain unauthorised access to the personal data of other sellers by employing software tools and manipulating the public URLs of active listings (“the “Incident”) on May 1, 2019. The User had accessed the personal data of six unique sellers who had active listings at the time of the Incident. The personal data concerned included:

(i) first and last names;

(ii) email addresses;

(iii) shipping addresses;

(iv) hashed account passwords; and

(v) the name of bank and bank account numbers (“Personal Data Sets”).

No buyer data was accessed in the incident. Investigations revealed that the Organisation had not conducted adequate security testing before the launch of the Website. The testing it had conducted was limited to design and functionality issues, such as verifying the password hashing and password requirement functions. Critically, the Organisation should have, but had not, conducted vulnerability scanning. Vulnerability scanning that is reasonably and competently conducted should include scanning for OWASP Top Ten, i.e. the top 10 security vulnerabilities listed by the Open Web Application Security Project (“OWASP”). The vulnerability of URLs to manipulation is within the OWASP Top 10, and would have been detected if the

Organisation had conducted adequate vulnerability testing. A financial penalty of $4,000.00 was imposed on Novelship for failing to put in place reasonable security arrangements to protect the personal data collected from its sellers from unauthorised access on its website.

During the past decade, novel and less regulated securities markets that allow privately held companies to sell their stocks to ordinary investors have emerged. The online economy has brought with it the opportunity for equity crowdfunding (ECF), which has now become a mainstream source of funding for small and medium-sized enterprises all around the world (Block et al.,2018; Rau, 2019). As time passess, equity crowdfunding (ECF) has emerged as an alternative funding channel for startup firms. This provides more legislative goals to protect investors engaging in this new asset class through data and legal protection.

The disclosure of personal financial information to ECF websites can expose users to greater privacy risks. On many ECF websites, the amounts invested are often openly published, and in some cases, investors even have attached their name and location to their public investor profile. In particular, people consciously weigh the risks and benefits of disclosing their income and wealth. The data and privacy risks in ECF in Malaysia is regulated by a mixed-methods approach legal protection that covers investment and investment behavior.

b. Indonesia

Xxxxx Dr Fithriah

c. Comparative Analysis between Malaysia and Indonesia

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3.5.4 Cybercrimes Legal issues and Protection which are related to ECF

a. Malaysia

Capital raising is a fundamental issue for every business. Normally, capital can be raised through the shareholders and also loans from the institutions. However, now there is a new approach to access the principal or capital for business. Crowdfunding is one of the methods to raise capital for business. According to Khan & Khan (2020) crowd funding means raising funds from crowd with the use of web based platforms.

It operates by way of individuals or by way of organisations, who invest in crowdfunding projects for a potential profit or incentive. Crowd funding is popular all over the world due to its benefits to the growth of small businesses. Smaller ventures can raise funds for their project by requesting small contributions from large number of investors through internet in return of equity or future benefits (Khan & Khan, 2020). Crowdfunding is a way how to increase fund through small assistances from a big number of investors by employing the internet platform.

Since transactions in ECF is manage through internet platform, it has some legal issues relating to cybercrime which also known as computer crime. The use of computer and internet can facilitate our daily activities. However, it also makes significant contributions to criminality where cybercrime has become a serious problem globally (Sarre, Lau & Chang, 2018). According to Arora (2016), among the activities of cybercrime are such as computer related frauds, cyber defamation and cyber harassment. While Ajayi (2016) is of the opinion that typical examples of computer crimes include but not limited to embezzlement, fraud, financial scams and hacking etc. According to Pavlik (2017), individuals who are illegitimate hackers are called black hats and they are malicious individual who create malware and intrude upon networks illegally. Computer hacking can lead to other crimes such as theft, fraud, and terrorist activity (Pavlik, 2017). These crimes are relatively new, having been in existence since the existence of computer and the use of internet.

Crowd funding usually involves the issue on fraud. According to Halberstam (n.d.), the possibility of fraud always exists due to such problems as fake websites. Scammers used several tactics to scam people through internet.

Fraud

The activities in ECF are carried out through online transactions. These transactions may lead to fraud. This is supported by Khan & Khan (2020) when she said that the chances of frauds and scams is possible with the raising fund from large crowd over internet. The event of fraud may take place before and/or after the campaign in crowd funding (Wan Haniff, Ab Halim & Ismail, 2019). This is because the general public is not in a position to carry proper due diligence to verify the background of the fundraising companies, which may lead to companies vanishing after raising funds. It also creates

the risk of cybercrimes due to the absence of adoption of strict security measures by the crowdfunding platform (Khan & Khan, 2020). The existence of the legal framework on ECF and cybercrime may reduce the possibility of fraud. For example, the requirements on disclosure may sometimes prevent fraud in ECF..

According to Paragraph 13.22 GRM, the issuer has an obligation regarding disclosure with the requirement to submit relevant information to the ECF platform and ensure that all informations are true and accurate and shall not contain any information or statement which are false or misleading or from which there is a material omission. Nevertheless, this rule does not guarantee the transparency of the company since the issuer is still able to sugarcoat the real company's performance by falsification of important information (e.g. financial statements) before the campaign commencement (Wan Haniff, Ab Halim & Ismail, 2019).

It is believed that the actual fraud always happened after the campaign has launched. The investors will always rely on the information provided in the website of the ECF platform acting as the middle person between the entrepreneur (issuer) seeking for capital and the investors. The nature of using the computer and the internet in ECF has denied traditional relationships between investors and entrepreneurs. Such opportunity was taken by the issuer to take control of their business without any interference from the investors (Wan Haniff, Ab Halim & Ismail, 2019). Thus, the potential for intentional fraud among issuer is high and expanding disclosure requirement may not be a bad idea. (Wan Haniff, Ab Halim & Ismail, 2019).

According to Wan Haniff, Ab Halim & Ismail (2019), while it is the duty for the issuer to disclose information regarding how the funds acquired are used as postulated under item 13.21 GRM, there is no guarantee that fraud will not occur. As a result, the investors may lose some or all of their investments. The investors also may lose their investment if the entity behind the crowdfunding platform is a sham. This is supported by Khan & Khan (2020) when she said that if any fraudulent entity plays the role of the crowdfunding platform, it can be harmful to the whole system.

As an example in India, the crowd has always been doubtful of activities carried on online platforms since India has not been able to make online platforms safer and is still plagued with cybercrimes (Khan & Khan, 2020). Fraudulent scams need not be sophisticated in order to be highly successful and therefore seriously damaging. The businesses are perennially vulnerable to scammers and they may not even realize their vulnerability or the fact that they have become victims (Sarre, Lau & Chang, 2018)

Misused of Personal information

Another issue regarding cybercrime that relate to ECF is misused of personal information provided by the investors to CFP. According to Halberstam (n.d.), with the increased social networking and the ability to make more online purchases, personal information is required in order to utilize these sites. Personal and private information, such as bank account numbers and credit cards numbers, are linked through individual profiles created by users. Credit card information is stored for purchases and personal data remains saved within the user's online account. Consumers assume that their personal information is stored securely when shopping online on sites. This situation also can happen to investors using this CFP. If this situation occur, personal online information can easily be compromised and a user's privacy can be violated.

According to Yik (2008), Section 9 of the Personal Data Protection Act 2010 imposes a strict liability on data user who processes personal data in a commercial context, such as banks, telecommunication companies, ISPs or application service providers, to take practical steps to protect the personal data from any loss, unauthorized or accidental access or disclosures, alteration or destruction. Failing which may expose the data user to prosecution under the PDPA Act 2010 and subject to criminal penalty with a maximum fine of RM500,000 or up to three years in jail, or both.

Information Technology (IT)

IT system is another issue that have to be focused on. Since the ECF main medium is internet, IT will be the main concerned. The ECF platform is under an obligation to ensure that it has a comprehensive and adequate IT system. According to Paragraph 3.04 of the GRM, before the RMO is allowed to fully operationalise the recognised market, the SC may require among others that the RMO to provide an IT assurance regarding the system readiness; and (b) a written declaration by the RMO's internal auditor or responsible person confirming that the RMO has, in relation to the recognized market,– (i) sufficient human, financial and other resources to carry out operations; (ii) adequate securities measures, systems capacity, business continuity plan and procedures, risk management, data integrity and confidentiality, record keeping and audit trail, for daily operations and to meet emergencies; and (iii) sufficient

IT and technical support arrangements. This shows that, there must be a guarantee regarding the IT system that must be provided by the RMO.

Whilst adopting IT and its application can be straightforward, securing this electronic environment from hacking and fraud, however, continues to be a problematic issue. IT, which is constantly under development, helps create a market consisting of different types of alternative financing instruments that emerge outside of the traditional financial system like banks and capital markets (Halberstam, n.d.). Since, all transactions in ECF are outside the traditional financial system, it is not easy for the ECF platform to ensure that it will be free from fraud and hacking.

b. Indonesia
Daeslaily

c. Comparative between Malaysia and Indonesia
Daeslaily & ALY

3.5.5 Contractual Legal Issues and Protection which are related to ECF

a. Malaysia

According to Sadzius & Sadzius (2017), crowdfunding includes at least three parties i.e the project owner seeking financing to fulfill their project goals; a crowdfunding platform acting as an intermediary between the project owner and the investor; and the investor, who along with others lends money for the project. Since crowdfunding involves three parties, ECF contracts can be divided into two namely contract between issuer (entrepreneur/business owner) and ECF provider (market operator/crowdfunding platform) and contract between ECF provider (market operator/crowdfunding) and investors. From these two types of contracts, several issues were discussed in most of the writings. This is can be supported with Halberstam (n.d.) where he said that there are two sets of terms and conditions that should be considered in this context, namely those between the CFP (crowd funding platform) and the Venture and those between the CFP and the investor. According to him also, properly drafted terms and conditions may make the CFP more legally secure and therefore more commercially attractive to potential investors in the CFP itself. Among the legal issues are:

Fairness of the terms of the contract

The terms of the contract that has been provided sometimes might cause unfairness to one of the parties. The terms can sometimes give benefit to one side only and automatically caused dissatisfaction to the other party. One of the example is the terms regarding amendment of the investor agreement belonging to a company with registration number 1341808D:

> *We may choose to amend this Agreement from time to time. If we choose to amend the Agreement in a manner that affects any of your substantive rights, we will promptly notify you of the amendment. Such notification may occur by email, by notice to you when you log onto the Platform or by other means. If we provide you such notice and you do not object to an amendment by the means given in the notice prior to the amendment taking effect, you shall be deemed to have agreed to the amendment. If you object to an amendment, such amendment will not be effective with respect to you, but your rejection shall be deemed to constitute your notice of termination of your membership in accordance with Clause 11.1 (Termination by You).*

It shows that the ECF platform has the right to amend the agreement from time to time with notification to the investors through email, notice in platform or other means. If the investors objected to the amendment, it shall constitute as a notice of termination of the agreement. In other words, this kind of phrase in the agreement, constitute a 'take it or leave it' basis of contract. It will leave the investors in a situation where there is no negotiation at all at this level and they can just accept the contract or just walk away. This is supported by Li (2016) when he said that the ambiguous identification and function of Chinese ECF portals, combined with their standard service contracts which investors can only choose to accept or walk away, give the portals too much discretion and leave the investors under protected. In other words, both parties have unequal bargaining power in determining the terms of the contract.

The investors in ECF can be regarded as consumer and they are protected under consumer law. The existence of the law to protect the consumer is very important in crowd funding. For example, in United Kingdom, there is a considerable amount of legislation which deals with consumer contracts and ensures that consumer rights are protected, notably the Unfair Contract Terms Act ("UCTA") 1977. In relation to a consumer contract, UCTA applies to any terms which seeks to restrict, exclude or avoid liability, for example, a clause may be inserted into a contract which aims to exclude or limit the CFP's liability for breach of contract or negligence (Halberstam, n.d.). The

Unfair Terms in Consumer Contracts Regulations 1999 deal specifically with contracts between a consumer and a seller of goods or supplier of services. The Regulations state that an unfair term is one that causes a significant imbalance in the parties' rights and obligations in favour of the seller or supplier (Halberstam, n.d.).

In Malaysia, the Securities Commission Guidelines for Recognised Market 2021 (GRM) promotes the protection of investors and public interest; and also fairness and transparency. This can be seen in Paragraph 3.01 of GRM that the Securities Commission (SC) may register an applicant as a registered market operator (RMO), if the applicant satisfies the SC that the rules of the market it seeks to operate make satisfactory provisions for the protection of investors and public interest; and also to promote fairness and transparency. The question regarding the adherence to this guidelines is still unanswered since 'unfair' terms can be found in the investor's contract.

Clause on information right and control rights

A successful crowd funding platform (CFP) may itself attract investment. In order to be successful, crowd funding platform must have good reputation in the eyes of the investors by providing sufficient and correct information to the investors. One of the duties of ECF platform is the duty of disclosure. The ECF platform should provide an accurate and complete information or report to the investors about all the material information that may affect their interests. In equity crowd funding, the investors rely on the information provided in the platform before making decision to invest. In the case where the information in the investment term sheet was wrong, who will be responsible for it? Whether the blame is on the issuer who provides the information to the platform or it is on the platform who shall be responsible to the contract with the investors?

The reality in ECF is not as expected. The issuing company may also not provide complete disclosures to be verified by the investors, creating information symmetry which may harm the investors (Khan & Khan, 2020). In a crowdfunding mechanism, the public forming part of the crowd may not have such knowledge and expertise and therefore they cannot determine if a venture is capable of generating revenue. So, the investors must be protected from any misrepresentation of the information. Taking away some of the information available to potential investors in the platform, the potential for misrepresentation could be an issue. According to Sadzius

& Sadzius (2017), in an investment based crowdfunding platform, operators are obliged to disclose certain information, such as information about investment risks, the fees for investors and project owners, terms and conditions of refunds for investors, or risk management methods, if applicable.

Interested parties will want to ensure that they obtain sufficient information about the CFP's business to enable them to decide whether the investment or acquisition represents a sound commercial transaction (Halberstam, n.d.). The investors can get these information through the due diligence process. Due diligence process is essentially an audit of the CFP's commercial, legal and financial affairs (Halberstam, n.d.). The outcome of a due diligence review may determine whether or not a potential investor or purchaser wants to proceed with the transaction.

Paragraph 6.01 of the GRM among others provides that a RMO must ensure that all disclosures are fair, accurate, clear and not misleading. The minimum disclosure documents required to be published on an ECF campaign site are provided by GRM. Paragraph 13.21 GRM provides that an issuer proposing to be hosted on an ECF platform shall submit the relevant information to the ECF operator, including the following information that explains key characteristics of the company; information that explains the purpose of the fund raising and the targeted offering amount; information relating to the business plan of the company; and audited financial statements of the company.

In Europe, the project owner must present the platform operator a document for confirmation which consists of information about the project owner and their proposal to conclude a contract (Sadzius & Sadzius, 2017). The platform must check the completeness, comprehensibility and consistency of the issuer's information and in some cases platforms may be required to provide the pre-determined criteria for selecting the projects (Sadzius & Sadzius, 2017).

Essentially, a crowdfunding campaign is an offer to buy certain ownership of the company to crowdfunding investors. In return for cash investment into the company, the investors will get shares issued on their names. Once the investors signed the agreement they become the members of the issuer's company. They have the right as member whereby they will be called for company's meetings. The investors will be provided also with the information during the company's meetings. Equity investors typically want some say in how the business is managed. Through these meetings, they can have some say about the decision or management of the issuer company.

However, there are arguments which said that their right to control is minimal. According to Li (2016), as compared to the economic right of the crowd funders, their control rights are rather minimal, and even those are largely commissioned upon the third party manager to be exercised.

The purpose of right for information and control right are to ensure that the business is able to deliver return to investors. This can be done through stipulating how often the campaigner should publish project financials and report to the investors, how to process the accounts of the business to the satisfaction of the investors, and how the campaigner should cooperate with respect to assisting the investors in monitoring the financials of the business (Li, 2016). Besides securing their economic rights, investors do not seem to have much control with respective to the merits of the project's business operations. The reason is related to the amount of their contribution. When the investors contribute only a small amount of money, it is difficult to enable them to have a say about the business operations of the company.

An informed decision of an investor is a must for protecting investors in crowdfunding platforms. They should be able to track the advancement in their investment frequently. The procedure begins with application of small company or start-up to the crowdfunding platform which then conducts proper due diligence. On approval, company's information and requirements is posted on the platform. Accredited investors can thereby assess the company and its requirements. If the investor shows interest, the issuing company can circulate the offer by private placement to the accredited investors who are registered on the crowdfunding platform (Khan & Khan, 2000).

Information asymmetry, though a problem in entrepreneurial financing setting in general, can get worse when it comes to crowdfunding, where funders are remote and have limited opportunity to perform due diligence in person with the entrepreneur that raises the fund (Li, 2016). According to her, because crowd funders are largely small and inexperienced investors, they tend to make decisions based on personal biases and persuasive narrative, rather than on financial experience, and such tendency gets exacerbated by social networking aspect of crowdfunding.

Issues on investment return

In general, investment in a business doesn't guarantee a return. This is because, a study by Ahmad and Seet (2009) has found that the SMEs in Malaysia faced high rate

of failure with an estimation 60% failure. According to Nur et al. (2015) equity investments in SMEs are at a risk of failure due to entrepreneurs' dependence on debt and lack of efficiency. This is supported by Halberstam (n.d.) who said that despite the CFP's best intentions and efforts, it is axiomatic that many of the ventures invested in via the CFP will end up in insolvency which will produce many disappointed or angry investors. In a crowdfunding mechanism, the public forming part of the crowd may not have such knowledge and expertise and therefore they cannot determine if a venture is capable of generating revenue (Khan & Khan, 2020). Furthermore, coupled with the lack of financial knowledge, the retail investors may not realized that the company they invested in is in trouble (Wan Haniff, Ab Halim & Ismail, 2019).

Internet crowdfunding platforms are legal entities that operate like any other business, where the main purpose is profit. Platforms generate revenue by acting as intermediaries for project owners and collecting fees for such services. The fees can be percentage-based or a one-time fixed annual payment depending on the generated sum of money (Sadzius & Sadzius, 2017). This is supported by Wan Haniff, Ab Halim & Ismail, 2019) who said that though ECF is seems capable in offering financial solution to the issuers who are seeking for additional funds to expand their company, in reality it may only benefits one party So, the issues regarding investment return in ECF is important to be discussed.

According to an example discussed by Li (2016), equity type projects do not promise their investors with a stable cash flow, but rather allow them to share both the upside and downside of the business. Return to the crowd funders is only possible when the project is able to generate positive net profit in the first place. However, before the money is to be distributed among investors yet the platform might get its share first to certain amount of percentage for example 10%. This is considered as a reward for its active management of the business. Some projects also take another 10% and set it aside as the "enterprise development fund" to be used for making up losses and working capital, and meeting other possible urgent needs. After that, another 5% will be taken away to pay for the third party manager for monitoring the business operation of the project entity. Therefore, only around 75% of the net profit will be shared among the campaigner and crowd funders according to their respective equity interest percentage. Since crowd funders are not guaranteed with a preferred return, there is also no mandatory requirement that they must sell their investment back to the campaigner and exit the project within certain term.

There is no guarantee from the CFP regarding the successful of the investment. In one of the example of investor's contract, it was provided that:

> *Our approval of an offer, as described in Clause 7.3 above, does not mean that we are recommending that you make an investment in the Issuer, that we believe the Issuer is likely to be successful or that we take any responsibility or will in any way be liable to you if the Issuer is not successful.*

From the terms of example of the investor's contract, it shows that the ECF platform will make a disclaimer regarding investment return. According to Halberstam (n.d.), certainly, the CFP should seek to disclaim any responsibility for the viability and financial suitability of the investment and to impose responsibility on the investor for making its own decision based on its own due diligence and its own financial resources and preferred risk profile. In ECF context, it is important to note that the success of obtaining funds does not guarantee business success. If the business fails, the investors will not get any return until all creditors have been paid and this puts them in a weak position (Wan Haniff, Ab Halim & Ismail, 2019).

As an example, since more than 50% of start-ups companies in India are prone to failure in their initial five years, the Securities Exchange Board of India has been entrusted with protection of investors (Khan & Khan, 2020). They do not want to put investors in a position where they have no way to recover their investment when a company defaults (Khan & Khan, 2020).

b. Indonesia

Equity Crowdfunding is a new financing method that differs from the conventional financial system because it considers the crowdfunding model in equity. Equity Crowdfunding is considered an innovation of a new financial model that explains the openness of fundraising and has a minimum adjustment of capital and profits directed to various groups of people. The term Equity Crowdfunding emphasizes tapping the crowd [16],[17], a crowdfunding engagement involving many parties not just as a professional investor but also as a promising financing tool for innovative ventures that are relatively new [18].

In the investment activity, there is a relationship between the two people called an alliance. Another understanding of Yahya Harahap is the Agreement or Verbintenis, containing the understanding of a legal relationship of wealth/property between two or more people, which gives the power of the right on one party to obtain same time oblige

the other party to perform achievements. Certainly on the legal relationship built in the implementation of the ECF itself. Whether it is from the Organizer-Issuer and the Organizer-Investor, what are the valid terms of the agreement in the legal relationship made when reviewed on the terms of the Agreement's validity?

The terms of validity of an agreement are described in Article 1320 of the Civil Code (KUHPer). Article 1320 of the Civil Code (KUHPer) reads that for the validity of an alliance; four conditions are required [20]:

a. Agree with those who bind themselves

The agreed word is conformity of will or approval of the will to desire it to the agreement. The word agreed is free, which means that without any pressure or coercion from a party, it comes from the voluntary will of the parties. The agreed word can be done expressly or secretly. Inequity crowdfunding investment agreement occurs when the party who wants to invest agrees to the terms and conditions of registering an account. Investors and issuers' willingness to conduct their own will has quietly occurred an agreed word that gave birth to the agreement and placed both parties' obligations.

b. Ability to make an alliance

The intent is that the person who makes the covenant must be able to comply with the law. Article 1330 of the Civil Code describes the subjects of law that are incapable of agreeing are:

- Immature people;
- Those who are put under the fold;
- In the case established by law, women, and in general, everyone to whom the law has prohibited making certain covenants.

As it progresses, proficiency in doing legal acts has undergone several changes. Based on Article 330 of the Civil Code, the age of ability to perform legal acts is 21 years. Then both for Issuers, Investors, and Operators are also clearly regulated in the Regulation of the Financial Services Authority of the Republic of Indonesia Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Fund Urun Services. The ECF Operator's side is very clearly regulated, which mentions that the Urun Dana Service Provider is an Indonesian legal entity that provides, manages, and operates crowdfunding services (Article 1 number 5 POJK No. 57/POJK.04/2020). It means to prove the implementation itself is mandatory to

attach documents such as a deed of establishment and identity of the founder of the legal entity. It shows the organizer's prowess (Article 13 POJK No. 57 / POJK.04 / 2020). Similarly, publishers and investors who make alliances with the organizer must be obliged to attach securities to show the proficiency of the Issuer and Investor.[1]

c. A certain thing

In Article 1320 of the Civil Code, a particular point is clarity on the content or object of the agreement intended for the parties to exercise their rights and obligations as a condition of this third explains the existence of objects in the explicit agreement. Article 1333 of the Civil Code explains that "An agreement must have a principal in the form of an item that is at least determined in type. The amount of goods is not necessarily certain as long as the amount can be determined or calculated."

d. A Halal Cause

Because is a cause that results in people making agreements, but what is meant in a lawful reason as the provisions of Article 1320 of the Civil Code is not a cause in the sense that causes or encourages people to make agreements but what is meant in this case is related to the object of the agreement. Article 1335 of the Civil Code reads, "A covenant without cause, or which has been made for a cause, which is false or forbidden, has no power." The article reaffirms one of the objective conditions of an agreement on a legal cause. If an agreement contradicts law, decency, or public order, the agreement has no legal force or so-called null and void.

Furthermore, Article 1336 reads, "If there is no stated cause, but there is a lawful cause, or if there is another reason than stated, the agreement is nevertheless valid." The implementation of ECF as an investment object, the government does not prohibit it even provide a clear legal umbrella, namely the issuance of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 57 /Pork.04/2020 concerning Securities Offerings Through Information Technology-Based crowdfunding services and, of course, directly supervised by the Financial Services Authority.

The term "Agreement" in treaty law is the equivalent of the term "*Overeenkomst*" in Dutch or "Agreement" in English. Article 1313 of the Civil Code explains that the meaning of a covenant is a legal act by which one or more persons bind themselves

[1] Can be seen on the ECF Organizer's Website in the Terms and Conditions section of Issuers and Investors).

to one or more others. The system of treaty law is an open system, meaning that everyone is free to enter into agreements, both those that have been regulated and that have not been regulated in the law [21].

The legal basis for buying and selling is Article 1457 to 1540 of the Civil Code (Civil Code). The issuer, in this case, acts as a limited liability company that sells the shares it owns to the financier. Based on the sale and purchase agreement concept, the issuer should hand over shares to the investor as the buyer, and the financier should provide some payment money for the purchased shares.

Investor's Rights and Obligations in ECF agreements

Based on Article 64 paragraph (1), "The agreement for the implementation of crowdfunding services between the Organizer and the Financier as referred to in Article 61 letter c may be outlined in the form of a standard agreement by fulfilling balance, fairness, and fairness." It means that the agreement does not need to use the same authentic deed used in the agreement between the Service Provider and the issuer, who must use the notarial deed. Then in the POJK also does not list the structure of the provisions of the standard agreement.

As one example, only the rights and obligations arising in the standard agreement of the organizer of the crowdfunding service are between, as follows:

"VIII. INVESTOR'S OBLIGATIONS

Notwithstanding any other rights and obligations as outlined in this Agreement, the obligations of the Financier shall be as follows:

1. *Investors are obliged to maintain the good name and reputation of the Organizer by not carrying out activities containing elements of ethnicity, religion, and race or not disseminating incorrect information on behalf of the Organizer.*
2. *Investors must comply with and comply with the terms and conditions in the Organizer's website and comply with POJK Crowdfunding services and applicable laws and regulations in the Republic of Indonesia.*
3. *Investors must agree and agree willingly to provide access to internal audits and external audits appointed by the Operator as well as audits of the Financial Services Authority (OJK) or other authorized regulators whenever necessary related to the implementation of this crowdfunding service."*

"IX. FINANCIER RIGHTS

Notwithstanding any other rights and obligations as outlined in this Agreement, the rights of investors are as follows:

1. *The Investor reserves the right to purchase shares offered by the Issuer through the Fund Urun Service organized by the Organizer.*

2. *Investors are entitled to benefit from dividend distribution conducted by the Issuer through the Organizer."* [22].

In the agreement, investors' right does not mention the right of investors to obtain the right to liability for losses incurred by publishers, organizers, or issuers and organizers—moreover, the right to obtain legal protection from supervisory institutions in this case OJK.

Organizers and financiers in equity crowdfunding have a legal relationship born from the agreement of the implementation of crowdfunding services which based on Article 64 paragraph (1) POJK No. 57 of 2020 "The agreement for the implementation of crowdfunding services between the Organizer and the Financier as referred to in Article 61 letter c can be outlined in the form of a standard agreement by fulfilling balance, fairness, and fairness". The agreement's binding occurs when the Investor expresses electronic approval of the agreement's contents on the Crowdfunding Service. The agreement may contain provisions on granting power to the organizer to represent the investor as the issuing shareholder, including in the general meeting of shareholders of the issuer and the signing of the deed and other related documents.

Based on the agreement between the organizer and the financier, the investor purchases shares owned by the issuer offered through the organizer by depositing a certain amount of funds on the escrow account; it is based on Article 37 paragraph (1) "The Organizer shall use the escrow account at the bank used to receive funds from the Securities offering through the crowdfunding service." An escrow account is an account that is opened specifically for specific purposes to accommodate funds entrusted to Bank Indonesia based on specific requirements by written agreements. The purpose of using an escrow account, in this case, is to prohibit the organizer from collecting public funds through the organizer's account.

Issuers and investors in equity crowdfunding do not meet in person but through intermediaries / Equity crowdfunding organizing platforms. As such, publishers and financiers have a legal relationship born of investment agreements. This investment legal relationship is implied from various articles in POJK No. 57/POJK.04/2020 concerning Fund-Based Securities Offerings through Information Technology-Based Securities Offerings. The purpose of the regulation in the POJK leads to investment agreements between publishers and investors through electronic organizers.

Shares are a sum of money invested by investors in a company, and on the investment of shareholders (candleholder/shareholder) benefit from the company in the form of dividends. Shares in civil law are considered intangible moving objects. Article 60 paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies states that shares are moving objects. Furthermore, Article 56 paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies states that the transfer of rights to shares is carried out by deed of transfer of rights. Law No. 40 of 2007 concerning Limited Liability Companies only recognizes shares in the name of only. Deed of transfer of rights can be done by notarial deed (authentic deed) or by deed underhand (private deed).

c. Comparative between Malaysia and Indonesia

Daeslaly dan ALY

3.5.6 The Roles of the ECF Enforcement Body

a. Malaysia

There are a few regulators responsible to ensure the smooth running of the crowdfunding activities. The main regulator is the Securities Commission which its role is provided under the Securities Commission Act 1993.

Securities Commission 1993

Section 3 of the Securities Commission Acts state that there is hereby established a body corporate by the name of “Securities Commission” with perpetual succession and a common seal, and which may sue and be sued in its corporate name and, subject to and for the purposes of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest vested in the Commission upon such terms as it deems fit.

While Section 15(1) of the SCA 1993 states on the functions of the Commission i.e.:

(a) to advise the Minister on all matters relating to securities and derivatives industries;

(b) to regulate all matters relating to securities and derivatives;

(c) to ensure that the provisions of the securities laws are complied with;

(d) to regulate the take-overs and mergers of companies;

(e) to promote and regulate all matters relating to fund management, including unit trust schemes;

(f) to be responsible for supervising and monitoring the activities of any exchange holding company, exchange, clearing house and central depository;

(g) to take all reasonable measures to maintain the confidence of investors in the securities and derivatives markets by ensuring adequate protection for such investors;

(h) to promote and encourage proper conduct amongst participating organisations, participants, affiliates, depository participants and all licensed or registered persons of an exchange, clearing house and central depository, as the case may be;

(i) to suppress illegal, dishonourable and improper practices in dealings in securities and dealing in derivatives, and the provision of investment advice or other services relating to securities or derivatives;

(j) to consider and make recommendations for the reform of the law relating to securities and derivatives;

(k) to encourage and promote the development of securities and derivatives markets in Malaysia including research and training in connection thereto;

(l) to encourage and promote self-regulation by professional associations or market bodies in the securities and derivatives industries;

(m) to license, register, authorise and supervise all persons engaging in regulated activities or providing capital market services as may be provided for under any securities law;

(n) to promote and maintain the integrity of all licensed persons in the securities and derivatives industries;

(o) to register or recognise all auditors of public interest entities for the purposes of this Act, and to promote and develop an effective audit oversight framework in Malaysia;

(p) to take all reasonable measures to monitor, mitigate and manage systemic risks arising from the securities and derivatives markets;

(q) to promote and regulate corporate governance and approved accounting standards of listed corporations; and

(r) to set and approve standards for professional qualification for the securities and derivatives markets;

While S.15(3) states that the Commission shall have the functions and powers conferred upon it by or under the securities laws.

Section 16 SCA - Powers of the Commission. The Commission shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions under the securities laws.

In short,the role of the Securities Commission is to regulate and enforce regulations pertaining to the capital market, ensuring sustainable market growth and development, supervising capital market activities and market institutions including the exchanges, clearing houses and registered market operators, and regulating all entities and persons licensed under the *Capital Markets and Services Act 2007*. Based on the SCA, the SC reports to the Minister of Finance and the accounts are tabled in Parliament annually.

The areas of responsibilities include:

- Developing the overall capital market and its market segments such as the equity market, bond and sukuk market, Islamic capital market, fund management, derivatives and other market-based platforms and services;
- Facilitating innovation and digital services through the capital market;
- Creating avenues for a sustainable financing ecosystem;
- Ensuring proper conduct of all market participants through our supervisory, surveillance and enforcement work;
- Championing good corporate governance practices; and
- Facilitating greater cross-border regulatory co-operation and thought leadership.

Underpinning all the work is a firm focus on investors. The SC mandates to regulate and ensure market growth are always done with the objective of protecting the investors, including initiatives to raise the levels of financial and investment literacy.

The Governing Bodies

Bank Negara (Central Bank of Malaysia)

The BNM is a statutory body wholly owned by the government that was established under the Central Bank of Malaysia Act 1958 and continues to operate under the Central Bank of Malaysia Act 2009 (CBA), which became effective on 25 November 2009. The BNM reports to the Minister of Finance (the Minister) and keeps the Minister informed of policies governing the monetary and financial sector, including the crowdfunding activities.

The BNM is empowered to act as the regulator of banking institutions under the Acts and the CBA. The CBA confers the necessary powers and instruments on the BNM to achieve its mandates effectively, and legitimises the duality of both the conventional and the Islamic financial systems in Malaysia, and in doing so establishes the legal foundation for the development of an Islamic financial system within the Malaysian financial system.

The BNM's primary objectives include the prudent conduct of monetary policy, financial system stability, and the development of a sound and progressive financial sector. In carrying out the aforementioned, the BNM is responsible for advising the government on macroeconomic policies and the management of public debt. It is also the sole authority for issuing currency and managing the international currency reserves of the country. Other functions of the BNM include the regulation and supervision of financial institutions as described below, and the monitoring and supervision of payment systems, money markets and foreign exchange markets.

From a supervisory perspective, the BNM is empowered by the Acts to regulate banking institutions, and does so by way of a risk-based supervisory (RBS) approach that monitors and reviews the manner in which all financial institutions identify, control and deal with their respective business risks.

Under the Development Financial Institutions Act 2002 (DFIA), it provides for the BNM to be responsible for the regulation and supervision of specialised financial institutions known as development financial institutions (DFIs), established by the government to specifically develop and promote national strategically important socioeconomic sectors such as agriculture, small and medium-sized enterprises, infrastructure, maritime, export-oriented sectors, capital-intensive and high-technology industries.

The provisions of the DFIA empower the BNM to monitor the crowdfunding activities and financial performance of these institutions and their main objective, which is to provide specific financial products and services to cater to their respective focus areas; and to ensure that DFIs are resilient, efficient and able to fulfil their respective mandates in a financially sustainable manner, while contributing to the overall stability of the financial system.

b. Indonesia

The Financial Services Authority

Equity Crowdfunding (ECF) has long been known in the global community but in Indonesia only gained legitimacy on December 31, 2018, when the Financial Services Authority (OJK) issued POJK Number 37/POJK.04/2018 on U crowdfunding services through Equity Crowdfunding. From the rule, OJK feels that there are still shortcomings related to the wide coverage of the ECF. Therefore ECF is expanded to Securities Crowdfunding through POJK Number 57/POJK.04/2020 on Securities Offerings Through Information Technology-Based crowdfunding services.

The initial question in starting this sub-chapter is when the OJK creates a new legal relationship called crowdfunding service, based on what authority? OJK, based on Law No. 21 of 2011 concerning Financial Services Authority has the task of regulation and supervision of (a) financial services activities in the Banking sector; (b) financial services activities in the Capital Market sector; and (c) financial services activities in the Insurance, Pension Fund, Financing Institutions, and Other Financial Services Institutions sectors. The point is that OJK has the authority to regulate and supervise all forms of financial services activities.

In Article 8 of the OJK Law on regulatory duties, it is stated that one form of regulatory duty is to establish legislation in the financial services sector. As one form of interpretation of Article a quo, the OJK is authorized to establish a legal institution / legal relationship into the qualifications of the Financial Services sector, including establishing crowdfunding services in the Financial Services sector.

Problems began to occur when the ECF was qualified in Financial Services activities in the Capital Market sector by the OJK. The problem is that by including ECF in Financial Services activities in the Capital Market sector, ECF must be subject to its parent provisions, namely Law no. 8 of 1995 on Capital Market (UUPM). Moreover, ECF is made with POJK that should be lower rules must be by higher rules (UUPM).

However, the provisions of the ECF did not follow the provisions of the UUPM. They even made new conditions so that the activities of the ECF could not be referred to as Capital Market activities.

An example of such inconsistencies is from a definition problem. Capital Market in UUPM is defined as activities related to Public Offering and Securities trading, Public Companies related to the Securities issued, and institutions and professions related to Securities (Article 1 paragraph (13) UUPM). Public Offering is a Securities offering activity conducted by the Issuer to sell Securities to the public based on the procedures stipulated in this Law and its implementation regulations (Article 1 paragraph (15) UUPM).

While the Securities Offering in POJK Number 57/POJK.04/2020 states that: Securities Offering by each Issuer through crowdfunding service is not a public offering as referred to in the Capital Market Law if: (a) the Securities offering is made through the Organizer who has obtained permission from the Financial Services Authority; (b) the Securities offering shall be made within a period of no later than 12 (twelve) months, and (c) the total funds raised through the Securities offering shall be at most Rp10,000,000,000.00 (ten billion rupiahs).

The conjunction "if" in the article is a condition stipulated by the OJK so that the Fund Urun Service is not a Public Offering as referred to in the Capital Market. If the Securities Offering is not a Public Offering referred to in the Capital Market, then why mention that ECF includes activities in the Capital Market sector? Furthermore, why is it mentioned in the consideration given that one of the bases of the issuance of POJK Number 57/POJK.04/2020 is UUPM? It means Article 2 paragraph (1) POJK a quo with Article 3 paragraph (1) POJK a quo contradict each other and by rules the two things that are contradictory it is impossible to gather each other.

Furthermore, the provisions concerning Issuers, in POJK Number 57/POJK.04/2020, are stated that the Issuer is a public company as referred to in the Law on capital markets if: (a) the number of shareholders of the Issuer is more than 300 (three hundred) parties, and (b) the amount of paid-up capital of the Issuer is more than Rp 30,000,000,000.00 (thirty billion rupiahs). The provisions are not only opposite to cup but also have deviated from the UUPM itself. UUPM defines a Public Company as a Company whose shares have been owned by at least 300 (three hundred) shareholders and have paid-up capital of at least Rp3,000,000,000.00 (three billion

rupiahs) or a total number of shareholders and paid-up capital stipulated by a Government Regulation.

From the above provisions, it can be seen that the paid-up capital to qualify for the Capital Market under the Capital Market Law is Rp. 3,000,000,000.00 (three billion rupiahs) or a capital stipulated by a Government Regulation. As of this writing, no Government Regulation requires a Public Company to have a paid-up capital of more than Rp. 3,000,000,000.00 (three billion rupiah). The question is, what is the legal basis for OJK to be able to say that the requirement to become a Public Company is to have a paid-up capital of Rp. 30,000,000,000.00 (thirty billion) in POJK Number 57/POJK.04/2020?

Some of the problems above have created legal uncertainty regarding the ECF regulation. Therefore, the authors propose two solutions to overcome these problems, namely: (1) revise the Capital Market Law by including the ECF as part of the Capital Market or (2) make a separate regulation regarding the ECF and state that the ECF is not part of the Capital Market but state that the ECF is an institution. OJK can supervise other financial services.

The development of the world today, or what is often called industry 4.0, has given rise to many innovations in the financial sector, one of which is ECF. This innovation that is too fast in the field of finance usually cannot be Sfollowed by the law. *Het recht hink achter de feiten aan* (the law always struggles to catch up with the facts that happen in society). ECF as a phenomenon that appears in the community certainly brings up positive and negative sides.

The positive side is that for small businesses (MSMEs) that are not bankable, the existence of this ECF is an alternative funding for their business. The negative side is that there is a high potential risk that will harm investors. In general, MSMEs are just starting out, which may still be looking for a niche market. In contrast to large/national scale businesses, the market niche is already established and stable for them.

The author sees the ECF arrangement (which is now SCF) by OJK solely to overcome the existing legal vacuum. Because of a legal vacuum, according to the author, OJK's actions can be justified to issue POJK regarding ECF. It means that having a legal basis and an institution that regulates and oversees the ECF would be better than the absence of an institution that regulates and oversees the ECF, even though the current regulations create legal uncertainty.

In the future, according to the author, although OJK has the authority to set regulations regarding ECF, the regulation regarding the existence of ECF should not be regulated by OJK because the main task of OJK is not to encourage economic growth and equity. The main task of OJK, as stated in the preamble to the OJK Law, is the implementation of an orderly, fair, transparent, and accountable financial services sector, as well as being able to realize a financial system that grows sustainably and stably and can protect the interests of consumers and society.

The Role of the Ministry of Communication and Information

One of the requirements that Crowdfunding Service Providers must meet to operate is to be registered as an Electronic System Operator at the ministry that carries out government affairs in communication and informatics (Menkominfo). Government Regulation No. 71/2019 concerning Electronic Systems and Transactions as a juridical basis for business actors in the digital industry to register their companies as Electronic System Operators.

The definition of Electronic System Operator is any person, state administrator, business entity, and community that provides manages, and/or operates an electronic system individually or jointly to electronic system users for their own needs and/or the needs of other parties (Article 1 PP No. 71/2019). Electronic system operation is divided into two scopes: (a) Electronic system operator in the public sphere; (b) private sector operator of the electronic system.

The implementation of the Electronic System in the public sphere consists of::

a. Agency, and
b. Institution appointed by the Agency

Electronic System Operators in the private sphere consist of:

a. Electronic system operator that is regulated or supervised by the Ministry or Institution based on the provisions of laws and regulations; and
b. Electronic System Operators who have portals, sites, or applications in the network via the internet that are used to:

1) Provide, manage, and/or operate the offer and/or trade of goods and/or services;
2) Provide, manage, and/or operate financial transaction services;

3) Delivery of paid digital materials or content through the data network either by downloading through portals or websites, send by electronic mail, or through other applications to the user's device;
4) Provide, manage, and/or operate communication services including but not limited to short messages, voice calls, video calls, electronic mail, and online conversations in the form of digital platforms, network services, and social media;
5) Search engine services, Electronic Information provision services in the form of writing, sound, images, animation, music, videos, films, and games or a combination of some and/or all of them; and/or
6) Processing of personal data for operational activities to serve the public related to electronic transaction activities.

Crowdfunding Service Providers are included in the private scope of Electronic System Operators. Therefore, the Crowdfunding Service Provider must register as an electronic system operator (Article 6 paragraph (1) PP a quo). The registration is submitted to the Minister through an electronically integrated business licensing service by the provisions of the legislation (Article 6 paragraph (3) PP a quo). With the issuance of PP No. 24/2018 concerning Electronically Integrated Business Licensing Services, Crowdfunding Service Providers are required to apply for permits to the OSS (Online Single Submission) institution.

OSS institutions are non-ministerial institutions that carry out government affairs in the field of investment coordination. This OSS institution will later issue business licenses and commercial or operational permits. The issuance of the permit is for and on behalf of the minister, head of the institution, governor, or regent/mayor, even though the OSS institution issues it.

Custodian Bank for Equity Crowdfunding in Indonesia

Custodian is a party that provides custody services for securities and other assets related to securities and other services, including receiving dividends, interest, and other rights, completing securities transactions, and representing account holders who are their customers (Article 1 paragraph (8) of the Capital Market Law). The Capital Market Law states that those who can carry out business activities as custodians are Depository and Settlement Institutions, Securities Companies, or Commercial Banks with approval from Bapepam (OJK).

The role of the Custodian Bank in providing crowdfunding services has an important role in maintaining orderly, fair, and efficient transactions. The condition for the Operator to apply for a license to the OJK is that there must be an agreement document with the Custodian Bank and the Depository and Settlement Institution (KSEI). This means that the Operator must appoint who will be the Custodian Bank.

Custodian Bank is a commercial bank that has obtained approval from the OJK to conduct business activities as a custodian. Custodian banks are under the Depository and Settlement Institution (PT. KSEI) as the party that organizes central custodian activities for custodian banks, securities companies, and other parties.

The functions of the Custodian Bank in administering the ECF include:

a. Securities account opening, Single Investor ID (SID), and Sub Securities Account (SRE) on behalf of the Investor
b. Escrow account opening
c. Store and record the ownership of securities issued by the Issuer
d. Settlement of transactions in the Secondary Market
e. Issue and send monthly confirmation to the Operator regarding the ownership of securities on behalf of the Investor
f. Reconciliation of funds and/or securities
g. Distribute the benefits (dividends) that are the rights of investors
h. submitting a monthly report of securities ownership to investors

At the inception of the ECF, proof of share ownership is not required to be recorded by the custodian. This can be seen in the distribution of shares purchased by investors, allowing for physical distribution through the delivery of share certificates. However, after the POJK No. 54/POJK.04/2020, the requirement to become an investor is to have securities account with a custodian bank specifically to deviate securities and/or funds through crowdfunding services (Article 56 paragraph (1) POJK No. 54/POJK.04/2020). It means that there is no more physical distribution of shares at this time or in POJK No. 54/POJK.04/2020.

The custodian bank's central role is related to crowdfunding service providers' mandatory use of escrow accounts. An escrow account is an account opened by a bank for certain purposes based on certain conditions by a written agreement. The purpose of using an escrow account in organizing crowdfunding service activities is so that the Operator does not collect/store Investor funds. Thus, the custodian bank

is the party in charge of temporarily storing the proceeds from the Investor's purchase, which will later be distributed to the Issuer.

The provisions of Article 37 paragraph (6) of POJK POJK No. 54/POJK.04/2020 states that funds deposited in an escrow account are prohibited from being transferred to someone other than the Issuer and Investor. Escrow accounts are also prohibited from being used for holding funds other than securities purchases by investors. In the case of offering sharia securities (Sukuk), the escrow account used must use a sharia bank.

c. Comparative Analysis between Malaysia and Indonesia

Che Bi dan Farid

3.5.7 ECF according to Shariah

a. Malaysia

Introduction

The Islamic commercial law or known as *Fiqh al-Muamalat* is part and parcel of the Shariah. The Islamic commercial law is derived from the Shariah principle which its operations and aims must be based on the teaching of al-Qur'an an al-Sunnah. The basic concept of the Islamic commercial law is that the wealth is a trust from Allah SWT which prohibits oppressive and unjust practices. It also promotes the concept of honesty, transparency, justice and fairness. (Hassan, et al., 2016).

The prohibition of *riba* (interest) and *gharar* (uncertainty); risk sharing; money as the potential capital; prohibition of speculative behavior; sanctity of contracts; and Shariah-approved activities are the basic Shariah principles should be observed in dealing with Islamic commercial transaction. Meanwhile the function of Islamic commercial transaction in general are to govern the economic activities and financing, so that people can manoeuvre their economic activities in line with the Shariah principles. (Hassan, et al., 2016).

Islam is a religion of peace and prosperity and always emphasizes on mutual cooperation and support among its followers in every sphere of their lives. Under Islamic commercial law, all commercial transactions are based on the same philosophy of brotherhood, a philosophy and cooperative spirit that has been instilled into practical modes of Islamic financial transaction including the Islamic investment activities. (Saqib et al, 2014). Equity financing is one of modes of financing under Islamic law by taking or pooling up capital or equity from other parties to undertake a commercial

project by way of partnership, joint-venture projects and cooperative societies. Normally the parties in equity financing will be entitled to profits and also the sharing of losses. (Hassan, et al., 2016).

Classical Muslim scholars have made a great contribution in this regard and find out an alternative funding sources to ensure that those who has constraint to get capital to carry out the business. An Islamic contract of *al-musyarakah* and *al-mudharabah* for example is an acceptable investment contract. This contract is not new and this concept is inherited from the pre-Islamic age and has been practice during the time of the Prophet Muhammad (pbuh). Later, such contract is developed by the Muslim jurists such as al-Kasani (1996), Ibn Qudamah (1988), Ibn Rush (2003) and Ibn Abidin (2005). This type of contract then been discussed and scrutinized by the contemporary Muslim scholars such as Muhammad Taqi Uthmani (2008) and Wahbah al-Zuhayli (2006).

Hence the Muslim entrepreneur is responsible to identify the permissible sources of financing by Shariah as a capital to run the business such as the way of *al-musyarakah* contract or the way of *al-mudharabah* contract. Both contract can be employed by the business entity in order to secure their capital to run the business.

There is a significant move made by SC with the issuance of GRM 2015 by including the provisions of Part E: Offering of Islamic Capital Market Products. There are three (3) significant sections under Chapter 12 pertaining to Shariah Adviser consist of (a) Appointment of Shariah Adviser; (b) Role of Shariah Adviser; and (c) Disclosure.

According to GRM 2015, where an Islamic capital market product is offered, on or through the recognised market, the RMO must appoint a Shariah adviser (GRM 2015, clause 12.01). In this regard, the Shariah adviser must either be: (a) a person or a corporation, registered with the SC; (b) a licensed Islamic bank; or (c) a licensed bank or licensed investment bank approved to carry on Islamic banking business (GRM 2015, clause 12.02).

Apart from that, GRM 2015 also provides the role and responsibility of Shariah adviser including (GRM 2015, clause 12.03):

(a) Advising on compliance with Shariah principles relating to the offering of Islamic capital market product;

(b) Providing Shariah expertise and guidance on all matters, particularly in documentation, structuring and investment instruments, and ensure compliance with relevant securities laws and guidelines issued by the SC;

(c) Ensuring that the applicable Shariah rulings, principles and concepts endorsed by the Shariah Advisory Council are complied with;

(d) Applying *ijtihad* (intellectual reasoning) to ensure that all aspects relating to the offering of Islamic capital market product are in compliance with Shariah, in the absence of any rulings, principles and concepts endorsed by the Shariah Advisory Council; and

(e) Where applicable, issue a Shariah pronouncement, which must include–

(i) the basis and rationale for the pronouncement;

(ii) the structure and mechanism of the Islamic capital market product; and

(iii) the applicable Shariah rulings, principles and concepts used in the Islamic capital market product.

Thirdly pertaining to disclosure requirement, where an Islamic capital market product is offered, on or through the recognised market, the RMO must disclose the following; (a) the name of the Shariah adviser appointed to advise on the offering of Islamic capital market product; and (b) the information relating to the structure of the Islamic capital market product (GRM 2015, clause 12.04).

According to Abdullah (2016), even though the provisions pertaining to the guidelines in Offering of Islamic Capital Market Products has been included, there is no Islamic ECF being registered in Malaysia. With the expectation of the potential emergence of Shariah-compliant ECF in Malaysia, the current state of laws is lacking proper regulatory and Shariah governance frameworks. The requirements for the appointment and disclosure of the Islamic capital market products *vide* Part E of the GRM 2015 is not sufficient in ensuring a proper and holistic Shariah governance framework for crowdfunding activities.

Up to date, even though several amendments have been made to GRM 2015 in order to strengthen the legal framework of GRM in Malaysia, there is no revision have been made to the above provisions. The same provisions can be found in the latest revised version of GRM namely Guidelines on Recognized Markets (SC-GL/6-2015(R5-2020) (hereinafter referred to as “GRM 2020”).

b. Indonesia

Indonesia's population, which is predominantly Muslim, of which 64% are still unbanked, provides a great opportunity for users of shariah-based financial technology (Fintech). Moreover, the support of modern technology makes the Islamic economy grow significantly from year to year. Moreover, the existence of shariah regulations strengthens the existence of shariah fintech to create new business innovations [56]. One of the Islamic fintech that attracts public interest is ECF. The ECF platform scheme is referred to as a business that saves startups [57] due to the global crisis that requires a shift in the fundraising mechanism by collecting funds collectively to finance business activities managed by publishers.

The implementation of ECF in Indonesia is based on the Regulation of the Financial Services Authority (POJK) of the Republic of Indonesia Number 37/POJK.04/2018 concerning Crowdfunding Services through Information Technology-Based Stock Offerings (ECF). However, since December 10, 2020, the regulation has been revoked and declared invalid since the issuance of the Regulation of the Financial Services Authority (POJK) of the Republic of Indonesia Number 57 /POJK.04/2020 concerning Securities Offering Through Information Technology-Based Crowdfunding Services. It confirms that the ECF arrangement follows the regulation of Securities Offering Through Information Technology-Based Crowdfunding Services. One of the reasons for the replacement of this regulation is to accommodate the needs of Micro, Small, and Medium Enterprises (MSMEs) in utilizing crowdfunding services as an alternative source of funding. The existence of ECF is a solution to assist funding for startups and small businesses [58], which previously had not been able to raise the economy of MSMEs [59]. For example, the Bizzare platform is engaged in the franchise business segment, Santara is engaged in the MSME sector, and Pramdana in the property sector investment are examples of ECF providers that are developing in Indonesia today. Through this platform, investors can buy shares in businesses managed by profitable publishers, and investors will get additional dividends from the shares they own.

Law Number 21 of 2011 concerning the Financial Services Authority explains that the Financial Services Authority carries out the task of regulating and supervising financial service activities in the capital market sector. Meanwhile, Law Number 8 of 1995 concerning the Capital Market does not explicitly regulate ECF.

In contrast to POJK No. 37/POJK-04/2018, which confirms that ECF is included in the scope of financial services activities under the auspices of the capital market, even though the mechanism for offering shares is through crowdfunding services, not through the stock exchange. The lack of synchronization between POJK No.37/POJK-04/2018 and Law No. 8/1995 in conjunction with Law No. 21/2011 can lead to contradictions in the implementation of crowdfunding services. However, the presence of ECF provides innovations in conducting share offerings which are philosophically also part of capital market activities in a simpler form.

The points regulated in the latest POJK include crowdfunding services, organizers, publishers, and investors. Now the securities that issuers can offer through crowdfunding services include equity, debt, or Sukuk securities with a maximum limit of 1 year and a maximum of Rp. 10 Billion. This regulation expands the securities instruments from initially only in the form of shares (equity) plus debt securities or Sukuk. Equity means ownership. Investors who have deposited funds to buy shares will become the owner or part of the company that issued the shares.

The implementation of ECF involving organizers, issuers, and investors is simpler than conducting an Initial Public Offering (IPO) process [60]. It can be said that ECF is a mini IPO for MSMEs and startups seeking funds from the public [61]. Crowdfunding service providers (platforms) that have an online information technology system are required to have a business license from the OJK by the regulations of Indonesian legal entities in the form of limited liability companies or cooperatives. Suppose the limited liability company is a securities company. In that case, it can carry out activities outside of the organizer's activities. However, if it is in a cooperative form, it may only operate in the service sector. If the share ownership of the operator is owned by a foreign citizen and/or a foreign legal entity, it may not exceed 49%. When applying for a business operating license to the OJK, a minimum paid-up capital of Rp. 2.5 Billion. This organizer acts as a liaison between investors and issuers, with the organizer using an online platform to carry out ECF activities [62].

The issuer, the party that owns the shares, is an Indonesian business entity in the form of a legal entity or other business entity that issues securities (shares) through crowdfunding services. The issuer must be in the form of a Limited Liability Company (PT) that offers its shares through an ECF platform managed by the organizer. Issuance of shares in crowdfunding services is not a public company as

regulated by the Capital Market Law, which requires the Issuer's number to be no more than 300 parties. The total paid-up capital of the Issuer is not more than 300 billion Rupiah. In carrying out business activities, publishers are prohibited from being controlled by conglomerates, public companies, or publicly listed subsidiaries, as well as business entities with net assets exceeding Rp. 10 billion, excluding land and buildings for business premises [62].

Investors who are domiciled as buyers of equity securities through crowdfunding services can be individuals or legal entities required to have securities account at a custodian bank whose function is to store securities. It is ensured that investors meet the criteria and can purchase securities issued by the issuer. If the investor earns up to Rp. 500 million, the maximum investment is 5% of income per year. Meanwhile, if the income is more than Rp. 500 million, investors can invest a maximum of 10% of income per year. However, suppose the investor is a legal entity with investment experience in the capital market. The securities to be purchased are debt or Sukuk guaranteed or guaranteed with a guaranteed value of at least 125% of the value of the funds raised. In that case, the investment amount of the investor is not limited. The provisions of investors in the POJK do not limit domestic investors and provide opportunities for shared ownership by foreign citizens and legal entities with the regulated provisions. It means that foreigners are allowed to become shareholders in the implementation of ECF [62]. This is different from POJK No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, which restricts recipients of peer-to-peer lending loans to be originating and domiciled in the territory of the Unitary State of the Republic of Indonesia (NKRI) [63].

This practice of ECF makes it easier for business actors to obtain funds in line with the government's spirit in realizing financial inclusion, which is the target [63]. Through crowdfunding services, publishers can sell their shares to the public so that the issuer will get additional funds for its business operations, and investors will get shares on the funds deposited to the issuer through the organizer. In summary, the organizer of ECF acts as a liaison between issuers and investors to help seek funding using an electronic system. Publishers who have projects and need capital for business development must submit a funding request proposal to investors through the ECF platform. Investors as parties who have sufficient funds will read investment opportunities on the offer submitted by the publisher through the

platform. If agreed, the investor will commit to investing in the project, and the investor is entitled to obtain equity [7].

Indonesia does not yet have a specific regulation on shariah ECF. However, several fatwas of the National Shariah Council (DSN) of the Indonesian Ulema Council (MUI) are considered relevant to assessing the conformity of shariah to the implementation of crowdfunding services shariah-compliant or not. Although the position of the DSN-MUI fatwa is not found in the hierarchy of laws and regulations in Indonesia, the DSN-MUI fatwa can be used as a guide in implementing shariah compliance in every institution with shariah principles [64]. The current DSN-MUI fatwa is not just an answer to someone's question but an active response of DSN-MUI to the increasingly rapid development of the shariah economy, even having binding legal force based on the Act [65].

The DSN-MUI fatwa that can be guided in implementing crowdfunding services includes DSN-MUI Fatwa Number 80/DSN-MUI/III/2011 concerning the Implementation of Shariah Principles in the Mechanism of Trading in Equity Securities in the Regular Market of the Stock Exchange. In its legal provisions, this fatwa states that the mechanism of trading equity securities in the regular market of the stock exchange may be carried out as long as it is guided by the special provisions stipulated in this fatwa. Such special provisions, such as securities trading, must use a sale-purchase contract (bai'). The sale and purchase of securities are considered valid when there is an agreement on the price and object of trade between the seller and the buyer. Securities traded must comply with shariah principles. During the trading of securities (equity), it must be carried out according to shariah principles that prioritize prudence and are prohibited from taking actions that contain elements of *maisir, gharar, haram, usury, riswah, dzulm dharar, taghrir, ghisysy, najsy, ihtikar, bai' al-ma 'dum, talaqqi al-rukban, ghabn, tadlis,* and immorality.

DSN-MUI Fatwa Number: 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Shariah Principles. The practice of information technology-based financing services is permitted on conditions according to shariah provisions as stated in this fatwa. Its implementation is prohibited from containing usury, *maisir, gharar, tadlis, dharar, zhulm, and haram*. The contracts used by legal subjects are organizers, recipients of financing, and providers of financing, including *al-bai', ijarah, mudharabah, musyarakah, wakalah*

bil ujrah, and qardh contracts. Suppose the organizer applies a standard contract in the implementation mechanism of information technology-based financing. In that case, it is obliged to prioritize the principles of justice, balance, and fairness by referring to shariah provisions and laws. The agreement of legal subjects in implementing this financing, one of which is marked with an electronic signature, must guarantee its validity and authentication according to the applicable legal rules. Operators are also allowed to charge a reasonable fee for the provision of financing systems and facilities using information technology, among others in factoring financing activities, financing for the procurement of goods ordered by third parties (purchase orders), financing for the procurement of goods for business actors who sell online seller, financing for the procurement of goods for business actors who sell online with payment through payment gateway providers, financing for employees (employees), and community-based financing.

DSN-MUI Fatwa Number 135/DSN-MUI/V/2020 Regarding Shares. The contract used in shariah share transactions on the primary market is the same as the *syirkah musahamah* contract if the shares come from portfolio shares. Meanwhile, the bai' contract is used if the shares offered are from shariah shares owned by the previous shareholders. The transfer of shariah share ownership can be done through buying and selling and grants, *waqf, infaq*, and gifts. According to this fatwa, the issuance and transfer of *syirkah* musahamah shares may be carried out.

Legal subjects in implementing information technology-based financing, if they are analogous to ECF activities, have the same roles and functions as the organizers, issuers, and investors. Business actors who need funds to develop their business can use crowdfunding services as an alternative to obtaining funds from the public by issuing shares. It is called a stock issuer because it is the party that can apply for funding by issuing shares through the ECF platform to be offered to investors. Investors who commit to funding projects carried out by the publisher will get a return on the investment. Meanwhile, the organizer of ECF acts as an intermediary that brings together investors and issuers who have the right to charge users fairly.

The shariah provisions in POJK Number 57/POJK/04/2020 are more comprehensive than POJK Number 37/POJK.04/2018, starting from the form of securities offered in the form of equity, debt, and Sukuk.

ECF is a Muamalah Activity

Crowdfunding is a platform that functions as a medium to attract funds from investors for projects managed by publishers [66]. The presence of ECF includes activities that combine financial services with technological advances, thereby changing the business model from conventional to more sophisticated and modern because of technological facilities. Crowdfunding service activities are equity in Islamic studies, including *muamalah* activities. Their activities discuss the property and its kinds, human relations with objects, human relations with objects concerning property rights, revocation of property rights in certain engagements [67]. Every economic activity in Islam is strived to be regulated so that it is orderly in *muamalah* so that *mashlahat* is realized. Therefore, every ECF activity can bring benefits and is declared by shariah if it does not conflict with shariah principles.

The basic principle in *muamalah* is that every Muslim is given the freedom to do whatever he wants as long as Allah does not prohibit it according to the provisions of the Qur'an and Al-Hadith. This is as stated in the rules of fiqh (Islamic law) "Basically all forms of *muamalah* are permissible unless there is a proof that forbids it" [68]. In another sense, all forms of *muamalah* are legal until a proposition is found that prohibits them. Islamic law provides wide opportunities for the development of new forms and types of *muamalah* by developing the needs of people's lives. Every Muslim is free to do whatever he wants as long as it is not prohibited by shariah. This means that the freedom of muamalah, according to Islam, must be within limits that Allah SWT does not prohibit. So to determine whether it is permissible or not to carry out *muamalah* activities, what is done is to look for forbidden arguments because the original law of doing muamalah is that it is permissible, not unlawful [67].

ECF is an activity of buying and selling shares between issuers and investors through a crowdfunding service platform intermediary. According to Wahbah, as quoted by DSN-MUI Fatwa Number 135/DSN-MUI/V/2020, that "It is permissible to engage in transactions on a share, it is legal, because the shareholder is a partner (shareholder) in the company (company) according to the shares he owns. " To maintain this permissibility, shariah crowdfunding services must consider the benefit aspect, namely achieving benefits and avoiding damage. Because the essence of benefit in Islam is all forms of goodness with an integral dimension of the world and

the hereafter, material and spiritual, individual and social. According to Islam, something is considered beneficial if it fulfills two elements, namely compliance with shariah (halal) and bringing goodness (*thayyib*) to all aspects of life and not causing harm (*madharat*) [69]. This benefit is aimed at fulfilling the vision of benefit included in the maqashid shariah (shariah goals), namely protecting religion (*al-dien*), soul (*al-nafs*), reason (*al-aql*), offspring (*al-nasl*), and property (*al-nafs*). Economic activity is considered beneficial if it is prosperous, happy, profitable, facilitates, and relieves. Meanwhile, it contains *madharat* if the activities are miserable, troublesome, detrimental, difficult, and burdensome [70].

The implementation of ECF must fulfill the principle of justice and avoiding elements of injustice. Any form of economic activity that contains oppression and injustice is not justified. The implementation of justice in ECF can be done by avoiding activities that are forbidden to do. It is in line with the rules of fiqh [68], "Whatever becomes an intermediary (media) for unlawful acts, it is also unlawful." It can be understood that the organizers of crowdfunding services with shariah principles are prohibited from facilitating electronic meetings between investors and issuers over the execution of an illicit project. When the project undertaken by the issuer is unlawful, and the issuer continues to offer its shares to the public (potential investors) through the ECF platform, the organizer is required to conduct an in-depth shariah-compliant study of the shares offered. Organizers based on shariah principles have the right to reject project proposals that will be promoted through the organizer's electronic system if it turns out that the project leads to things that are prohibited by state law and religious law. On the other hand, this principle of fairness also requires the parties involved to be honest in expressing their will and circumstances during the crowdfunding service agreement.

In particular, the principles in *muamalah* can be classified into two, namely, things that are ordered to be done and things that are forbidden to do. Muamalah transactions must be avoided from maisir, gharar, haram, and usury. About what is ordered in *muamalah*, among others, the transaction object must be lawful, and *thayyib*, the management of the object of the transaction, must be trustworthy and based on willingness. The Islamic principle that muamalah must be lawful, not for things that are forbidden. Muslim preferences are not only determined by utility alone but must fulfill *mashlahat*.

The basic idea and spirit of crowdfunding are *at-ta'awun* (*gotong royong*). Indonesian Muslims can be encouraged to implement the values of *gotong royong* as a basis for moving the community to utilize the ECF instrument in economic activity [71]. ECF, or what is often called a joint venture, has the same concept as stocks. It is interpreted as a joint business because the source of funds comes from the community in large quantities. It is estimated that significant funds will be collected even though each investor submits a small number of funds. The money given by the investor to the issuer becomes capital so that the investor is entitled to partial ownership of the company and hopes to get equity from the results of the fundraising project. Islam always encourages its people to work together in goodness. About investment in ECF, it must be done in companies that comply with shariah principles, not in companies that mix halal assets with haram goods which are not allowed by Islam. Investing in companies that are not lawful means doing mutual help in the bad. It is contrary to the word of Allah SWT in the letter Al-Maidah (5) verse 2.

وَتَعَاوَنُواْ عَلَى ٱلۡبِرِّ وَٱلتَّقۡوَىٰۖ وَلَا تَعَاوَنُواْ عَلَى ٱلۡإِثۡمِ وَٱلۡعُدۡوَٰنِۚ وَٱتَّقُواْ ٱللَّهَۖ إِنَّ ٱللَّهَ شَدِيدُ ٱلۡعِقَابِ....

… And help one another in virtue and piety, and do not help one another in sin and transgression. Moreover, keep your duty to Allah. Lo! Allah is severe in punishment.

Amanah in managing property in *muamalah* is an Islamic teaching. Funds entrusted by investors (financiers) to issuers must be managed with a sense of responsibility and great care. The proceeds from the management of these funds can be distributed to their owners by the agreed contract. Therefore, issuers domiciled in offering shares through electronic ECF providers must have the ability and intelligence to manage funds to provide appropriate equity without compromising shariah principles. The trust given by investors to the issuer must be appropriately maintained, and satisfaction is achieved, thus encouraging investors to continue to purchase shares issued by the issuer.

Another principle that must be considered in muamalah is mutual consent between the parties (*antaradhin minkum*). All transactions carried out by the parties must be based on the willingness of each party. The willingness between the parties to the transaction (contract) is considered a prerequisite for realizing all transactions. ECF activities cannot be said to have been realized and mutually willing as long as the transaction is under pressure, coercion, and fraud. If fraudulent practices and

coercion are found in the *muamalah*, the act can be canceled. Mutual willingness is an element that shows the sincerity and good faith of the parties in conducting transactions. The willingness to participate in ECF is implemented in an agreement between the parties based on an agreement in the form of a contract that includes consent and qabul and voting rights or options (*khiyar*).

Shariah ECF Contract

A limited company as a share issuer through the ECF platform can sell its shares to the public so that the issuer will get additional funds for the company's operations. At the same time, investors are entitled to a portion of the company's shares. Therefore, crowdfunding services have a legal relationship between three parties (triangular relationship), namely the issuer, the organizer, and the investor [63].

Crowdfunding service activities use several agreements made between the organizer and the issuer, the organizer and the investor, and the issuer and the investor. One aspect of shariah compliance in shariah financial institutions is the implementation of contract standards [72]. The position of the agreement (*akad*) in Islam greatly determines the validity of a legal act. The validity of a contract provides a legal bond to the parties when the contract has fulfilled the pillars and conditions according to shariah provisions. Akad is the relationship between consent and *qabul,* which is justified by shariah and has legal consequences for the object [73]. According to Dewi et al. (2013), there are three important elements contained in the contract. (1) The relationship between ijab (statement of will by one party to do something) and *qabul* (statement of accepting or approving the will of one party by a second party). (2) The contract is justified by shariah. It must not conflict with things that Allah SWT prohibits in the Qur'an and Al-Hadith. Justified by shariah includes the implementation of the contract, the purpose of the contract, and the object of the contract. When the contract deviates from shariah, the contract becomes invalid. (3) Has a legal effect on the object of the contract. Every contract agreed by the parties has legal consequences for the object of the contract. This will provide consequences in the form of rights and obligations for the parties entering the contract.

The implementation of the contract in Islam must meet the pillars and conditions. Legal actions are considered legal or not according to the law depending on the pillars and conditions. Both are things that must be fulfilled and held. According to Anwar [74], pillars are important elements that are in the law itself that form something so that something is realized because of the elements that make it up. The essence of the pillars is the elements that make up the substance of something. Each of the pillars (elements) that make up something requires conditions so that the element can function to form a legal act (contract).

Meanwhile, Dewi et al. [73] define a condition as something that depends on the existence of shariah law, and it is outside the law itself which must be done so that the act can be done. Thus, pillars can be understood as things that must be fulfilled when legal action is carried out, while conditions must be met before and when the act is carried out. Conditions related to harmony. Each of the pillars that make up the contract still requires conditions so that the pillars can function to form a contract.

The pillars of the contract as described in Chapter III Article 22 Compilation of Shariah Economic Law (KHES) are (1) the subject of the contract (*al-aqidain*); (2) the object of the contract (*mahalllul 'aqd*); (3) Statement of the will of the parties (*shiqat 'aqd*); (4) The purpose of the contract (*maudhu'aqd*). The subject of the contract is the parties to the contract. ECF in carrying out activities involves legal subjects in the form of individuals and legal entities. Therefore, in this discussion, it is necessary to first explain the subject of law in the terminology of Islamic law. Judging from the legal aspect, the legal subject is the party that has the authority to take legal action and carry out the rights and obligations. Legal subjects in the study of legal science consist of two kinds, namely humans and legal entities [75]. As legal subjects of engagement in fiqh terminology, humans are *mukallaf* when someone can carry out legal actions. The conditions that must be met for a mukallaf are baligh, multiple parties, and common sense [74]. According to several legal experts [76], a legal entity results from human engineering to form a body that can carry out legal actions with other parties independently and has rights and obligations in which status and position before the law are the same as humans.

Legal entities in Islam are not explicitly explained. However, in An-Nisa' (4): 12 and Shaad (38): 24, there is the term *syirkah* which means association or alliance, which can be used as a reference regarding the existence of a legal entity. The

existence of cooperation between several parties can lead to the interests of the *syirkah* against third parties. A new legal subject emerged regarding the relationship with third parties, called a legal entity [73]. Legal entities can carry out legal actions like humans as legal subjects after going through the registration stage and obtaining approval by the authorized institution by fulfilling the elements of a legal entity, namely having separate assets, having certain goals, having their interests, and having an organized organization.

The contract object (*mahallul 'aqd*) is used as the contract object, both tangible objects and intangible objects such as benefits. The contract object's conditions must meet that it existed when the contract was held, justified by the Shari'a, must be clear and recognizable, and transactive [74]. As the contract (*maudhu 'aqd*) is seen as valid and has legal consequences, the purpose of the contract must be confirmed by shariah, and the purpose must last until the end of the implementation of the contract [77]. One of the important things that characterize shariah-based activities is that the object being transacted must be halal. This contract object must be considered if you are going to carry out shariah ECF activities. Shares issued by the issuer must ensure that its business activities do not conflict with shariah. In another sense, the shares offered by the issuer to the public must meet the halal criteria and comply with the DSN-MUI fatwa.

The statement of the will of the parties in the contract includes consent and qabul. Ijab is a statement of promise from the first party to do or not to do something, while *qabul* is a statement of acceptance from the second party for the offer made by the first party. Still, according to Dewi et al. (2013), for consent and qabul to have legal consequences, they must: (1) have compatibility between ijab and qabul; (2) The objectives contained in the statement must be clear so that the desired type of contract can be understood; (3) Between *ijab* and qabul must show the will of the parties with certainty, no doubt, and not forced; (4) Unity of the assembly. The ongoing ijab and qabul in ECF are evidenced by an agreement to provide crowdfunding services between three parties (triangular relationship), namely the organizer, issuer, and financier. The parties have their authority and rights, and obligations must be considered during the implementation of crowdfunding services. Although the parties have different legal relationships, they are related to each other.

Crowdfunding service providers and share issuers are legal subjects in ECF with the status of a legal entity. Meanwhile, investors as legal subjects (can be

individuals or legal entities) buy shares from issuers through crowdfunding intermediaries. Thus, there are three legal subjects involved in conventional ECF activities, namely the providers of crowdfunding services (ECF platforms), publishers (startups), and investors (investors). Meanwhile, ECF that is run on shariah principles is required to have a Shariah Supervisory Board (DPS), which functions to oversee crowdfunding activities so that they are in accordance with shariah principles as stipulated in the DSN-MUI fatwa. The issuer and financier are domiciled as parties using crowdfunding services. ECF platform as a liaison between publishers and investors using an online electronic system. The issuer is interested in offering shares to investors through the website provided by the platform, while the interests of investors buy shares in the hope of obtaining equity. Based on this explanation, the triangular relationship agreement or contract in crowdfunding services is not made face-to-face. The parties during the contract are not held in one assembly. Regarding the contract where there is no one assembly (place), *wahbah* is of the opinion, as quoted by DSN-MUI Fatwa No: 117/DSN-MUI/II/2018, that during the time the communication was connected, both parties were still discussing the matter of the contract being transacted and did not move on to the discussion. Otherwise, the contract is still mentioned in the contract assembly even though it is carried out by telephone, radiogram, and letter.

Contracts in the study of muamalah fiqh that can be adapted to the ECF mechanism include bai', mudharabah, and musyarakah contracts to be used between the issuer and investors, wakalah bil ujrah contracts are used to connect investors and ECF providers. In contrast, issuers and crowdfunding service providers use *ijarah* contracts. For more details on the contracts used by the parties in crowdfunding services, it can be explained as follows.

Publisher's Agreement with Investors

Users of the provision of ECF services are issuers and investors. It has been explained previously about the operational requirements that the user must meet. Users are required to provide the correct identity as a form of prevention of the possibility of unwanted crimes in the implementation of ECF [78]. The clarity of the profile of the legal subject of crowdfunding services also affects the validity of the parties' contracts. The contract between the issuer and the owner of the funds can use at least 3 (three) contracts, namely bai' (buying and selling), mudharabah, and musharakah

(cooperation or syirkah) contracts. A syirkah contract is a cooperation agreement between two or more parties for a business in which each party contributes assets/business capital provided that each profit is divided according to the agreed ratio. At the same time, the losses are borne by the parties in proportion to the business capital. This provision is in line with the fiqh rule, "Profits are divided according to the parties' agreement, and losses are divided according to the share of each capital."[79]

Syirkah has an essential role in solving community economic problems, especially those constrained by capital and the ability to manage capital. The model used in syirkah is a collaboration between the capital owner and the business owner. Suppose the owners of capital cannot utilize the capital they have. On the other hand, for business managers who can manage capital but do not have capital, cooperation or syirkah is one solution.

The formulation of the legal relationship between the issuer and the investor is contained in POJK Number 57 / POJK.04/2020, which defines an investor as a party that purchases securities from an issuer through a crowdfunding service platform. This means that the legal relationship between the issuer and the investor is an online share purchase agreement. However, this discussion will begin by explaining the syirkah contract first before continuing with the bai' contract.

a) Mudharabah is a business or project cooperation agreement between two parties between the first party (shahibul maal) who provides funds. In contrast, the second party (*mudharib*) acts as a fund manager where business profits are shared between brands according to the agreement stated in the contract. If it incurs a loss, then it is borne by the financier [80]. Pillars or factors that must exist in the mudharabah contract are [81]:

1) Contractor (capital owner and business executor)

The fund provider (*shahibul maal*) and the fund manager (*mudharib* or *amil*) are the actors in the *mudharabah* contract. Without these two perpetrators, the *mudharabah* contract would never have existed. The condition that the contractor must meet is to have legal competence.

2) The object of the contract (capital and labor)

The owner of the capital submits his capital as the object of the contract, while the executor of the business submits his ability or work as the object of mudaharabah. Without these two objects, the mudharabah contract will not exist. Capital is a sum of money and/or assets given by the provider to the fund manager (mudharib) for a

specific purpose. The requirements that must be met regarding capital are: (a) Capital must know the amount and type; (b) Capital may be in the form of money or goods that can be valued at the time of the contract; (c) Capital cannot be in the form of receivables and must be paid to mudharib either gradually or not by the agreement. Scholars have different opinions about capital in the form of goods because goods are considered unpredictable and result in uncertainty about the amount of capital deposited. However, the scholars of the Hanafi sect allow capital in the form of goods as long as the value of the goods used as a capital deposit must be agreed upon at the time of the contract between the capitalist and the business manager. The scholars agree on capital because it is forbidden to practice *mudharabah* with debt [81].

Meanwhile, business activities are managed by *mudharib* as a balance of capital provided by capitalists or fund providers. In connection with the charity or activities undertaken by the manager must: (a) Business activities are the exclusive right of mudharib, the fund provider is not entitled to intervene. However, the financier has the right to supervise the business undertaken by the *mudharib*; (b) Fund providers are not allowed to narrow down the actions of managers that may hinder the achievement of the purpose of *mudharib* to obtain profit; (c) The manager must not violate Islamic shariah law in performing actions related to *mudharabah* and must comply with the policies applicable to such activities [80].

3) Consent of the parties (*ijab-qabul*)

The statement of *ijab-qabul* in the mudharabah contract must be stated by the parties to express their wishes when entering into a contract between them. The agreement of the parties is a consequence of the principle of mutual consent. Both parties to the contract must show a willingness to agree to bind themselves in the mudharabah contract. The financier agrees to provide funds, while the executor agrees to do the business to the best of his ability. The execution of the contract between the offer and the receipt must explicitly indicate the purpose of the contract. Acceptance of the offer is made when the contract and the contract are put in writing.

4) *Profit ratio*

Profit is the amount earned as an excess of capital. The profit ratio is a special pillar in the mudharabah contract. The existence of this ratio reflects the rewards that are entitled to be received by both parties who perform the mudharabah contract. Business managers get rewarded for the work done, while capitalists get rewarded for the capital that has been handed over. In the event of a loss, the fund provider bears all losses

on the business managed by the mudharib, and the manager shall not bear any losses unless the loss is caused by an error of intent, negligence, or breach of the agreement. It is called the method of calculating revenue sharing using the method of profit sharing [80].

Salam [82] emphasized that the legal relationship or agreement between the investor and the issuer can be likened to using a mudharabah contract. Therefore, to ensure the conformity of shariah to the practice of ECF, the pillars and conditions of the mudharabah contract must be ensured. Investing using ECF using a *mudharabah* contract has the following advantages: (1) With a profit-sharing system, the risks are shared; (2) Reducing funding gaps because access to capital is provided from various investors; (3) Become a new investment opportunity for small and medium investors; (4) Encouraging innovation; (5) Creating and increasing job opportunities by establishing a startup [83]. ECF can precisely be adjusted to *mudharabah mutlaqah* [82]; it is understandable because the form of a project collaboration between investors and issuers in ECF transactions is not determined and not limited by investors. Meanwhile, the results or profits from the business are divided according to the initial agreement contained in the agreement deed of the parties.

A cooperation agreement in ECF occurs between the capital owner (investor) and the capital manager (issuer). The investor in his journey will be the owner of the shares after buying the shares offered by the issuer by submitting a certain amount of funds. In contrast, the issuer who has received a capital injection will manage and develop the project. The parties in ECF activities must be competent in taking legal action. It can be appointed as a representative because one party acting as a share manager represents the shareowner. ECF activities include share issuers and investors. If it is analogous to the parties or 'aqidain as in the mudharabah contract, the investor is shahibul maal, while the issuer of shares is mudharib.

Meanwhile, ECF organizers act as intermediaries (representatives) to bridge the interests of issuers and investors [82]. Thus, the issuer of shares will be charged for the utilization of the platform. Investors who have submitted money online through the platform to the issuer will get equity according to the mudharabah contract. The important thing that must be considered in investing through crowdfunding services through electronic transactions is that the platform must explicitly and clearly state the provisions for profit sharing that will be received by the parties so that no one feels

disadvantaged. The principle of profit-sharing is one of the main and emphasized in cooperative activities or cooperation as taught in Islamic economics.

According to Article 37 of POJK Number 57 of 2020, the purchase of securities, whether in equity, debt, or Sukuk, made by investors through the operator must use an escrow account at the bank used to receive funds from the securities offering through crowdfunding services. Investors deposit a certain amount of funds in an escrow account according to the crowdfunding service agreement. All funds deposited are deposited funds resulting from the securities offering belong to the issuer and are deemed to have been received by the issuer unless the securities offering are null and void or canceled by the issuer. If the securities offered are in the form of Sukuk, the escrow account must use a shariah bank. Likewise, every transaction in ECF that involves banks should ideally use Islamic banks instead of conventional financial institutions that still apply usury. It is a consequence of the application of shariah principles in the implementation of crowdfunding services in Indonesia, which requires that every activity is by shariah principles.

The basic stipulation in Islam regarding *maal* (capital) is that the funds submitted by investors must be clear and the source known to ensure that it is by shariah principles. In the perspective of shariah, anything that can be used to seek profit through a halal business is called capital. If the capital is in the form of goods, it will generate rent (if it is rented out) or profit (if it is sold). Capital is in the form of money, so it must produce goods first, as in contracts that produce fixed profits such as in *salam*, *murabahah*, and *istisna'* contracts. However, suppose the capital is in the form of money for business activities that cannot be ascertained in advance, such as in a contract that produces variable profits. In that case, it can only be determined using the profit ratio agreed in advance.

Article 56 POJK Number 57 of 2020 concerning Securities Offering Through Crowdfunding Services Based on Information Technology, investors who will buy securities using crowdfunding services must have a securities account with a Custodian Bank to store securities and have the ability to buy securities from the issuer. Investors can purchase a maximum of 5% (five percent) through crowdfunding services if their income reaches Rp. 500,000,000.00 (five hundred million rupiahs) per year. Meanwhile, investors with an income of more than Rp. 500,000,000.00 (five hundred million rupiahs) per year, can buy securities up to 10% (ten percent) through the ECF platform per year. Suppose the investor is a legal entity and a party who has

investment experience in the capital market, as evidenced by the ownership of a security account for at least two years before the share offering. In that case, the above criteria do not apply. What must be observed and realized in the implementation of shariah ECF is the obligation to ensure halal sources of funds (capital) and comply with shariah compliance and avoid elements of gambling (maisir), fraud (*gharar*), haram, and interest (*riba*).

Indirectly, the criteria set out in the regulation can be analogous to the capital requirements in the fiqh *muamalah* provisions, even though POJK Number 57 of 2020 has not been explained explicitly and in detail about the source of the funds coming from halal sources or not. Therefore, before deciding whether to buy shares offered by publishers through platforms owned by online organizers, ideally, they should fill in a kind of statement that the funds used to purchase the shares are halal. Halal statement on the funds received by the publisher will further strengthen his belief that the capital used to develop the project or business is clean from things that Islam prohibits. So basically, in the agreement to provide crowdfunding services, investors must be transparent in conveying the source of funds deposited by investors through the platform, which must be halal. The scholars agree that non-halal income is haraam and is prohibited from being used by the owner for any needs, either openly or using hilah, such as being used to pay taxes. What is meant by non-halal income is any income originating from non-halal businesses. It is by the fiqh rule, "any income that cannot be owned, and then the income cannot be given to others" [68]. The Islamic concept explains that someone cannot own something that is haram. Judging from the maqashid shariah aspect, any income generated in a non-halal way cannot be owned by the non-halal business actor. In another sense, non-halal businesses do not escape ownership as a sanction for their involvement in non-halal businesses.

Regarding the relationship status of the investor to the capital owned in the *mudharabah* contract, it is necessary to convey Al-Kasani's opinion in Fatwa Number 135/DSN-MUI/V/2020:

> "And in our opinion (the Hanafi school), that the relationship status of the owner of capital to mudharabah assets is milk raqabah (ownership of substance or physical property), not milk tasharruf (ownership to manage). So, the ownership status in haqq al-tasharruf (right to manage) is the same as the other party's ownership status. The manager of the *mudharabah* property has *haqq al-tasharruf*, not *milk al-raqabah* (ownership rights to the

property itself. Therefore, the relationship between the manager's ownership of the property is like that of another party. The owner of the capital does not have the right to prohibit the manager from managing the assets or syirkah capital. On that basis, the status of the *syirkah mudharabah* property for each pika is like the property of the other party; therefore, it is permissible to buy and sell between the two parties."

Types of business activities that are considered contrary to shariah principles are not allowed to be carried out in stock investment business activities in companies conducting non-halal business [84], namely: (1) Conventional financial institution businesses such as conventional banking and insurance; (2) Invest in issuers (companies) which at the time of the transaction the company's profit level to usurious institutions is more dominant than its capital; (3) Gambling and games which are classified as gambling or trade which are prohibited because they include *maisir* or gambling which is prohibited in Islam; (4) Producers, distributors, and traders of illegal food and beverages; (5) Producers, distributors and/or providers of goods or services that damage morals because they contain harm. Although these five elements generally occur on the stock exchange, many other transactions are prohibited because they contain usury, speculation, fraud, bribery, buying and selling narcotics, intoxicating drinks, and so on. Judging from the maqashid aspect, the prohibited elements from being transacted in muamalah are to protect property (hifz maal). One aspect that every human being must protect is the concept of Islam.

After the issuer submits the completeness of the share offering documents to the operator, the organizer or platform is required to review the issuer's documents (business owner), such as an examination of the deed of establishment of a legal entity, articles of association, the required amount, risks that may be faced, the issuer's business plan, business license, dividend policy, and the issuer's financial statements [62]. The issuer must submit decisive information and documents to the organizer accurately and transparently. When a document review is carried out, the organizer can offer shares to the public through the platform. If the documents required for the public offering of shares are declared complete and without problems, the organizer will display the issuer's share offering on his website. Although it has been stated in the POJK that issuers offering shariah securities must have a Shariah Supervisory Board,

organizers serving shariah share offerings must still ensure that the projects carried out by the issuers are by shariah principles and the issuer's fundraising is not for terrorism and money laundering activities.

Moreover, suppose the operator also accepts the offering of securities in the form of Sukuk. In that case, it must have a team of shariah experts to review the share offering by the issuer. It is sole to guarantee shariah principles in the implementation of crowdfunding services.

Regarding *sighat* contracts, namely ijab and qabul in ECF transactions, it contains a cooperation agreement between investors or issuers using an electronic trading force provider with a profit-sharing system. The contract agreement between the investor and the issuer is stated in a notarial deed (authentic deed). It is a manifestation of the agreement's implementation (*sighat*) as in the provisions of Islamic contract law. The handover mechanism between publishers, investors, and platforms is carried out online using fund transfers [82]. The investor who will buy shares from the issuer will transfer funds according to the number of shares purchased through the crowdfunding service platform account. The issuer will hand over the shares to the investor through the intermediary provider. After submission, the issuer shall register the share ownership of the investor in the register of shareholders of the issuer on behalf of the investor. The mechanism for recording the names of shareholders (investors) is provided on the website of the ECF organizer.

b) Musyarakah contract is a contract made by people who bind themselves to cooperate. Each party contributes funds provided that the benefits and risks are shared by the agreement [80]. This kind of contract includes a *syirkah* model that can be used by someone who has capital constraints. Everything that other people use has the right to get mutually beneficial compensation, either in terms of capital or labor. Cooperation in ECF can also use a *musharaka* contract provided that it must meet the pillars and conditions so that the cooperation is declared valid according to shariah provisions [85].

1) The contracting parties (‘aqidain) must be capable of taking legal action with provisions. (a) Competent in conferring or being given representative powers; (b) Each partner must provide funds and work, and each partner performs the work as a representative; (c) Each partner must have the right to manage *musharaka* assets in the project; (d) Each partner authorizes the other partner to manage assets, and each

is deemed to have been authorized to carry out *musharaka* activities with due regard to the interests of the partner, without committing negligence and willful mistakes; (e) A partner is not permitted to disburse or invest such funds for its own sake.

2) The contract object (*ma'qud alaih*) consists of capital, work or charity, profits, and losses. About capital, (a) The capital provided must be in cash or gold and silver, which can be denominated so that the value is the same. So the amount and type of capital must be known. If the capital is an asset, then the parties must agree on the asset to be valued in cash; (b) The parties may not lend, donate, or give *musharaka* capital to other parties, except based on an agreement. Regarding the work of charity carried out by the parties, the parties must: (a) The participation of partners in the work is the basis for the implementation of *musharaka*. However, the equal portion of work is not a condition that one partner may carry out more work than the other, and in this case, he may claim a share of the profits. In addition to himself; (b) Each partner carries out work in *musharaka* on behalf of his partner and his partner's representatives. The position of each in the work organization must be explained in the form of an agreement or contract [80]. Provisions for profit or loss in a *musharaka* contract; (a) Each profit-sharing must be clearly stated at the beginning of the contract to avoid disputes at a later date; (b) Each partner's profits must be shared proportionately based on all profits and no pre-determined amount is assigned to a partner; (c) A partner may propose that if the profit exceeds a certain amount, the excess or percentage is given to him; (d) Losses must be divided among the partners in proportion to their respective shares in the capital given up; (e) The operational costs of the musharaka are borne jointly according to the agreement. The calculation of profit sharing in a musharaka contract uses the profit and loss sharing method, where the parties will get a share of the results of the agreed ratio multiplied by the amount of profit earned by the mudharib, whereas if a loss occurs, it is shared in proportion to their respective contributions [80]

3) The contract agreement (sighat) in consent and qabul between the parties must be stated by the parties to show their will when entering into a contract with provisions. (a) The offer and acceptance must be stated explicitly, indicating the purpose of the contract; (b) Acceptance of the offer is made at the time of the contract; (c) The contract is written in writing which is valid and legal.

When the pillars and conditions of the musharaka above are related to the implementation of ECF, the issuer and the investor are positioned as 'aqidain or the

parties to the contract. Then ma'qud alaih (object of the contract) is a project campaigned by the publisher, hoping that the investor can provide additional funds. Then, the publisher will carry out the project. The paid-up capital of investors in ECF is in the form of several funds that the POJK, not capital, have determined in other forms. The statement of the parties' will or *syighat* in the musharaka contract is a series of stages in the agreement mechanism of the parties for the implementation of crowdfunding services. In the crowdfunding service mechanism, the parties have their positions and tasks. The investors and organizers are not directly involved in managing the project or business undertaken by the issuer of shares [82]. If the concept of musharaka is to be applied in ECF, the financiers and publishers work together on the project. The essence of the musharaka contract is the cooperation of maal (capital) and charity (business). It is one of the differences between *musharaka* and *mudharabah*. The implementation of the cooperation of investors in charity that is possible to do is to monitor the development of project management either directly or indirectly.

Specifically, when viewed from constructing the parties' relationship in ECF, it can be equated with a syirkah musahamah contract, namely a syirkah contract in which the capital portion of the partners or investors is owned based on paid-in capital as evidenced by shares. This contract is the development of syirkah inan, which has limited responsibility [79]. The paid-up capital of investors or shareholders belongs to the issuer (company) so that the company becomes the property of shareholders who are running *syirkah*. The rights of each shareholder are determined and represented to the company's management by deliberation or the General Meeting of Shareholders, where the voting rights are based on the number of shareholdings of the investors. Meanwhile, according to Salam (2020), the agreement on crowdfunding services can be analogous to *syirkah* amla, an alliance between two or more people to own an object [82]. That is, joint ownership of shares and their existence arises when two or more people by chance acquire joint ownership of a property.

As stated in the mudharabah and musyarakah contracts, profit-sharing must be in the form of a percentage as stated in the agreement or agreement at the outset, which may not be stated in a certain nominal rupiah form. It should be underlined that the profit-sharing between the issuer and the investor should not be based on things that are prohibited by shariah. The profit must be lawful and clean from subhat and unlawful. If the investor bears a loss to the extent of the paid-up capital, the loss is

shared unless there is negligence by the manager. The fund manager (publisher) does not benefit from the results of his work other than having lost energy. The issuer does not get anything if the funds he manages do not make a profit.

c) Bai' or buying and selling is a property exchange contract that aims to transfer ownership of the property [86]. In another sense, buying and selling can be understood as an exchange of property based on a mutual willingness to transfer property rights with a legal and justified medium of exchange. It confirms that the sale and purchase contract has a consequence as a legal act, namely the transfer of rights to an item from the seller to the buyer.

The validity of the sale and purchase agreement must meet the pillars and conditions, namely: (1) The subject of the contract or the parties to the contract, namely the seller and the buyer; (2) The object of the contract or the goods being transacted; (3) Sighat contract or agreement of the subject of the contract on the object of the contract which is proven by the existence of consent and qabul [80]. The parties to the contract must have legal skills and are not forced to take legal action. Objects that are traded must be holy and lawful, not including prohibited items, and contain benefits. When a sale and purchase transaction takes place, the object of the contract can be handed over by the seller to the buyer, as well as the buyer will give money to the seller. It is illegal to sell an item that cannot be delivered to the buyer.

Meanwhile, the sighat contract must have clarity and compatibility between the consent and qabul to the specifications of the goods and the agreed price. The sighat clause of the contract must be clear that it must not contain a clause depending on the validity of the sale and purchase transaction in future events. According to Gemala Dewi et al. (2013), *sighat* contracts cannot be timed because timed trading is not valid [73].

Shariah ECF activities that are traded are shares or ownership of capital invested in a joint venture run based on shariah principles, not in the form of money or debt. Thus, securities that can be traded as objects are equity securities that comply with shariah principles and are included in the Shariah Securities List (DES) which was compiled and issued by Bapepam-LK (now OJK) with the involvement of the National Shariah Council of the Indonesian Ulema Council. Shariah shares are proof of ownership of a company that does not conflict with shariah principles and does not include shares with special rights. The shares traded on the stock exchange have received special provisions by PT. the Jakarta Stock Exchange and the Jakarta Islamic

Index (JII). JII is a kind of index consisting of about 30 stocks that accommodate Islamic investment. In other words, the issuance of JII is used as a benchmark for the performance of a stock investment based on shariah principles.

Equity sale and purchase contracts are considered valid when there is an agreement on the price, type, and volume between the sale offer and the purchase offer [86]. Investors who buy shares owned by the issuer through crowdfunding service providers will deposit funds in an escrow account as a reservoir for funds from the issuer's share offering, which is carried out online. Publishers in ECF activities must inform the actual condition of the company that is managed accurately, transparently, and reliably. It is a form of implementing transparency and increasing public trust in crowdfunding services so that no party is harmed in this business activity. To harm other parties in a way contrary to shariah principles is to violate the principles of justice that are upheld in Islam.

The principle of buying and selling shariah shares is required to ensure that the projects carried out by the issuer comply with shariah provisions. As previously explained, the existence of a list of shariah shares is part of an effort to provide certainty and transparency for investors. In contrast, compliance with shariah provisions results from the National Shariah Council (DSN) role, which issues shariah fatwas in the economic field. Fatwa of the National Shariah Council Number 80/DSN-MUI/III/2011 prohibits trading in equity securities containing prohibited elements. Transactions of buying and selling shares are prohibited from carrying out *tadlis* actions, including front running, namely the actions of members of the stock exchange who conduct transactions first on certain securities because of information that their customers make transactions in large quantities so that they can affect market prices to obtain large profits. Another action is to provide a statement that materially misleads the public (misleading information) even though the information can affect the price of securities. Stock trading, which contains this *tadlis* element, results in excessive profits for only a few people but harms many parties.

Meanwhile, actions that fall into the *taghrir* category are pseudo-trading that do not change ownership (wash sale), aiming to form a price as if the price was formed through a fair transaction, even though it is a pseudo-engineering. This kind of trade is an attempt to trick the other party. Then, pre-arrange trades or transactions through the installation of buy and sell orders at a certain time, which is almost the same time

due to a previous agreement between the seller and the buyer, which aims to form an improper price [86].

The *najsy* category in securities trading is pump and dump or transactions created to increase the price of securities to the highest level. Then the interested party makes a transaction to sell a very significant amount to realize a price reduction. This transaction aims to create a trading climate to sell at high prices for unreasonable profits. Transactions are conducted by initiating creating an uptrend price accompanied by excessive and misleading information by the initiator of buying to increase the price high. If the price has reached the highest price level, the interested parties will engineer a sell initiator transaction to push the price down. It is an act of hype and dump that has similarities to pump and dump. Performing fake demand or supply orders (creating fake demand/supply) is also prohibited in Islam. This practice occurs by placing a bid/sell at the best price; if the specified order is fulfilled, the order will be deleted. This action is to create a positive impression to the public so that it seems as if the trade is dynamic so that the public is influenced to make sales or purchases [86]. The prohibition of making false offers (*najsy*) is emphasized in the hadith of Muhammad SAW, which reads, "From Ibn Umar, R.A, that the Messenger of Allah forbade making false offers (*najsy*)" (H.R. Bukhari) [87].

The prohibition of doing *ikhtikar* is explained in the hadith of the Prophet Muhammad, Saw., "From Ma'mar bin Abdullah that the Messenger of Allah said: Do not do *ihtikar* (hoarding) except the guilty person" (H.R. Muslim) [88]. Among the ihtikar practices in stock trading, namely interest polling, namely the price movement of securities created and enlivened by certain groups so that it seems as if the securities trading transaction activity is running drastically, even though it is fake and does not match the existing reality. Efforts to realize the sale and purchase of shares from the majority shareholder to create a pseudo supply caused prices to decline that morning and caused public investors to short sell. This action is called cornering. Then, actions that are included in the *ghisysy* category are marking at the close (price formation at the end of the trading closing day as desired), and alternate trade, namely trading by certain groups where the parties alternate roles as sellers and buyers to make it seem natural and dynamic. 86].

Bai' al-ma'dum is a sale and purchase whose object does not exist at the time of the contract or the sale and purchase of an item even though the seller has no securities (equity) that he sells. Selling shares that are not owned at a high price is

often called short selling or selling blank. As for *talaqqi al-rukban* is the sale and purchase of an item at a price far below the market price because the seller does not know the price. Another illegal activity is insider trading by utilizing information from insiders in financial markets that is confidential and has not been disclosed to obtain profits through shortcuts. This kind of insider trading includes *ghabn fahisy* prohibited in capital market law and Islamic economic law. Meanwhile, securities trading contains usury and is prohibited in *muamalah* fiqh, for example, margin trading (transactions with financing), where the parties carry out transactions with loan facilities accompanied by interest [86].

Submission of information to the public to encourage someone to take legal actions must be carried out based on halal principles and avoid actions that contain prohibited elements. Accurate and decisive information must be conveyed transparently because it will influence investment decisions by investors to buy shares to issuers. The stock issuing industry in ECF should have portfolio shares and have plans to add new shares (issuing new shares) through the General Meeting of Shareholders (GMS) by starting with a public offering of new shares to the public before the issuer cooperates with a crowdfunding service platform. Suppose at the time of signing the agreement with the ECF operator, the issuer does not yet have and carry out these activities. In that case, the publisher's good faith must be reviewed because shares as the object of the agreement are an important element in the sale and purchase of shares [63]. According to the DSN-MUI Fatwa Number 135/DSN-MUI/V/2020, unpaid portfolio shares are part of the company's authorized capital structure which cannot be recognized as shariah shares, so they do not have rights attached to shariah shares. The plan to add new shariah shares can be carried out as long as the fair value of the shares guides it, and the old shareholders have the right to buy the new shariah shares first.

Companies that are truly unable to realize shariah principles in share buying and selling transactions must meet several requirements: (1) The company's business activities (issuers) do not conflict with shariah principles; (2) The ratio of interest-based debt to assets is not more than 45%; (3) Non-halal income with halal business income of not more than 10%; (4) Shareholders who apply shariah principles are required to clean their assets from elements that are contrary to shariah principles [79].

An issuer in ECF with the status of an Indonesian business entity in the form of a legal entity or other business entity acts as a seller of its shares to investors. As the

concept in the sale and purchase agreement, each party has rights and obligations that must be implemented. The issuer having a business or project domiciled as the seller is obliged to issue and hand over the shares to the investor as the buyer. Investors are also obliged to submit money to the issuer to pay for the shares purchased.

1) Investor Agreement with ECF Operator

The ECF operator is an Indonesian legal entity in the form of a Limited Liability Company (PT) or a Cooperative that has met the following requirements: (1) Has a business license from the Financial Services Authority to the Chief Executive of the Capital Market Supervisor; (2) Registered as an electronic system operator at the Ministry of Communication and Information; (3) The Operator must have a minimum capital of Rp 2.5 billion when applying for a license to the Financial Services Authority; (4) Operators are required to have human resources (HR) with expertise and/or background in Information Technology (IT) to support the development of ECF services [62].

The Operator is obliged to provide information to users (investors and issuers) in an accurate, honest, clear, and not misleading manner. Considering that ECF is implemented using an online electronic system where communication between the platform and users is not face-to-face. The principles of honesty, trust, and trust must be upheld by each party [56]. ECF can also be a trust-based business because it uses a platform by utilizing the sophistication of information technology to create various undesirable possibilities. Therefore, the operator must maintain user trust with the basic principle of providing legal protection for investors and issuers [89]. The principles of good corporate governance must also be applied in the implementation of crowdfunding services.

The agreement between the operator and the investor ideally regulates the things that must be included so that the investor knows the general description of the substance of the agreement entered into with the operator [90]. The agreement for the implementation of crowdfunding services between the organizer and the investor, as referred to in Article 64 of POJK Number 57 of 2020, can be stated in the form of a standard agreement while still meeting the principles of balance fairness and fairness. The standard agreement on crowdfunding services between the operator and the investor begins to bind both parties when the investor declares his agreement to this

agreement electronically. The standard agreement is also possible to regulate the mechanism for delegating power of attorney from investors as shareholders issued by the issuer to the organizer, such as signing deed and documents at the General Meeting of Shareholders (GMS) conducted by the issuer [63]. The arrangement of this standard agreement has similarities with the concept of a standard contract as stipulated in the Fatwa of DSN MUI Number 117/DSN-MUI/II/2018 that the organizer is obliged to fulfill the principles of balance, fairness, and fairness according to shariah and applicable laws and regulations if they are to enforce a standard agreement to the user. The agreement is binding when the investor agrees electronically on the contents of the standard agreement. Article 78 of POJK Number 57/POJK.04/2020 states that standard agreements are prohibited from transferring the responsibilities or obligations of the operator to the user. In addition, the standard agreement is not allowed to state that the User is subject to new, additional, continued, and/or changes made unilaterally by the operator during the period of utilization of crowdfunding services by the user.

Investors who purchase shares owned by the issuer through crowdfunding service providers must have securities account at the custodian, which is used to transfer a certain amount of funds to an escrow account, a particular account used to accommodate public funds entrusted to a designated bank. The escrow account is functioned to prevent the organizer from collecting funds through the organizer's account. When the organizer offers securities in the form of shares, the agreement contains provisions regarding the granting of power of attorney to the organizer who represents the investor as the issuer's shareholder, including attending the General Meeting of Shareholders of the issuer and signing the deed and other related documents. Offering debt securities or Sukuk, the agreement must contain at least provisions regarding the granting of power to the operator to represent the interests of investors as holders of debt securities or Sukuk [62].

The relationship between the financier and the ECF operator can use a *wakalah bil ujrah* contract, which is an agreement in which the grantor authorizes the grantor to perform an agreed legal act on behalf of the grantor on matters that can be represented shariah with compensation in the form of wages to the trustee [91].

The important thing that must be considered in the wakalah contract is the statement of consent and acceptance stated by the parties who indicate a will to enter into a contract. According to Umam (2016), the pillars of the *wakalah* contract are the statement of consent and acceptance. For simple matters can use consent and

acceptance orally, while complex matters (such as fundraising services) should be made in writing either in the form of an authentic deed made in the presence of authorized officials or a deed under the hand made by the parties independently. . As for wakalah with the concept of giving allowances or fees, it is binding on the parties, so it cannot be canceled unilaterally. The grantor must be the rightful owner of what is authorized to others. The muwakkil (who represents) must be a mukallaf or a person who has the competence to take legal action. Meanwhile, the representative (proxy) must speak the law, perform the duties assigned to him, and trust. The authorized object should be known by the representative and not contrary to Islamic law [92].

The provider of fundraising services is the grantor of the financier. At the same time, the beneficiary is the fundraising platform—organizer as a system provider for investors in trading shares sold by issuers through fundraising services. The financier authorizes the organizer to hand over his capital by the agreed project to the issuer. After the issuer submits proof of ownership of the project (shares) to the issuer through an intermediary (representative), the organizer must distribute the issuer's shares to the financier. Distributing shares is done electronically using collective custody at the custodian or physically by delivering share certificates [62]. Before registering securities in collective custody, the issuer must agree with the Depository and Settlement Institution. The custodian's duties include providing securities services, completing securities transactions, and representing account holders who become customers. This confirms that the purchase of shares in ECF is not necessarily scriptless [63].

The operator who serves the offering of Sukuk by the issuer through a managed fundraising service must show a statement that will appoint the party responsible for supervising the compliance of shariah principles. Here is the position of the organizer as the capitalist who should: (1) Monitor the development of project management; (2) Supervise and monitor the performance of issuers based on Sukuk issuance agreements; (3) Ensure the payment of obligations to securities holders in the form of Sukuk; (4) Monitor payments made by issuers to Sukuk securities holders [62]. The performance that the platform has done for him is entitled to a wage or fee.

2) Publisher Agreement with ECF Organizer

As the party whose services are used by the publisher to offer shares to the public online, the organizer must have an attractive campaign concept so that the public is willing to buy the shares offered. Education and training must always be

carried out by the organizers to improve the quality of human resources so that during the review process, the issuing company's documents run according to applicable regulations Issuer documents that must be reviewed by the organizer when offering shares through ECF such as the legality of the issuer as evidenced by legal entity ratification, business license, capital increase mechanism, company structure, and other related essential documents. Likewise, the business carried out by the publisher must be able to encourage investors' interest to invest in sectors that are not prohibited by law. The mechanism of an ECF campaign that is done creatively can influence the community to participate in providing support and eventually buying shares [93]. Operators are also required to have standard operating procedures regarding the implementation of anti-money laundering and prevention of terrorism financing programs. This means that the projects carried out in crowdfunding activities are not projects that are prohibited by state law and religious law.

Article 62 of POJK Number 57 of 2020 explains that the agreement for implementing crowdfunding services between the organizer and the issuer must be stated in a notary deed that can use electronic documents. At least the deed states the number of the agreement, the start and end of the agreement, the shares offered, the identity of the parties, the rights and obligations of each party, the nominal amount of funds raised, the amount of commission, and the cost of implementing ECF, and the dispute resolution mechanism. Meanwhile, suppose the issuer issues debt securities or Sukuk. In that case, the agreement must explain the rights and obligations of the operator as the investor's proxy and the amount of profit-sharing ratio. When issuing Sukuk, there must be a statement if it turns out that there is a failure to fulfill obligations related to conformity with shariah principles. The agreement for the issuance of debt securities or Sukuk between the operator as the proxy of the investor and the issuer must be stated in a notarial deed that must contain provisions regarding the rights and obligations of the parties, the type and scheme of the shariah contract used for shariah transactions, up to the amount of profit-sharing ratio, margin, or return services. The agreement must also contain a statement that will appoint a party responsible for supervising and guaranteeing shariah principles in the capital market if the operator does not have a Shariah Supervisory Board.

According to the concept of ECF, the issuer may only offer shares to the public through the organizer. Therefore, the agreement between the organizer and the issuer must contain a prohibition on the issuer from offering shares on other ECF platforms.

It means that the issuer's share offering can only be made to one crowdfunding service provider at the same time. Meanwhile, the offering of debt securities or Sukuk can be carried out in stages using more than one project. The issuer authorizes the organizer to offer the shares owned by the issuer to the public online using the organizer's crowdfunding service platform. If the investor agrees to buy the issuer's shares through the operator, the investor will transfer money to the operator, who will then be forwarded to the issuer. Investors who have purchased shares are entitled to share ownership of the issuer, which the operator will later distribute to investors after transferring funds to the issuer [62].

Based on the above explanation, the agreement between the project owner (stock seller) and the ECF fundraising service provider is a cause agreement (wakalah bil ujrah) from the issuer to the organizer to offer the issuer's shares to the public through the fundraising service platform. However, the agreement between the organizer and the publisher can also use ijarah contract [82], which is a contract of transfer of use/benefit rights for a particular good or service through payment of rent or wages without being followed by the transfer of ownership of the goods themselves [92]. According to Hanafi scholars, ijarah is a transaction for a benefit in return. This agreement is an agreement related to providing benefits to the tenant in rental costs [80]. Thus, the ijarah contract is only intended for the existence of benefits on goods and/or services that cannot be limited by conditions [73]. In short, *ijarah* can be interpreted as a rental agreement.

Pillars and conditions that must be met in the *ijarah* contract are: (1) The existence of *sighat ijarah* in the form of consent and acceptance from the parties voluntarily to perform the contract either orally or in writing; (2) The parties to the contract, namely the lessor and the tenant must be of sound mind and have legal competence; (3) The object of the contract is in the form of benefits for goods and rent or benefits of services and wages [92]. The object of *ijarah* must be ensured that it can be assessed, rented, and executed in the contract without violating the provisions of applicable law.

The application of the *ijarah* contract on ECF is made between publishers who promote their projects using the services of fundraising organizers are called musta'jir (tenants). In contrast, the organizers (platforms) whose services are hired by publishers are *mu'jir* (tenants). Meanwhile, the fee or wage in the *ijarah* contract must be transparent and something of value. According to Hanafi scholars, the wages are

not the same as the benefits rented. It is possible to rent on the same item, but different values and benefits are allowed [73]. That is, the practice of ijarah can be imposed on the benefits of goods and or services that are needed can be taken for a fee. Fundraising service providers who have provided stock trading systems using electronic systems can charge fees to users, namely issuers and financiers. The organizer is the party who leases the services of the ECF platform site to the publisher in search of capital. The publisher can be charged administrative fees based on the principle of *ijarah.*

3) Position of the Shariah Supervisory Board in Shariah ECF

The existence of shariah supervision is a feature that distinguishes shariah business entities from conventional businesses. If contextualized with the concept of *maqashid* shariah, the existence of supervision is the implementation of the provisions in shariah law revealed by Allah SWT to realize the benefit. Due to the development of modern Islamic financial institutions, parties who can ensure shariah compliance in the operationalization of the financial industry are needed, so the Shariah Supervisory Board (DPS) was created.

The Shariah Supervisory Board consists of scholars with integrity, competence, and specialization in *fiqh mu'amalah maliyah* recommended by the National Shariah Council (DSN) of the Indonesian Ulema Council (MUI). The two organs are related; namely, the DPS must be independent even though it is affiliated to the financial institution but is a recommendation and at the same time an extension of the DSN-MUI. Even some DPS members are members of the DSN, although each organ has different and separate functions and duties. The function of the DSN is the formulation of fatwas in the economic field, while the DPS only has a supervisory function [94]. DSN-MUI is the only institution with authority to issue shariah fatwas in the economic field in Indonesia [95]. It can be said that DPS is a critical institution in every shariah institution in charge of ensuring and supervising the implementation of the DSN-MUI Fatwa [72].

On the other hand, an institution that requires a fatwa from the perspective of Islamic law on its business activities can apply for a fatwa to the DSN-MUI. Based on this explanation, the focus of the duties of the Shariah Supervisory Board is only on supervising the operation of an institution so that it is shariah-compliant. DPS supervision is carried out in 2 (two) forms, namely supervision before the business is run (ex-ante) by making shariah systems and procedures to be complied with, while

supervision after the business is carried out (ex-post) through audit sampling of Islamic financial institution products [78].

Just for comparison, in Malaysia, the shariah supervisory agency is controlled by the Shariah Advisory Council (MPS) located at the Malaysian central bank. It is independent, namely, the Shariah Advisory Council of Bank Negara Malaysia (MPS BNM), which has a higher position than the shariah power of attorney of banks trading. The Shariah Advisory Council is responsible for all matters relating to Islamic financial institutions and can oversee the Shariah Supervisory Board of every Islamic bank in Malaysia [94]. Suppose there is a difference in the decision between the Shariah Advisory Council of Bank Negara and the shariah power of attorney of another bank. In that case, the decision of the Shariah Advisory Council of Bank Negara shall be used [64].

The supervision of shariah practices in crowdfunding services is carried out by the Shariah Supervisory Board appointed by the National Shariah Council of the Indonesian Ulema Council. The primary step for the Shariah Supervisory Board to assess whether ECF activities have complied with shariah principles or not is based on the Fatwa issued by the DSN-MUI and related legal regulations. The existence of a Shariah Supervisory Board in business financial institutions and shariah economics in Indonesia is recognized as in Law Number 40 of 2007 concerning Limited Liability Companies Article 109, which reads:

1. *Companies that run their business activities based on shariah principles in addition to having a Board of Commissioners are required to have a Shariah Supervisory Board (2) The Shariah Supervisory Board as referred to in paragraph 1 consists of one or more shariah experts who are appointed by the General Meeting of Shareholders (GMS) for a recommendation of the Indonesian Ulema Council, and (3) the Shariah Supervisory Board as referred to in paragraph 1 is tasked with providing advice and advice to the board of directors and supervising the company's activities by shariah principles*.

Based on the explanation above, after obtaining the recommendation from the DSN-MUI, a GMS will be held to determine the composition of the DPS in charge of conducting a shariah review of business practices carried out with shariah principles. The Shariah Supervisory Board is usually placed at the level of the Board of Commissioners. Supervision of shariah institutions includes supervision of their

products and business activities to ensure that they are by shariah principles. Another important thing that must be considered in crowdfunding service activities in Indonesia, which is still relatively new, is educating ECF parties about halal and haram, which should be considered by economic actors [71].

POJK Number 57/POJK.04/2020 regulates the provisions of the Shariah Supervisory Board for publishers and providers (platforms). Publishers who carry out business activities based on shariah principles by issuing shariah shares through crowdfunding services, then in addition to complying with the provisions of Article 47 paragraph (1) and paragraph (2), the issuer is required to submit a photocopy of the Articles of Association (AD) which explains its business management activities and procedures. Must be based on the shariah framework, as well as the appointment of the Shariah Supervisory Board based on the decision of the General Meeting of Shareholders (GMS). The existence of this provision will further provide legal certainty to the public, especially those involved in crowdfunding service activities with shariah principles. The Shariah Supervisory Board has a supervisory function to ensure that the issuer's issuance is by shariah principles. Shariah shares must be protected from elements of *maisir* (gambling), *gharar* (uncertainty), haram, usury (additional), *tadlis* (unclean), *dharar* (harm), *riswah* (bribes), *zhulm* (persecution), and immorality. The Shariah Supervisory Board supervises the issuer's business activities and the products (shares) to conform to shariah lines.

Meanwhile, crowdfunding service providers who carry out business activities and serve share offerings based on shariah principles must submit documents in the form of Articles of Association stating that the activities and types of business and business management methods are by shariah. There must be evidence of a GM's decision stating that the Shariah Supervisory Board has been appointed and the shariah capital market expert permit owned by the Shariah Supervisory Board has been carried out. Suppose the operator serving the offering of Sukuk by the issuer does not have a Shariah Supervisory Board. In that case, the organizer must make a statement letter whose contents will appoint a shariah supervisory party responsible for supervising the fulfillment of shariah principles. This confirms that the crowdfunding service platform must also be supervised and regulated by the shariah board so that its activities are by shariah provisions.

The function of the Shariah Supervisory Board is to supervise and review projects submitted by issuers in the electronic ECF system. The Shariah Supervisory

Board is required to conduct a substantive review of shariah material on business activities carried out based on shariah principles. The Shariah Supervisory Board can ask for an explanation of the business being carried out, examine the contract used, provide an opinion according to the shariah perspective, to explain comprehensively the fulfillment of shariah principles for the business being carried out.

The position and role of the Shariah Supervisory Board are very fundamental to ensure the supervision and compliance of Shariah compliance in every shariah institution operation. Shariah compliance for every institution that runs the business with shariah principles is a goal or *raison d'etre* [64]. At least Surat At-Taubah (9): 105 has provided a normative basis for the concept and validity of shariah supervision.

وَقُلِ ٱعۡمَلُواْ فَسَيَرَى ٱللَّهُ عَمَلَكُمۡ وَرَسُولُهُۥ وَٱلۡمُؤۡمِنُونَۖ وَسَتُرَدُّونَ إِلَىٰ عَٰلِمِ ٱلۡغَيۡبِ وَٱلشَّهَٰدَةِ فَيُنَبِّئُكُم بِمَا كُنتُمۡ تَعۡمَلُون

And say: "Work you, then Allah and His Messenger and the believers will see your work, and you will be returned to (Allah) Who knows the unseen and the real, then He will inform you of what you have done it. (Surah At-Taubah: 105)

According to Anwar (2020), the verse above instructs everyone to work and always be self-aware if their work is supervised by Allah, the Apostle, and the believers (society). The phrase "seeing" in verse can be understood as monitoring the work of someone who will later be held accountable. Thus, there is a trilogy of elements of the shariah supervision system [94], namely (1) Allah's supervision as the supervision of conscience by always having faith in Him; (2) Supervision of the Apostle as formal-institutional supervision in which he has provided the provisions of shariah law; (3) Supervision of believers as social supervision carried out by the community. The explanation informs that shariah supervision will not be optimal if it is only delegated to one party (DPS) but must be a shared responsibility [72]. According to Baehaqi (2014), shared responsibility in the supervision process must use a systems approach as a model of shariah supervision. The Shariah Supervisory Board is carried out and involves other internal and external supervision [96]. This kind of supervision model can be applied in crowdfunding service activities. The supervision of the implementation of crowdfunding services is morally responsible to Allah SWT, organizationally to the DSN-MUI, and credibility to the community. All stakeholders must jointly carry out the supervisory function to implement ECF by shariah guidelines.

The Shariah Supervisory Board at each issuer and crowdfunding service platform based on shariah principles must periodically make statements (reports) that the activities it supervises are by shariah provisions or not. This statement is contained in the annual report of the relevant crowdfunding service. The Shariah Supervisory Board must also research and make recommendations on projects or products (shares) produced by supervised issuers. So, it can be said that the Supervisory Board acts as the first filter before activity or product is promoted and issued a fatwa by the DSN-MUI.

Considering that the supervision of the Shariah Supervisory Board is very decisive in overseeing the operation of the offering of shares through crowdfunding to continue to comply with shariah principles, the role of the Shariah Supervisory Board must be actively carried out optimally in supervising shariah compliance in the implementation of crowdfunding services. Although the existence of the Shariah Supervisory Board is a prerequisite for the operation of the Islamic finance industry, its performance must be maximized to realize shariah compliance in ECF operations. The Shariah Supervisory Board must be selected based on scientific capacity and experience and commit to the development of the shariah economy. From an early age, the Shariah Supervisory Board must firmly straighten out if there are shariah deviations in the practice of crowdfunding services because violations of shariah compliance by issuers and organizers will only damage the credibility and integrity of the shariah ECF industry in Indonesia.

c. Comparative Analysis between Malaysia and Indonesia
   Azam dan Pak Habibi

3.6 RECOMMENDATION

a. Malaysia

ECF according to the Malaysian capital markets law

Recently, the SC has taken appropriate steps to mitigate lower demand from investors in the alternative market due to pandemic-induced uncertainties, especially on ECF (ECF) and peer-to-peer (P2P) financing platforms. As a result, 1,403 issuers raised RM631.04 million on ECF and P2P financing platforms in 2020, up 42.91% from RM441.56 million raised in 2019. For ECF issuers, 57% raised the money for business

expansion. Among the steps the SC took was increasing the upper limit for ECF fundraising to RM10 million from RM5 million per issuer, and widening the scope of eligible ECF issuers to companies with up to 10 million paid-up capital from the initial RM5 million. In addition, a secondary trading framework for ECF and P2P was launched to provide investors with an exit mechanism. This enabled early investors to exit from deals they had earlier invested in and provided an opportunity for new investors to take part in deals they might have missed earlier. Therefore, the recent amendments to the GRM 2020 is a good move by the SC to boost the ECF trading in Malaysia.

In addition, the researchers are also of the opinion that the CMSA 2007 should broaden the criminal and civil sanctions to the recognized market as accorded to the approved markets. As for now, the recognized markets are covered in the administrative actions by the SC in Part XI of the CMSA 2007. The prohibited conducts as mentioned in Part V of the CMSA 2007 can occur in any equity markets not only confine to the approved markets.

b. Indonesia

Uni Putri

Data protection and Privacy

a. Malaysia

Parties that have been violated of personal data and privacy can rely on the provisions in the Personal Data Protection Act 2010 (PDPA 2010). The purpose of enacting the PDPA 2010 is to control and regulate the process of personal data in relation to business transaction as well as ensuring that the data of a user is not wrongly used by any parties in such business transaction (Personal Data Protection, (n.d.)). Protection is seen in section 4 of the PDPA 2010 which defines “personal data” as any information that is related to business transactions which is being processed entirely or partly with the use of any machines which can be control for that purpose, any information that is related to business transaction which is being written down with the purpose that either

the entire information or part of it to be processed with the use of such machine or any information that is related to business transaction which is being written down to be included as part of a filing system or with the intention that it should be included as part of a filing system.

According to the proviso provided under the interpretation of “personal data” in the Act, the word “information” is referring to any kind of information which is linked directly or indirectly to a person or data subject that can be identified through such information and this include any sensitive information of that person. Based on this section 4, “sensitive personal data” can be defined as any personal information that is related to the body or mental health of a person, his point of view in politics, his religious belief, any offence or wrongful act that he has committed or allegedly committed or any personal data being recognized by the order of Minister in the Gazette. However, based on the same section 4, the word “personal data” shall not include any information that has been processed by a credit reporting agency for the purpose of conducting a business that deals with credit information of individuals or businesses by virtue of the Credit Reporting Agencies Act 2010.

Legal point of views should be alerted on the privacy policy of companies because the privacy policy of one company is different from other companies. Basically, there are various ECF companies established in Malaysia such as Leet Capital Sdn Bhd, Ata Plus Sdn Bhd, Crowdo Malaysia Sdn Bhd, etc (Securities Commission Malaysia. (n.d)). For instance, the privacy policy in Leet Capital Sdn Bhd includes statements on how they collect the data, what type of personal information they collected, the consent to the personal information’s collection, how will they use the data, the retention of such personal information and how people can access and update their personal information (Privacy Notice - LEET Capital. (n.d.)). Meanwhile, the privacy policy of Ata Plus Sdn Bhd consists of the statements on the consent of the personal information’s collection and the usage of such personal information (Ata Plus. (n.d.)).

On this point, it is important to have a framework that enables start-ups and SMEs to access market-based financing through a platform registered with the Securities Commission. ECF framework will provide an alternative source to quicker access of capital at lower cost, opportunity to harness the power of the crowd on the internet to

raise funding and gauge market reception of their proposed product or services. ECF also enables the investors to be the shareholders of such start-ups and SMEs (Securities Commission Malaysia. (n.d)).

Furthermore, to ensure that the investors' privacies are well protected, the investors may exercise their rights to access to their own personal data and get a copy of the personal data held by the ECF platforms which might be subjected to an additional administrative charge. This right of access is given to the data subject in accordance with section 30 of the PDPA 2010. Referring to one of the ECF platforms in Malaysia, i.e. FBM Crowdtech Sdn Bhd, the investor is also given the right to request for a deletion of the personal data (Privacy Policy b, 2020). Personal data of the investors shall be considered as collected lawfully by the ECF platforms by following all of the steps in the process of collecting the personal data of the investors and this will in turn legally protect the personal data and privacy of the investors.

ECF per se is risky. Therefore, each platform must carefully evaluate the risks associated with data and privacy rights whilst balancing the protection of personal credit information. Hence, each platform should applied sufficient security measures in all circumstances to ensure the personal data and any other sensitive information are well protected when being stored. When processing personal data according to section 9(1) of the Act, data users should take practical steps to protect personal data from any loss, modification, unauthorized access or disclosure, by taken into account on the nature of personal data and potential damage that may cause to the owner of the personal data. Equipment for the retention and places where personal data is stored should also include sufficient security measures. These measures are to ensure the security of personal data, as well as the integrity, reliability and ability of personnel to have access to collected personal data. The platform operator shall be responsible for any loss or damage occurs to the owner of the personal data due to the improper retention of the data.

Generally, the personal data will be retained as long as necessary for the fulfilment of the purpose mentioned above, or for the legal and accounting requirements, subject to the privacy protection policies of each operator (Novia & Nahdlotul, 2020). This can be shown in MyStartr Platform, where in the privacy policy, it mentions that the platform

will only retain the personal data for so long thereafter as is necessary for them to fulfil the purposes as set out in the privacy policy (Privacy Policy c., 2020). However, if it is necessary for the platform to comply with their legal obligations, they may need to keep the personal data for a longer period of time, in order to respond to any disputes, claims or complaints related to the platform users. There are some platforms mentioned on the specific retention period. For example, Fundnel Malaysia (Privacy Policy d., 2020) mentioned in the privacy policy that, unless otherwise required by law or courts or government agencies, their platform will not retain the personal data for a period exceeding seven years (Privacy Policy d., 2020). However, as accordance to section 10(1) of the PDPA 2010, the retention period shall not be longer than the time required to achieve the purpose of personal data collection. Hence, the platform operator shall ensure the storage and retention of personal data is strictly follow the privacy policy and the law under PDPA 2010 or other legal resources herein related. It is essential that if it is no longer necessary to retain the data for the purpose of processing data, data users should take all reasonable steps to ensure that all personal data are properly destroyed or permanently deleted from the place which stored the data.

Although ECF platforms take reasonable measures to safeguard the personal data security whether in electronic or physical form, investors should be precautious and take measures to avoid personal data from improper or unauthorized access, disclosure, use, appropriation, destruction, modification or loss. In regards to the security of personal data and sensitive information collected, security measures to keep them confidential may be held by the ECF platform through implementation of industry standard or protocols. For instance, in respect to web-related information, ECF uses cookies which is a text file a webpage stores in users' local browse cache, to operate the website (necessary cookies), analyse the ways users' access or browse the website, to recognize and customize users' experience (functionality cookies) and store the visits and movement on the website in showing advertisements relevant to one's interests (Privacy Policy d., 2020). ECF however, does not have control over cookies from third parties which are used for performance or targeting. One may refuse any cookies while accessing the website by changing browser setting but it might affect the features or functionalities of the website. In such any damage or loss by deletion or rejection of cookies, ECF shall not be responsible nor held liable.

It is important to note that the transfer of personal data is at the investor's own sole risks once the investor has acknowledged or consented that communications through the web are inherently insecure. ECF usually does not warrant, guarantee, represent or otherwise reassure that the provided personal data will not be accessed, used, copied or disposed in circumstances of breach of security measures. The ECF or any of its affiliates cannot be held liable for any damage or loss as a consequence of the breach or any misuse, theft or other personal data compromise due to the direct or indirect of unauthorized use or access to any electronic devices used to access or use the service website. As far as reasonably possible, all the affected persons will be promptly notified in the case of such a breach. Investors are crucially advised to protect themselves by using encryption or other forms of security measures.

c. Indonesia

Fithriah

Cybercrimes

a. Malaysia

RMO or ECF platform must take all necessary actions to avoid fraud. According to Khan & Khan (2000), in addition to the eligibility conditions, crowdfunding platform have also been entrusted with the duty of a gatekeeper to conduct screening and adequate due diligence along with regulatory and background check of the companies so as to minimize any risk of fraud. The law relating to fraud in ECF must also be strengthen by the government. Personal data, should be retained by the data controller as long as is necessary for the purpose for which the data was collected. It also must be kept secure. Those who provide their data must be given sufficient information about how it is used (Halberstam, n.d.). Finally the IT infrastructure in the platform must be up to date and secured. The ECF platform must ensure that their computer system has taken certain measures against cyber-attacks in their operations

b. Indonesia

Daelaily

Contract

a. Malaysia

It is recommended that all the terms in the contract are fair to both parties. The investors must be given chances to negotiate some important terms in the contract. This is because investors as consumer has rights that must be protected under the law. Therefore, the CFP needs to put into place terms and conditions to maximise its potential redress and minimise its potential exposure (Halberstam, n.d.). The information that must be provided to investors must be stated clearly in the ECF platform. The investors must also have financial knowledge in order to evaluate whether the company can provide investment return or not.

b. Indonesia

Daslaily

The Roles of Enforcement Body

a. Malaysia

It is very important to have an enforcement body to develop the overall capital market and its market segments such as the equity crowdfunding. On top of that, the Securities Commission Act 1993 had provided this enforcement body a big discretionary power to regulate and enforce regulations pertaining to the capital market, ensuring sustainable market growth and development, supervising capital market activities.

However, there some recommendations can be made to this body especially to contribute to international regulatory policymaking. As such, the SC can actively involved in various international fora including among others, the International Organisation of Securities Commissions (IOSCO), the Organisation for Economic Cooperation and Development (OECD) and the Financial Action Task Force (FATF).

Next, the body can also promote the regional connectivity especially in the ASEAN Capital Markets Forum (ACMF), which is a high-level grouping of capital market regulators from the ten ASEAN jurisdictions, namely Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

Therefore the activities of crowdfunding can be extended further in the foreign countries.

Then, it is also recommended that the Securities Commission can further the regulatory cooperation in a more global area. Here, the SC can work with a global network of securities regulators to facilitate cross-border cooperation on regulatory and enforcement matters.

Last but not least, the Securities Commission is recommended to strengthen the capacity building. It is noted here that, to recognise of the role played by the SC, International Organisation of Securities Commission Organisation (IOSCO) established its first ever Regional Hub outside its Madrid headquarters in Kuala Lumpur in 2017. It means also that the Securities Commission in Malaysia is very well-established and therefore can extend its role at the international standard.

b. Indonesia

Daeslaily

The Application of Shariah Principles in ECF

a. Malaysia

As highlighted by Abdullah (2016) parameters of the Shariah contracts and available structures for Islamic equity crowdfunding should be provided by the regulator. Furthermore, the Guideline should specify the criteria for the eligible parties in the Shariah equity crowdfunding exercises.

In addition, the present position on the requirement of the appointment of the approved Shariah advisor could lead to market to uncertainty and possibly dispute as to the approved transactions in the absence of solid Shariah parameters pertaining to such crowdfunding activities. Therefore, Abdullah (2016) also recommended as follows: (a) The provisions of the Guidelines on Recognised Markets are to be revisited and additional adjustments should be incorporated to strengthen the Shariah governance aspects of the Islamic equity crowdfunding in the country. This is pertinent since Shariah-compliant transactions run based on the nature of the Shariah contracts involved; and (b) Shariah parameters should be issued by the regulators to allow crowdfunding activities to be run on the basis of Shariah principles.

b. Indonesia

Pak Habibi

3.7 CONCLUSION

ECF in Capital Markets

ECF can undeniably fill the gap that is still underserved by early-stage Venture Capital (VCs), Angel Investors, Government Grants, and informal investors. For startups and SMEs, ECF provides wide reach to investors willing to support the vision and a means to directly engage with them. For investors, it serves as a matchmaker and facilitator for their investment journey and sets forth a layer of transparency and accountability. Through this function, ECF in Malaysia can only be expected to drive these important segments of the economy and create more opportunities for investors and capital markets alike. Uni Indonesia??

Data protection and privacy (legal issues and protection)

The online economy has brought with it the opportunity for equity crowdfunding (ECF), which has now become a mainstream source of funding for small and medium-sized enterprises all around the world (Block, Colombo, Cumming, and Vismara, 2018; Rau, 2019). The regulation of securities markets and investor participation are crucial policy instruments to ensure strong investor protection and, as a consequence, stock market development (La Porta et al., 1997, La Porta et al., 1998, La Porta, et al., 2006, Goethnerab, et al., 2021).

As ECF requires mandatory registration, all investors must provide relevant personal information on the platform. Thus, there arises inevitable issues regarding the data protection and privacy. The investors may expose to the high risks of misuse and unlawful disclosure of personal data. Although ECF may be risky to the investors, the risk in terms of the privacy of their personal data can be mitigated if the platforms comply strictly with the Personal Data Protection Act 2010 when handling the personal

data of the investors. Thus, the platforms must take proper steps when collecting personal data as it is prohibited to obtain personal data of the investors through any unlawful methods. It is also necessary for the platforms to follow the privacy policy when using and disclosing the personal data of the investors and when storing the data.

Cybercrimes (legal issues and protection)

Daeslaily

Contract Issues (legal issues and protection)

Daselaily

Regulatory Body

To conclude, Malaysia has a good legal system that is the result of many decades of good work and systematic development. The strength of the BNM's institutional arrangements has been tested, and has always been proven in times of change and uncertainty. Although the pandemic, together with fundamental shifts in political and social dynamics, has made the regulatory and policy-making environment increasingly challenging, we firmly believe that Malaysia will maintain its role at the forefront of banking and financial regulation, and continue its outstanding work towards a better future for all Malaysians. Indonesia ???

ECF shariah

Equity crowdfunding is a permissible mode of financing under Islamic commercial law as long as the transaction complies with the Shariah principles. Currently the Securities Commission of Malaysia has provided rulings in governing Islamic Equity Crowd Funding to be observed by the relevant parties. However, the current regulatory should be improved to ensure the exhaustive legal framework for Islamic Equity Crowd Funding.

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5.0 REFERENCES

Abdullah, S. & Oseni, O.A. (2017). Towards a Shariah compliant equity-based crowdfunding for the halal industry in Malaysia. *International Journal of Business and Society,* 18(S1), 223-240.

Block,J., Colombo, M.G., Cumming, D. & Vismara S. (2018). New players in entrepreneurial finance and why they are there. Small Business Economics, 50 (2) (2018), pp. 239-250

Bradford, C.S. (2012). *Crowdfunding and the Federal Securities Laws*. University of Nebraska-Lincoln, sbradford1@unl.edu. Available at https://digitalcommons.unl.edu/

Britannica Dictionary. Available at https://www.britannica.com/topic/cybercrime

Capital Market and Services Act 2007 (Act 671). Kuala Lumpur: ILBS.

Communication and Multimedia Act 1998, Kuala Lumpur: ILBS.

Companies Act 2016. Kuala Lumpur: ILBS.

Computer Crimes Act 1997, Kuala Lumpur: ILBS.

Copyright Act 1987, Kuala Lumpur: ILBS.

Cybersecurity.(2010).Digital Forensics – CyberCSI. Available at https://www.cybersecurity.my/data/content_files/48/787.pdf. Access on 2 September 2020.

Defamation Act 1957, Kuala Lumpur: ILBS.

Galwin, W. F. (2012). Comment on SEC regulatory initiatives under the JOBS Act: Title III — Crowdfunding. Retrieved from www.sec.gov/comments/jobs-title-iii/jobs-title-iii.shtml

Gobble, M. A. M. (2012). Everyone is a venture capitalist: the new age of crowdfunding. *Research Technology Management*, 4 (55).

Guideline of Recognised Market 2015 (Revised 2020). Kuala Lumpur: Securities Commission.

Merriam-webster Dictionary. Available at https://www.merriamwebster.com/dictionary/cybercrime

Mohd Thas Thaker, M.A. & Pitchay, A.A. (2018). Developing waqf land through crowdfunding-waqf model (CWM): the case of Malaysia. *Journal of Islamic Accounting and Business Research*, 9(3), 448-456.

Mokhtarrudin, A., Masrurah, I. M. and Muhamad, S. C. R. (2017). Crowdfunding as a funding opportunity for youth start-ups in Malaysia. *Pertanika Journal of Social Sciences & Humanities*, 25(S), 139-154.

Mollick E. (2014). The dynamics of crowdfunding: An exploratory study. *Journal of Business Venturing*. 29(1), 1-16.

Penal Code. Kuala Lumpur: ILBS

Personal Data Protection Act 2010, Kuala Lumpur: ILBS.

Schwienbacher, A. & Larralde, B. (2010) Crowdfunding of Small Entrepreneurial Ventures. *SSRN Electronic Journal*, 10, 1-23.

Securities Commission's Guidelines on Regulation of Markets, Kuala Lumpur: Securities Commission.

Securities Industry Act 1983 (Act 280), Kuala Lumpur: ILBS.

Sedition Act 1948. Kuala Lumpur: ILBS.

Sigar, K. (2012). Fret no more: inapplicability of crowdfunding concerns in the internet age and the JOBS Act's safeguards. Administrative Law Review, 2 (64), p. 474-505.

Strategic Trade Act 2010, Kuala Lumpur: ILBS.

Sullivan, B., Ma, S. (2012). Crowdfunding: potential legal disaster waiting to happen. Retrieved from Forbes.com <https://www.forbes.com/sites/ericsavitz/2012/10/22/crowdfunding-potential-legal-disaster-waiting-to-happen/#36ad4e0a576c>. Access on May 17, 2020.

Valanciene, L., Jegeleviciute, S., 2013. Valuations of crowdfunding: benefits and drawbacks, Economics and Management, 18(1), 39 – 48.

Abdullah,N.A.H., Ahmad,A.H.H., Md. Rus, R. & Zainudin, N. (2015). Modelling small business failures in Malaysia. Proceedings of *INTCESS15-2nd International Conference on Education and Social Sciences*. (pp. 613-618).Istanbul, Turkey.

Ajayi, E. F. G. (August 2016). Challenges to enforcement of cyber-crimes laws and policy. *Journal of Internet and Information Systems*. 6(1), 1-12.

Appudurai, J. & Ramalingam, C.L. (2007). Computer Crimes: A case study of what malaysia can learn from others?. *Journal of Digital Forensics, Security and Law*, 2(2), 7-22.

Arora, B. (2016). Exploring and analyzing Internet crimes and their behaviours. *Perspective in Science*, 8, 540-542.

Halberstam, S. (n.d.). How to set up and run a crowdfunding platform – legal, financial, fiscal and exit issues. Retrieved at https://www.weblaw.co.uk/ebooks/crowdfunding-guide.pdf.

Khan, J. & Khan, U.K. (2020). Crowdfunding in India and its regulation: A critical analysis of SEBI's consultation paper on crowdfunding. *International Journal of Law Management & Humanities*. 3 (4), 2100-2117.

Li, J. (2016). ECF in China: Current practice and important legal issues. *The Asian Business Lawyer*. 18, 59-131.

Pavlik, K. (2017). Cybercrime, hacking, and legislation. *Journal of Cybersecurity Research*. 1 (1), 13-16.

Sadzius L. & Sadzus, T. (September 2017). Existing legal issues for crowdfunding regulation in European Union. *International Journal of Business, Humanities and Technology*, 7 (3), 52-62.

Sarre, R., Lau, L.Y.C., & Chang, L.Y.C. (2018) Responding to cybercrime: current trends. *Police Practice and Research*, 19(6), 515-518.

Wan Haniff, W.A.A.; Ab Halim, A.H. & Ismail, R. (2019). ECF in Malaysia: Legal and Shariah challenges. *International Journal of Asian Social Science*. 9 (8), 450-460.

Yik, C.S. (2018). Cyber security law and framework in Malaysia. Paper presented at *Law Awareness Week 2018*. Nilai, Negeri Sembilan. Retrieved from https://chialee.com.my/basics-of-cyber-security-law-in-malaysia/

Ata Plus. (n.d.). *Legal.* http://www.ata-plus.com/legal. Retrieved July 27, 2021.
Butarbutar, R. (2020). Personal Data Protection in P2P Lending: What Indonesia Should Learn from Malaysia? *Pertanika Journal Social Scinces & Humanities*. 28 (3): 2295 – 2307 (2020).

Capital Market and Services Law (Section 377 CMSA 2007)

GC & Others v CNIL [2019] EUECJ C-136/17
"In the matter of an investigation under section 50(1) of the Personal Data Protection Act 2012 And Novelship Pte. Ltd." Case No. DP-1905-B3820, 24 Nov 2020. Singapore

Case: Lloyd v Google LLC [2019] EWCA Civ 1599

Case: R (Bridges) v Chief Constable of South Wales Police and Others [2019] EWHC 2341

Case: R v Jarvis [2019] SCC 10

Case: ZXC v Bloomberg LP [2019] EWHC 970 (QB)

Chambers & Partners. (2019). *Data protection & cybersecurity 2019*. Retrieved July 15, 2020, from https://practiceguides.chambers.com/practice-guides/data-protectioncybersecurity-2019/malaysia

Competition Act 2010 (the CA 2010)

Electronic Commerce Act 2006 (the ECA 2006)

Garner, B. A. (2004). *Black's law dictionary.* St. Paul, USA: West Thomson.

Goethnerab, M., Hornufcde, L., & Regnera, T. (2021). Protecting investors in equity crowdfunding: An empirical analysis of the small investor protection act. *Technological Forecasting and Social Change Journal.* Vol. 162. January 2021, 120352.

iMoney.my. (2019). *All you need to know about P2P lending in Malaysia.* Retrieved July 10, 2020, from https://www.imoney.my/articles/ p2p-lending-guide

Kandiah, S. (2019). *The Financial Technology Law Review*. Retrieved February 10, 2020, from https://thelawreviews.co.uk/edition/the-financialtechnology-law-review-edition-2/1192796/ Malaysia.

Kandiah, S. (2021). *The Financial Technology Law Review: Malaysia*. Retrieved June 7, 2021, from https://thelawreviews.co.uk

Kantaatmadja, M. K. (2002). *Cyberlaw: Suatu pengantar [Cyber law: An introduction].* Bandung, Indonesia: ELIPS.

La Porta, R., Lopez-de-Silanes, F., Shleifer A., Vishny R.W. (1998). Law and finance. *Journal of Political Economy*, Vol. 106. Issue 6, pp. 1113-1155.

La Porta, R., Lopez-de-Silanes, F., Shleifer A., Vishny R.W. (1997). Legal determinants of external finance. *Journal of Finance.* Vol. 52. Issue 3, pp. 1131-1150.

La Porta, R., Lopez-de-Silanes, F., Shleifer A. (2006). What works in securities laws? *Journal of Finance.* Vol. 61. Issue 1, pp. 1-32.

Mateescu, A. (2015). *Peer-to-peer lending survey.* Data & Society Research Institute. https://www. Datasociety.net/pubs/dcr/PeertoPeerLending.pdf. Retrieved April 7, 2020.

Mokhtarrudin, A., Masrurah, I. M. K., & Muhamad, S. C. R. (2017). Crowdfunding as a funding opportunity for youth start-ups in Malaysia. *Pertanika Journal of Social Sciences and Humanities*, 25(S), 139-153.

Munir, A. B. (1999). *Cyber law: Policies and challenges.* Kuala Lumpur, Malaysia: Butterworth Asia.

Novia C., Nahdlotul F. (2020). Legal protection for investors in crowdfunding services through information technology offers (equity crowdfunding). *Syiah Kuala Law Journal.* Fakultas Hukum Universitas Syiah Kuala. Vol. 4(2) Agustus 2020, pp. 153-172. ISSN : 2580-9059.

Personal Data Protection Act 2010 (the PDPA 2010) (Act 709)

Personal Data Protection. (n.d.). Retrieved from My Government : https://www.malaysia.gov.my/portal/content/654

Privacy Notice - LEET Capital. (n.d.). Retrieved from Leet Capital Sdn. Bhd. https://leet.capital/privacy-policy

Privacy Policy a. (2020). Retrieved from Equity Pitch In: https://equity.pitchin.my/privacy-policy

Privacy Policy b. (2020). Retrieved from FundedByMe Crowdtech Sdn Bhd: https://www.fundedbyme.com/en/privacy-policy/#information-collection-and-use

Privacy Policy c. (2020). Retrieved from MyStartr: https://www.mystartr.com/page/general/equity-privacy-policy

Privacy Policy d. (2020). Retrieved from Fundnel: https://fundnel.com/my/privacy-policy

Rau, P.R. (2019). *Law, trust, and the development of crowdfunding*. University of Cambridge. Working paper. Google Scholar.

Sadzius, L. & Sadzius, T. (2017). Existing Legal Issues for Crowdfunding Regulation in European Union Member States. International Journal of Business, Humanities and Technology Vol. 7, No. 3, September 2017 pp. 52-62.

Securities Commission Malaysia. (2020). *Guidelines on digital assets.* Available at https://www.sc.com.my/api/documentms/download.ashx?id=dabaa83c-c2e8-40c3-9d8f1ce3cabe598a. Retrieved April 5, 2020.

Securities Commission Malaysia. (2016a). *Guidelines on management of cyber risk*. Available at https://www.sc.com.my/api/documentms/download.ashx?id=9aaddb2eaa13-409a-a47f-8d0124afd229. Retrieved April 5, 2020.

Securities Commission Malaysia. (n.d). List of Registered Recognized Market Operators - Digital. Available at https://www.sc.com.my/development/digital/list-of-registered-recognized-market-operators. Retrieved July 29, 2021.

Securities Commission Malaysia. (2016b). *SC Introduces regulatory framework to facilitate peer-to-peer financing.* Retrieved July 10, 2020, from https://www.sc.com.my/resources/media-releases-and-announcements/scintroduces-regulatory-framework-to-facilitatepeer-to-peer-financing

Shahwahid, F. M., & Miskam, S. (2015). Personal Data Protection Act 2010: Taking the first steps towards compliance. *Journal of Management & Muamalah.* Vol 5(2), 64-75

The International Comparative Legal Guides. (2019). *Malaysia: Fintech 2019*. Retrieved July 11, 2020, from https://iclg.com/practice-areas/ fintech-laws-and-regulations/malaysia

Bank Negara Malaysia, 2020. BNM's Annual Report 2020: www.bnm.gov.my/o/ar2020/index.html.

Bank Negara Malaysia, Policy Document on Licensing Framework for Digital Banks: www.bnm.gov.my/-/policy-document-on-licensing-framework-for-digital-banks. (accessed 5 August 2021)

Bank Negara Malaysia, 2018. BNM Financial Stability and Payment Systems Report 2018: www.bnm.gov.my/-/financial-stability-and-payment-systems-report-2018. (accessed 5 August 2021)

Bursa Malaysia, https://www.bursamalaysia.com/regulation/structure/regulatory_oversight_body (5 August 2021)

Loo Choo Hong, 2018, Crowdfunding: Issues Pertaining to Financial Reporting Assurance in Malaysia, Journal of Wealth Management and Financial Planning, Vol 5 June 2018.

Mohamed, Duryana. 2012. Combating the threats of cybercrimes in Malaysia: The efforts, the cyberlaws and the traditional laws. Computer Law and Security Review, https://doi.org/10.1016/j.clsr.2012.11.005 (4 August 2021)

Securities Commission Malaysia, 2020. Securities Commission Malaysia, Annual Report 2020. Available at www.sc.com.my/resources/publications-and-research/sc-annual-report-2020.

Securities Commission, 2021. www.sc.com.my/about/client-charter/business-processes/the-licensing-process.

Startup.com,2021.https://www.fundable.com/crowdfunding101/history-o crowdfunding

Izwan Partners (2021). Equity Crowdfunding Legal Tips for Malaysian Companies. Available at https://www.izwanpartners.com/equity-crowdfunding-legal-tips-startups/
Access on 18 October 2021.

Taha T., Macias I. (2014) Crowdfunding and Islamic Finance: A Good Match?. In: Atbani F.M., Trullols C. (eds) Social Impact Finance. IE Business Publishing. Palgrave Macmillan, London. 113-125.

Afroz, R., Tudin, R., Morshed, M. N., Duasa, J. & Muhibbullah, M. (2019). Developing a Shariah-Compliant Equity-based Crowdfunding Model towards a Malaysian Low-Carbon Consumer Society. Malaysian Journal of Consumer and Family Economics. 22(2), 185-202.

Marzban, S., Asutay, M., Boseli, A. (2014). Shariah-compliant Crowd Funding: An Efficient Framework for Entrepreneurship Development in Islamic Countries. Harvard Islamic Finance Forum 2014. https://www.researchgate.net/profile/Shehab-Marzban/publication/280612061_Shariah-compliant_Crowd_Funding_An_Efficient_Framework_for_Entrepreneurship_Development_in_Islamic_Countries/links/55be948b08ae9289a099d92d/Shariah-compliant-Crowd-Funding-An-Efficient-Framework-for-Entrepreneurship-Development-in-Islamic-Countries.pdf

Abdullah, A. (2016). Crowdfunding as an emerging fundraising tool: With special reference to the Malaysian regulatory framework. *Islam and Civilisational Renewal*, 7(1), 89-119.

Al-Kasani, A.B.I.M. (1996). *Bada' al-Sana' fi Tartib al-Shara'*. Vol. 6, 1st edn. Beirut,: Dar al-Fikr.

al-Zuhayli, W. (2006). *Al-Fiqh al-Islami wa 'Adilatuhu*. Vol. 5, 3rd edn. Iran: Nashr Ihsan.

Ibn Abidin. (2005). *Radd al-Muhtar*. Vol.6. Beirut, Lubnan: Dar al-Fikr.

Ibn Qudamah, A.A.M. (1988). *Al-Kafi - Kitab al*-Buyu'. Vol. 2, 5th edn. Beirut: Al-Maktab al-Islami.

Ibn Rushd, A.A.W.M.I.A. (2003). *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*. Vol. 2, 1st edn. Beirut, Lubnan: Dar al-Fikr.

Saqib, L., Roberts, K.W., Zafar, M.A., Khan, Khurram & Zafar, A. (2014). Musharakah—A Realistic Approach to the Concept in Islamic Finance and its Application to the Agricultural Sector in Pakistan. *Arab Law Quarterly*, 28(1), pp. 1-39.

Uthmani, M.T. (2008). *Introduction to Islamic Financial System*. Karachi: Maktaba Mariful Quran.

US Securities & Exchange Commission, 2021. www.sec.gov/enforce/Article/enforce-about.html. Accessed 24 Oct 2021.

Malaysian Securities Commission, 2021. www.sc.com.my/about/about-the-sc. Accessed 24 Oct 2021

OUTPUT OF RESEARCH

No	JOURNAL ARTICLE	PROCEEDINGS ARTICLE	BOOK CHAPTER	OTHERS
1	Yeon, A.L., Yaacob, N., Hussain, M.A, & Md. Ismail, C.T., (2021). Equity Crowdfunding Vs Cybercrime: A Legal Protection. – Legal Reference Services Quarterly, Volume 40, Issue 04. Taylor & Francis, pp (Scopus)	Mohammad Azam Hussain, Asmah Laili Yeon, Nurli Yaacob, Che Thalbi Md. Ismail & Roos Niza Mohd Shariff (2020). Legal Protection of Cybercrime in Relation To Equity Crowdfunding In Malaysia. E-Proceeding MPUUM International Conference on Internet Governance: Universiti Utara Malaysia. pp 8-10. eISBN: 978-967-16057-7-6		
2	Yeon, A. L. & Putri, U.T., (2021). ECF Industry and Regulation in Malaysia and Indonesia: Prospects and Challenges during the Covid 19 Pandemic. Journal of International Studies. (in process) Scopus & ESCI	Md Ismail, C.T. (2021). Equity Crowdfunding Development in Malaysia. Proceedings: Seminar on Law and Society pp 296-303		
3	Mohammad Azam & Muhammad Habibi Miftakhul Marwa, Islamic Equity Crowd Funding in Malaysia and Indonesia: Legal and Shariah Issues.			

	(in Process)			
4	Fithriah Shalihah & Roos Niza Mohd Shariff (2022). Identifying barriers to data protection and investor privacy in equity crowdfunding: experience from Indonesia and Malaysia UUM Journal of Legal Studies			
5	Asmah, Deslaely, & Che Thalbi (2022). Legal Issues on Contract Relating to ECF in Malaysia and Indonesia			

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Nama	:	**Dr. Fithriatus Shalihah, S.H., M.H., Muhammad Habibi Miftakhul Marwa, S.H.I., M.H. dkk**
Alamat	:	Jl. Pleret, Perum Pondok Permai, Banguntapan Residence Blok C 15, RT 15, Potorono, Banguntapan , Bantul, DI YOGYAKARTA, 55791
Kewarganegaraan	:	Indonesia
Pemegang Hak Cipta		
Nama	:	**UNIVERSITAS AHMAD DAHLAN**
Alamat	:	Jl. Pramuka 5F, Pandeyan, Umbulharjo , Yogyakarta, DI YOGYAKARTA, 55161
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LAMPIRAN PENCIPTA

No	Nama	Alamat
1	Dr. Fithriatus Shalihah, S.H., M.H.	Jl. Pleret, Perum Pondok Permai, Banguntapan Residence Blok C 15, RT 15, Potorono, Banguntapan
2	Muhammad Habibi Miftakhul Marwa, S.H.I., M.H.	Teluk, RT 001/RW 005, Kragilan, Gantiwarno
3	Muhammad Farid Alwajdi, S.H., M.Kn.	Jl. Sorogenen No. 18, Sorosutan, Umbulharjo
4	Uni Tsulasi Putri, S.H., M.H.	Karangasem, RT 004/RW 025, Sendangtirto, Berbah
5	Deslaely Putranti, S.H., M.H.	Jl. Ki Ageng Pamanahan No.03, RT 052/RW 013, Sorosutan

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EQUITY CROWDFUNDING DI INDONESIA

Dr. Fithriatus Shalihah, S.H., M.H.
M. Habibi Miftakhul Marwa, S.H.I., M.H.
M. Farid Alwajdi, S.H., MKn.
Uni Tsulasi Putri, S.H., M.H.
Deslaely Putranti, S.H., M.H.

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Uni Tsulasi Putri, S.H., M.H.
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Telp. (0274) 563515, Phone (+62) 882 3949 9820

Prakata

Alhamdulillahirabbil 'alamin, segala puji bagi Allah SWT, yang telah memberikan nikmat kesehatan sehingga buku yang berjudul *Equity Crowdfunding di Indonesia* dapat terselesaikan dengan baik. Buku ini merupakan luaran wajib dari Penelitian Kerja sama ASEAN dalam hal ini antara Universitas Ahmad Dahlan Indonesia dan Universiti Utara Malaysia, yang di danai secara silang oleh LPPM UAD tahun anggaran 2021. Tim peneliti terdiri dari 5 (lima orang) yaitu Dr. Fithriatus Shalihah, S.H., M.H., Muhammad Habibi Miftakhul Marwa, S.H.I., M.H., Muhammad Farid Alwajdi, S.H.,MKn., Uni Tsulasi Putri, S.H., M.H., dan Deslaely Putranti, S.H., M.H.,

Membaca buku ini pembaca akan memperoleh pemahaman tentang latar belakang keberadaan *equity crowdfunding* di Indonesia yang sangat erat kaitannya dengan perkembangan teknologi dan dinamika kegiatan finansial di masyarakat yakni mengenai Layanan Urun Dana Berbasis Teknologi Finansial *(Crowdfunding)*. Munculnya fenomena *equity crowdfunding* ini karena beberapa alasan. *Pertama*, berkembangnya teknologi informasi yang memungkinkan pengusaha untuk mengakses alternatif pembiayaan usaha. *Kedua*, Usaha Mikro Kecil dan Menengah (UMKM) sulit mengakses pembiayaan melalui perbankan ataupun tidak dapat masuk ke pasar modal. *Ketiga*, masyarakat (pemodal) ingin mendapatkan untung lebih daripada uangnya sekedar disimpan di bank. Artinya, sektor UMKM ini meskipun kecil tapi dampaknya sangat besar bagi perekonomian Indonesia. Oleh karena itu, dengan munculnya platform *equity crowdfunding* ini menjadikan UMKM dapat dengan mudah mengakses alternatif pendanaan untuk bisnisnya agar dapat berkembang *(scale-up)*. Peluang untuk mendapatkan dana segar dari masyarakat ini tentu ada risikonya. Salah satu risikonya adalah gagalnya usaha yang didanai dari uang masyarakat, sedangkan pendanaan melewati *equity crowdfunding* ini tanpa adanya jaminan dari si penerbit.

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tentunya banyak kekurangan dalam penulisan buku ini, oleh karenanya kami mengharap masukan yang konstruktif dari pembaca sekalian. Semoga bermanfaat!

TIM PENULIS

Daftar Isi

Pendahuluan

Crowdfunding (urun dana) merupakan kegiatan mengumpulkan uang dari sejumlah besar investor melalui platform internet (Bradford, 2012). Bradford (2012) mengemukakan bahwa di Amerika Serikat, situs *crowdfunding* seperti Kiva, Kickstarter, dan IndieGoGo telah berkembang biak, serta jumlah uang yang dikumpulkan melalui *crowdfunding* telah berkembang hingga miliaran dolar hanya dalam beberapa tahun. Schwienbacher dan Larralde (2010) dan Mollick (2014) menyatakan bahwa ini adalah metode baru untuk mendanai berbagai usaha baru, memungkinkan individu pendiri proyek nirlaba, budaya, atau sosial untuk meminta pendanaan dari banyak individu, seringkali dengan imbalan produk masa depan atau ekuitas, biasanya melalui inter-net.

Di Indonesia, *crowdfunding* mulai bermunculan pada 2012, yaitu dengan didirikannya platform *Wujudkan.com*, sebuah *crowdfunding* berbasis imbalan yang bergerak di industri kreatif. Kemudian, mulai ber-munculan platform-platform lain, seperti *Kitadapat.com, Ayopeduli.com, Patungan.net* yang merupakan *crowdfunding* berbasis donasi dan *Gan-dengtangan.com* yang merupakan *crowdfunding* berbasis hutang (Nugro-ho dan Rachmaniyah, 2019).

Penawaran saham yang dapat mendorong tumbuhnya aternatif pembiayaan bagi dunia usaha dan media investasi bagi masyarakat memasuki episode baru. Dalam industri jasa keuangan, salah satu inovasi teknologi yang dapat digunakan masyarakat yaitu melalui penawaran saham berbasis teknologi informasi atau yang dikenal dengan *layanan urun dana*. Layanan urun dana adalah salah satu produk dalam *fintech* yang mempertemukan penerbit saham dengan pemodal (investor) melalui sistem elektronik atau teknologi informasi. Saat ini, bisnis *crowdfunding* berkembang pesat hingga muncul inovasi baru terkait penawaran saham *(Equity Crowdfunding)* (Rosadi, 2015).

Equity crowdfunding masuk dalam kategori *crowdfunding* yang ditu-jukan untuk kepentingan bisnis. *Equity crowdfunding* adalah penawaran dan penjualan saham yang bersifat ekuitas untuk semua pemodal. Ekuitas

berarti kepemilikan, dan seorang pemodal yang membeli saham bersifat ekuitas akan menjadi pemilik bagian dalam perusahaan yang menerbitkan saham tersebut. Penawaran semacam itu hanya dapat dilakukan melalui perantara atau penyelenggara (Freedman dan Nutting, 2015; Norita dan Harahap, 2018). Konsepnya sama seperti saham, bahwa uang yang disetorkan akan menjadi ekuitas atau bagian kepemilikan atas perusahaan dengan imbalan deviden.

Munculnya fenomena *equity crowdfunding* ini karena beberapa alasan antara lain:

1. Berkembangnya teknologi informasi yang memungkinkan pengusaha untuk mengakses alternatif pembiayaan usaha.
2. Usaha Mikro Kecil dan Menengah (UMKM) sulit mengakses pembiayaan melalui perbankan atau pun tidak dapat masuk ke pasar modal.
3. Masyarakat (pemodal) ingin memperoleh untung lebih daripada uangnya sekedar disimpan di bank.

Perlu dicermati bahwa UMKM ini pada tahun 2017 memiliki pangsa pasar sekitar 99,99% dari total keseluruhan pelaku usaha di Indonesia dan mampu menyerap sekitar 97% tenaga kerja nasional (Haryanti, De-wi Meisari, Hidayah, 2018). Artinya, sektor UMKM ini meskipun kecil, tapi dampaknya sangat besar bagi perekonomian Indonesia. Oleh karena itu, dengan munculnya platform *equity crowdfunding* dapat menjadikan UMKM dengan mudah mengakses alternatif pendanaan untuk bisnisnya agar dapat berkembang (*scale-up*). Peluang untuk memperoleh dana se-gar dari masyarakat ini tentu ada risikonya. Salah satu risikonya adalah gagalnya usaha yang didanai dari uang masyarakat, sedangkan pendanaan melewati *equity crowdfunding* ini tanpa adanya jaminan dari si penerbit.

Adapun undang-undang di Indonesia yang terkait dengan teknologi finansial masih mengacu kepada Kitab Undang-Undang Hukum Perdata (KUHPerdata), yaitu Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 tahun 2008 tentang Informasi dan Transaksi Elektronik, Undang-Undang Nomor 23 Tahun 1999 tentang Bank Indonesia, serta Undang-Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan. Pengaturan dan Pengawasan bisnis *fintech* di Indonesia dilakukan oleh dua lembaga negara independen yaitu

Bank Indonesia (BI) dan Otoritas Jasa Keuangan (OJK). BI bertugas mengatur dan mengawasi usaha jasa sistem pembayaran berbasis teknologi finansial (SP-Tekfin), sedangkan OJK berwenang mengatur dan mengawasi bisnis *fintech* di luar moneter dan sistem pembayaran. OJK adalah lembaga independen (Santi, Budiharto dan Saptono, 2017).

Sejauh ini Otoritas Jasa Keungan (OJK), hanya mengatur *Crowdfunding* yang menjanjikan imbalan keuntungan. Sementara *Crowdfunding* dengan jenis lain (yang bukan investasi), di atur dalam Undang-Undang nomor 9 tahun 1961 tentang Pengumpulan Uang atau Barang. Perkembangan *fintech* yang sangat pesat ini sangat perlu diatur oleh hukum untuk perkembangan industri itu sendiri, dan perlu juga untuk memberi perlindungan kepada masyarakat selaku pengguna. Pemerintah melalui OJK sebagai badan yang berwenang mengatur *fintech* sesuai kategorinya, telah mengeluarkan peraturan teknis dalam regulasi terkait *equity crowdfunding* tersebut yakni POJK No.37/POJK-04/2018 tentang Layanan Urun Dana Melalui Penawaran saham Berbasis Teknologi Informasi *(Equity Crowdfunding)*. Setelah dikeluarkannya POJK Nomor 37/POJK-04/2018, hingga bulan Desember 2019 OJK telah mengeluarkan izin untuk tiga platform ECF, yakni Santara, Bizhare, dan *Crowd*-dana.

Pada 31 Desember 2018, Otoritas Jasa Keuangan (OJK) mengeluarkan suatu aturan dalam membentuk hubungan hukum yang baru disebut Layanan Urun Dana atau *Equity Crowdfunding* (ECF). Kenapa dikatakan hubungan hukum yang baru? Karena pada hakikatnya ECF merupakan peristiwa nyata yang sudah lama ada di masyarakat, namun baru dikualifikasikan menjadi peristiwa hukum sejak 31 Desember 2018 (Satjipto, 2014). Sejak itulah muncul hubungan pertalian antara subjek hukum yang diberi kualifikasi oleh hukum sebagai Layanan Urun Dana (ECF).

Setidaknya ada tiga faktor yang mempengaruhi tumbuh kembangnya ECF di Indonesia, yaitu:

1. Pengusaha yang Membutuhkan Modal

   Dari aspek prespektif pengusaha (penerbit), salah satu faktor yang memengaruhi mengapa UMKM sulit berkembang adalah masalah permodalan. Padahal, sektor UMKM mampu menyerap sekitar 97% dari total tenaga kerja di Indonesia. Dengan kontribusi sekitar 60,3%

dari PDB (Produk Domestik Bruto) Indonesia. Tahun 2018 tercatat bahwa penyaluran pendanaan untuk UMKM oleh perbankan hanya sebesar 19% dari total penyaluran kredit (Gunawan, 2020). Artinya, sektor UMKM perlu memperoleh perhatian yang serius oleh pemerintah. Di sisi lain, ketika UMKM ingin mengembangkan usahanya, terhambat akses permodalan karena dianggap tidak dapat dibankkan. Oleh karena itu, perlu suatu mekanisme agar UMKM dapat memperoleh modal, salah satunya melalui alternatif pendanaan *equity crowdfunding*.

2. Masyarakat yang Ingin Menginvestasikan Modalnya untuk Mendapatkan Keuntungan

   Ada masyarakat yang mengharapkan bertambahnya kekayaan mereka lewat investasi yang memiliki proyeksi *return* yang menarik dan memiliki dampak positif, seperti membantu UMKM tumbuh berkembang. Data di OJK mencatat bahwa sampai September 2020 platform ECF di Indonesia sudah menghimpun dana kurang lebih Rp. 150.000.000.000,00 dengan 17.000 jumlah investor yang tersebar di ketiga platform (Santara, Bizhare dan Crowddana) (Walfajri, 2020).

3. Pertumbuhan Akses Internet di Indonesia

   Tumbuh kembangnya akses internet di Indonesia juga mempengaruhi masyarakat untuk mengetahui alternatif-alternatif investasi yang dapat diakses dengan mudah. Laporan dari *Wearesocial* menyebutkan bahwa sampai Januari 2020 ada 175 juta penduduk yang menggunakan akses internet. Penduduk Indonesia sendiri berjumlah sekitar 268 juta jiwa (Nugraheny, 2020). Ini artinya lebih dari sete-ngah penduduk Indonesia sudah dapat mengakses internet. Bahkan yang menarik adalah ada 338 juta *smartphone* yang terkoneksi internet di Indonesia. Artinya penduduk Indonesia yang mampu mengakses internet tadi mempunyai lebih dari 1 (satu) handphone untuk aktivitas sehari-hari (Kemp, 2020).

Faktor berkembangnya teknologi informasi semakin mendorong masifnya pertumbuhan ECF di Indonesia. Dengan semakin mudah dan banyaknya orang yang memiliki akses internet, mendorong orang untuk se-

nantiasa mengakses konten-konten secara digital, termasuk konten-konten investasi. Hal ini dibuktikan dengan pernyataan Santara bahwa dalam masa pandemi COVID-19 ini jumlah pengguna terdaftar bertambah (Rahardyan, 2020). Faktor Teknologi Informasi jugalah yang disebutkan dalam konsideran menimbang sebagai penyebab dikeluarkannya aturan mengenai ECF (Otoritas Jasa Keuangan, 2018). Setelah ECF berjalan kurang lebih 2 tahun, OJK mengeluarkan aturan pengganti ECF yang disebut dengan *Securities Crowdfunding* (SCF). Pada 11 Desember 2020 OJK mengeluarkan Peraturan Otoritas Jasa Keuangan Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi. Aturan ini mencabut aturan POJK Nomor 37/POJK.04/2018 tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (*Equity Crowdfunding*). SCF ini bukan menghapuskan lembaga ECF namun sebagai perluasan dari penawaran efek, yang tidak hanya terbatas pada saham, namun juga utang.

1 Aspek Hukum *Equity Crowdfunding*

A. Pengertian *Equity Crowdfunding*

Secara teori *Equity Crowdfunding* merupakan salah satu jenis dari *Crowdfunding*. Kata *Crowdfunding* diartikan sebagai *involves individuals, typically entrepreneu-rial oriented, or entrepreneurial firms raising capital through (typically) on-line internet platforms from large numbers of small investors* (Cumming & Johan, 2019). Pendapat serupa juga mengatakan *Crowdfunding can be defined as a practice of funding startups or small firms or project by raising small amount of money from a large number of people utilizing online social media such as Facebook, Twitter, LinkedIn and other specialized blogs* (Adhikary et al., 2018). Berdasarkan pendapat di atas, dapat disimpulkan bahwa *crowdfunding* adalah iuran yang dilaksanakan oleh banyak orang untuk mendanai/membiayai suatu perusahaan/proyek tertentu dengan menggunakan media *online*/internet. Secara umum ada empat jenis/tipe *crowdfunding* yang dikenal masyarakat, yaitu: (1) *donation/donor-based crowdfunding*, (2) *Reward based crowdfunding*, (3) *Debt/Lending based crowdfunding*, dan (4) *Equity based crowdfunding* (Gupta, 2018).

Equity Crowdfunding diartikan sebagai masyarakat/investor membeli sejumlah saham pada perusahaan tertutup (perusahaan kecil) dengan tujuan memperoleh keuntungan di kemudian hari *(individual invest money in purchasing offerings of private company securities with an expectation of receiving monetary rewards in the future)* (Shneor et al., 2020). Di Indonesia, *equity crowdfunding* pertama kali memperoleh landasan yuridis dengan Peraturan Otoritas Jasa Keuangan Nomor 37/POJK.04/2018 tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (*Equity Crowdfunding*). Istilah *equity crowdfunding* tampak ditegaskan dalam POJK tersebut, sehingga istilah *equity crowdfunding* (ECF) memperoleh landasan yuridis.

Setelah berjalan kurang lebih dua tahun, aturan POJK tersebut dirasakan kurang memenuhi kebutuhan hukum di Indonesia. Oleh karena itu, pada 11 Desember 2020 OJK mengeluarkan Peraturan Otoritas Jasa Keuangan Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi. Disebutkan dalam konsideran POJK Nomor 57/POJK.04/2020 bahwa tujuan dikeluarkannya POJK tersebut adalah untuk memperluas cakupan penawaran efek dalam Layanan Urun Dana, sehingga POJK Nomor 37/POJK.04/2018 *(Equity Crowdfunding)* harus diganti. Perubahan tersebut membawa dampak pada perubahan istilah juga, yang sebelumnya *Equity Crowdfunding* (ECF) menjadi *Securities Crowdfunding* (SCF).

B. Dasar Hukum *Equity Crowdfunding* di Indonesia

Equity Crowdfunding pertama kali diberi payung hukum pada 31 Desember 2018 dengan ditetapkannya POJK No. 37/POJK.04/2018 tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi *(Equity Crowdfunding)* oleh OJK, dan ditetapkan pada tanggal yang sama oleh Menteri Hukum dan Hak Asasi Manusia. Setelah dua tahun berjalan, regulasi tersebut diubah dengan POJK Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi yang ditetapkan oleh OJK pada 10 Desember 2020 dan mulai berlaku pada tanggal diundangkan, yakni pada 11 Desember 2020. Pada dasarnya, POJK Nomor 57/POJK.04/2020 memberikan perluasan mengenai Penawaran Efek yang sebelumnya pada POJK 37/POJK.04/2018 hanya mengatur me-ngenai Penawaran Saham (efek bersifat ekuitas), kemudian menjadi pe-nawaran efek yang tidak terbatas pada efek bersifat ekuitas, tetapi juga efek bersifat utang dan sukuk. Oleh karena itu, istilah yang digunakan pada POJK terbaru adalah *Securities Crowdfunding*.

Pengaturan *equity crowdfunding* dan *securities crowdfunding*, baik pada POJK No. 37/POJK.04/2018 maupun POJK No. 57/POJK.04/2020, mencantumkan UU Nomor 8 Tahun 1995 tentang Pasar Modal dan UU Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan pada poin menimbang. Pada dasarnya, UU tentang Pasar Modal maupun UU tentang

Otoritas Jasa Keuangan tidak secara gamblang mengatur mengenai *equity crowdfunding* atau *securities crowdfunding*. Pasal 2 ayat (1) POJK No. 57/POJK.04/2020 menyebutkan bahwa kegiatan layanan urun dana *(Crowdfunding)* merupakan kegiatan jasa keuangan di sektor pasar mo-dal. Oleh karena itu, ditegaskan dalam ayat (2) bahwa pihak yang mela-kukan kegiatan Layanan Urun Dana dianggap sebagai pihak yang melakukan kegiatan jasa keuangan di sektor pasar modal. Sedangkan pasal 1 angka 13 UU Nomor 8 Tahun 1995 tentang Pasar Modal menyebutkan bahwa "pasar modal" adalah kegiatan yang bersangkutan dengan: (1) Penawaran Umum dan perdagangan Efek, (2) Perusahaan Publik yang berkaitan dengan efek yang diterbitkannya, dan (3) lembaga dan profesi yang berkaitan dengan Efek.

Penawaran umum, pada pasal 1 angka 15 UU Pasar Modal didefinisikan sebagai kegiatan penawaran Efek yang dilakukan oleh Emiten untuk menjual Efek kepada masyarakat berdasarkan tata cara yang diatur dalam UU Pasar Modal dan peraturan pelaksanaannya. Pasal 3 POJK tersebut menyebutkan bahwa penawaran efek oleh penerbit melalui Layanan Urun Dana *(Securities Crowdfunding)* bukan merupakan penawaran umum seperti yang dimaksud dalam Undang-Undang mengenai pasar modal jika:

a. Penawaran efek dilakukan melalui Penyelenggara yang telah memperoleh izin dari OJK,

b. Penawaran Efek dilakukan dalam jangka waktu paling lama 12 (dua belas) bulan, dan

c. Total dana yang dihimpun maksimum Rp 10.000.000.000,- (sepuluh miliar rupiah).

Berdasarkan regulasi pada UU Pasar Modal dan POJK tersebut, terdapat inkonsistensi pengaturan karena pada pasal 2 POJK tersebut mengatur bahwa kegiatan Layanan Urun Dana dikategorikan sebagai kegiatan jasa keuangan di sektor pasar modal, tetapi penawaran Efek melalui layanan urun dana bukan merupakan kegiatan penawaran umum dalam pasar modal, sehingga pertanyaan yang menarik untuk diajukan yaitu:

1. Apakah Layanan Urun Dana melalui Penawaran Efek tepat dikategorikan sebagai kegiatan di bidang pasar modal?

2. Apa dasar hukum bagi OJK dalam mengeluarkan regulasi terkait dengan *equity crowdfunding* atau *securities crowdfunding*?

Hal ini akan diuraikan lebih lanjut pada pembahasan mengenai kewenangan OJK dalam *Equity Crowdfunding*.

C. Perubahan *Equity Crowdfunding* Menjadi *Securities Crowdfunding*

Pada subbab sebelumnya telah dibahas mengenai perubahan regulasi, khususnya Peraturan OJK yang sebelumnya mengatur mengenai *Equity Crowdfunding* menjadi *Securities Crowdfunding*. Perubahan ECF men-jadi SCF ini tidak menghapus kegiatan dari ECF itu sendiri. SCF ini ha-nya memperluas cakupan dan subyek dari layanan urun dana. ECF dalam POJK Nomor 57/POJK.04/2020 terwadahi dalam Pasal 28 ayat (1) huruf a. Secara singkat dapat dikatakan bahwa ECF merupakan bagian dari SCF (Peraturan Otoritas Jasa Keuangan Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020).

ECF dalam POJK Nomor 37/POJK.04/2018 tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi *(Equity Crowdfunding)* diartikan sebagai layanan urun dana melalui penawaran saham berbasis teknologi informasi. Ketika diterbitkannya POJK No. 57/POJK.04/2020, istilah penawaran saham berganti dengan penawaran efek. Efek merupakan surat berharga seperti: surat pengakuan utang, surat berharga komersial, saham, obligasi, tanda bukti utang, unit penyertaan kontrak investasi kolektif, kontrak berjangka atas Efek, dan setiap derivatif dari Efek (Pasal 1 ayat (2) POJK No. 57/POJK.04/2020).

Terdapatnya saham dalam definisi efek tersebut menunjukkan bahwa penawaran saham yang sebelumnya diwadahi dengan POJK No. 37/POJK.04/2018 berganti wadah dengan POJK No.57/POJK.04/2020 dengan istilah penawaran efek. Artinya, pergantian istilah penawaran efek tidak menghapus kegiatan penawaran saham karena penawaran saham merupakan bagian dari penawaran efek.

D. Efek dalam *Securities Crowdfunding*

Perbedaan mendasar antara *equity crowdfunding* dengan *securities crowdfunding* terletak pada objek yang ditawarkan. Sebelumnya, pada *Equity Crowdfunding* hanya menawarkan saham, yakni efek bersifat ekuitas. Kemudian, dengan adanya perubahan *Equity Crowdfunding* menjadi *Securities Crowdfunding*, objek yang ditawarkan diperluas menjadi "Efek". Efek seperti yang dimaksud dalam POJK No. 57/POJK.04/2020 pasal 1 angka 2 yakni "Surat berharga, yaitu surat pengakuan utang, surat berharga komersial, saham, obligasi, tanda bukti utang, unit penyertaan kontrak investasi kolektif, kontrak berjangka atas efek, dan setiap derivatif atas efek". Pasal 28 POJK tersebut memberikan batasan efek yang dapat ditawarkan melalui Layanan Urun Dana *(Crowd-funding),* yaitu terbagi menjadi tiga bentuk:

1. Efek Bersifat Ekuitas

Efek bersifat ekuitas dapat berupa saham atau efek bersifat ekuitas lain yang wajib dikonversikan menjadi saham. Dalam hal ini, OJK dapat menentukan jenis efek lain tersebut yang dapat ditawarkan melalui *Crowdfunding*. Dalam UU Nomor 8 Tahun 1995 tentang Pasar Modal, dikenal beberapa jenis efek selain saham, yakni hak memesan efek terlebih dahulu (HMETD), waran, opsi, obligasi, dan unit penyertaan, serta dikenal pula efek syariah yaitu efek yang diterbitkan dengan berdasarkan pada prinsip-prinsip Syariah (Rahadiyan, 2017). Bagi penyelenggara yang menjalankan kegiatan usaha berdasarkan prinsip syariah, dapat menetapkan efek bersifat ekuitas berdasarkan prinsip syariah dengan ketentuan wajib mempunyai dewan pengawas syariah serta mempunyai mekanisme dan prosedur penetapan efek bersifat ekuitas sebagai efek syariah.

Efek bersifat ekuitas dapat juga disebut efek bersifat penyertaan, karena dengan seorang pembeli membeli efek bersifat ekuitas tersebut, pembeli berkedudukan sebagai pemodal atau investor yang menanamkan modalnya ke dalam suatu perusahaan yang menerbitkan efek (Rahadiyan, 2017). Dalam pasar modal, perusahaan yang menerbitkan efek tersebut dikenal sebagai emiten, sedangkan dalam *equity crowdfunding* atau *securities crowdfunding*, perusahaan tersebut disebut

sebagai Penerbit. Penerbit efek bersifat ekuitas dilarang menggunakan jasa layanan urun dana melalui lebih dari 1 (satu) penyelenggara.

2. Efek Bersifat Utang

Efek bersifat utang pada dasarnya adalah suatu bentuk utang dari penerbit kepada pemodal. Dalam hal penerbit menawarkan efek bersifat utang, maka penerbit akan mengeluarkan suatu bukti utang (Rahadiyan, 2017). Pada pasal 41 ayat (1) POJK Nomor 57/POJK.04/2020 menyebutkan bahwa penerbit efek bersifat utang atau sukuk wajib menyetorkan sejumlah total Efek sesuai dengan hasil penawaran Efek kepada penyelenggara maksimal dua hari kerja setelah masa penawaran efek berakhir. Selain itu, pada ayat (3) menyebutkan bahwa Penerbit wajib membuat akta pengakuan hutang yang dibuat secara notarial oleh notaris.

3. Sukuk

Sukuk adalah Efek Syariah berupa sertifikat atau bukti kepemilikan yang bernilai sama dan mewakili bagian yang tidak terpisahkan atau tidak terbagi atas aset yang mendasarinya. Dalam hal penerbit menerbitkan efek berupa sukuk, maka Penyelenggara wajib memastikan bahwa Sukuk yang diterbitkan telah memperoleh pernyataan kesesuaian Syariah dari tim ahli Syariah yang memiliki izin ahli Syariah pasar modal.

Baik efek bersifat utang atau sukuk yang ditawarkan melalui *crowdfunding* wajib (1) diterbitkan dalam mata uang rupiah, (2) memiliki Proyek yang mendasari penerbitan efek tersebut, (3) tidak dapat diperdagangkan, (4) memiliki jatuh tempo tidak lebih dari 2 (dua) tahun, (5) dapat dilunasi lebih awal sebelum jatuh tempo dengan syarat tertentu, dan (6) pembayaran pokok, bunga, nisbah bagi hasil, margin, imbal jasa atau imbal hasil dapat dilakukan secara berkala atau pada saat jatuh tempo (POJK No. 57/POJK.04/2020, Pasal 30). Adapun proyek yang dimaksud pada angka 2 tersebut di atas adalah kegiatan atau pekerjaan yang menghasilkan barang, jasa dan/atau manfaat lain, baik yang sudah ada maupun yang akan ada, termasuk kegiatan investasi yang telah ditentukan yang akan menjadi dasar penerbitan efek bersifat utang atau *sukuk*.

E. Pihak-pihak dalam *Equity* dan *Securities Crowdfunding* di Indonesia

Dalam Peraturan Otoritas Jasa Keuangan Nomor 37/POJK.04/2018 tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi *(Equity Crowdfunding)* subyek yang terlibat dalam membentuk ECF ada tiga, yaitu: (1) Penyelenggara, (2) Penerbit, (3) Pemodal. Subjek tersebut tidak berubah dengan adanya POJK Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi. Meskipun secara penamaan tidak berubah, tetapi syarat-syarat untuk dapat disebut sebagai subjek hukum tersebut mengalami perubahan karena tujuan dari POJK Nomor 57/POJK/04/2020 memperluas cakupan dari pihak-pihak yang terlibat dalam layanan urun dana.

1. Penyelenggara

Penyelenggara adalah badan hukum Indonesia yang menyediakan, mengelola, dan mengoperasikan Layanan Urun Dana (Pasal 1 ayat (5) POJK Nomor 57/POJK.04/2020). Secara sederhana, Penyelenggara merupakan pasar, tempat bertemunya penerbit yang membutuhkan modal dan masyarakat yang ingin menginvestasikan dananya. Syarat bagi penyelenggara adalah badan hukum Indonesia yang dapat berbentuk Perseroan Terbatas atau Koperasi (Pasal 8 POJK Nomor 57/POJK.04/2020). Khusus untuk perseroan terbatas Penyelenggara (platform) dapat didirikan dan dimiliki oleh: (a) WNI/Badan Hukum Indonesia, atau (b) WNA/Badan Hukum Asing. Apabila Penyelenggara dimiliki oleh WNA/Badan Hukum Asing maka kepemilikan sahamnya dibatasi paling banyak 49% (empat pulus sembilan persen) (Pasal 9 POJK No. 57/POJK.04/2020 Jo. Perpres No. 44/2016).

Penyelenggara wajib memiliki izin dari Otoritas Jasa Keuangan dan terdaftar sebagai Penyelenggara Sistem Elektronik pada kementerian yang menyelenggarakan urusan pemerintahan di bidang komunikasi dan informatika (Menkominfo) (Pasal 5 dan 6, POJK Nomor 57/POJK.04/2020). Penyelenggara wajib memiliki modal sendiri/ modal disetor minimal Rp. 2.500.000.000,- (dua miliar lima ratus juta

rupiah) pada saat mengajukan izin ke OJK (Pasal 11 ayat (1) POJK No. 57/POJK.04/2020). Pihak penyelenggara juga diwajibkan memiliki sumber daya manusia yang berlatar belakang atau ahli di bidang teknologi informasi dan ahli dalam meninjau/me-*review*/menelaah penerbit (Pasal 12 ayat (1) POJK No. 57/POJK.04/2020).

Penyelenggara juga wajib terdaftar sebagai anggota asosiasi yang telah diakui oleh Otoritas Jasa Keuangan (Pasal 83 POJK Nomor 57/POJK.04/2020). Asosiasi ini bertugas untuk memberikan rekomendasi kepada calon penyelenggara yang ingin mengajukan izin kepada OJK. Sebagai catatan, sebaiknya keberadaan asosiasi tersebut jangan mempersulit calon penyelenggara yang ingin mengajukan izin, bagaimana pun calon penyelenggara merupakan saingan bisnis dari penyelenggara yang sudah terlebih dahulu tergabung dalam asosiasi. Salah satu faktor pembeda dengan POJK Nomor 37/POJK/04/2018 adalah berlakunya POJK Nomor 57/POJK.04/2020 mempunyai konsekuensi, Penyelenggara wajib memperluas kegiatan usahanya tidak hanya memfasilitasi penjualan saham saja, tetapi juga efek yang bersifat utang atau sukuk.

2. Penerbit

Dalam POJK Nomor 37/POJK.04/2018, syarat utama untuk dapat berpartisipasi dalam penyelenggaran layanan urun dana adalah Penerbit harus berbentuk badan hukum yang berupa perseroan terbatas. Setelah diganti dengan POJK Nomor 57/POJK.04/2020 syarat tersebut diperluas yaitu penerbit adalah yang berbentuk *badan hukum maupun badan usaha yang bukan badan hukum.* Artinya baik PT, CV, Firma dan Persekutuan Perdata, bahkan perusahaan perorangan dapat menjadi penerbit.

Dalam Pasal 1 ayat 7 POJK *a quo* disebutkan bahwa yang menjadi penerbit adalah badan usaha Indonesia. Apakah yang dimaksud dengan badan usaha Indonesia? Apakah ketentuan ini berarti yang boleh menjadi penerbit di layanan urun dana adalah badan usaha yang didirikan dengan hukum Indonesia? Bagaimana dengan badan usaha yang salah satu pendirinya adalah orang asing atau beberapa sahamnya dimiliki orang asing? Di sisi yang lain, ketentuan yang melarang badan

usaha asing juga tidak ada. Sebaiknya ketentuan mengenai penerbit harus berbadan usaha Indonesia harus dijelaskan lebih lanjut supaya tidak menimbulkan berbagai penafsiran.

ECF dijelaskan dalam Pasal 2 ayat (1) POJK *a quo* disebutkan merupakan kegiatan jasa keuangan di sektor pasar modal dan pihak yang terlibat pun dinyatakan pihak yang melaksanakan kegiatan di sektor pasar modal. Dalam Pasar Modal pihak yang menawarkan efek (saham) disebut sebagai perusahaan publik akan tetapi dalam skema ECF disebutkan bahwa Penerbit bukanlah perusahaan publik jika jumlah pemegang saham penerbit tidak lebih dari 300 (tiga ratus) pihak dan maksimal jumlah modal disetor tidak lebih dari Rp. 30.000.000.000,- (tiga puluh miliar rupiah). Syarat lain bagi penerbit adalah: (a) penerbit tidak boleh perusahaan yang dikendalikan secara langsung maupun tidak langsung oleh suatu kelompok usaha/konglomerasi, (b) penerbit bukan merupakan perusahaan terbuka ataupun anak perusahaan terbuka, (c) kekayaan perusahaan tidak boleh lebih dari Rp. 10.000.000.000,- (sepuluh miliar rupiah) tidak termasuk tanah dan bangunan (Pasal 46 ayat (1) POJK No. 57/POJK.04/2020).

3. Pemodal

Dalam Pasal 1 ayat (8) POJK Nomor 57/POJK.04/2020 disebutkan bahwa Pemodal adalah pihak yang melakukan pembelian Efek Penerbit melalui Layanan Urun Dana. Pembelian efek dalam konteks penelitian ini harus dimaknai sebagai pembelian saham karena yang sedang kita bahas adalah ECF. Syarat menjadi pemodal adalah: (a) memiliki rekening efek pada Bank Kustodian yang khusus untuk menyimpan efek dan/atau dana melalui Layanan Urun Dana, (b) memiliki kemampuan untuk membeli efek Penerbit, dan (c) memenuhi kriteria Pemodal dan batasan pembelian efek (Pasal 56 ayat (1) POJK No. 57/POJK.04/2020).

Tidak dijelaskan apa yang dimaksud dengan memiliki kemampuan untuk membeli efek penerbit. Oleh karena itu, kemampuan tersebut dapat kita maknai sebagai kemampuan dalam melaksanakan perjanjian sebagaimana tercantum dalam Pasal 1320 KUHPerdata tentang syarat sah perjanjian, yaitu: (1) kesepakatan kedua belah pihak, (2) kecakapan

kedua belah pihak, (3) suatu hal tertentu, dan (4) sebab/causa yang halal. Kriteria pemodal dan batasan pembelian efek dijelaskan sebagai berikut: (a) Penghasilan Pemodal pertahun sampai dengan Rp. 500.000.000,- (lima ratus juta rupiah), maka Pemodal hanya dapat membeli efek paling banyak 5% (lima persen) dari total penghasilannya dalam setahun, dan (b) apabila penghasilan Pemodal pertahun lebih dari Rp. 500.000.000,- (lima ratus juta rupiah) maka pemodal dapat membeli efek paling banyak 10% (sepuluh persen) dari total penghasilannya setahun (Pasal 56 ayat (3) POJK No. 57/POJK.04/2020).

Kriteria tersebut menjadi tidak berlaku apabila Pemodal merupakan: (1) badan hukum, dan (2) pihak yang berpengalaman berinvestasi di pasar modal yang dibuktikan dengan kepemilikan rekening efek paling sedikit dua tahun sebelum penawaran saham (Pasal 56 ayat (4) POJK No. 57/POJK.04/2020). Syarat demikian merupakan syarat kumulatif karena ada kata sambung "dan". Ketentuan tersebut dapat diartikan sebagai peringatan kepada Pemodal bahwa dalam berinvestasi terdapat risiko-risiko yang akan muncul, sehingga Pemodal tidak boleh berinvestasi berlebihan apabila belum berpengalaman.

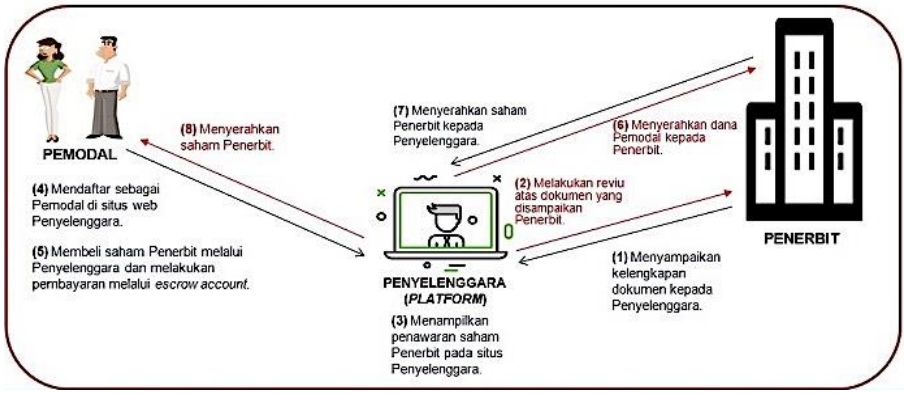
Dalam POJK Nomor 57/POJK.04/2020 tidak merinci status kewarganegaraan yang berhak untuk membeli efek. Artinya, dimungkinkan bagi warga negara Indonesia (WNI), warga negara asing (WNA), maupun badan hukum asing untuk berpartisipasi sebagai Pemodal. Meskipun demikian, untuk pemodal asing wajib memperhatikan ketentuan yang tercantum dalam Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal jo. Peraturan Presiden Nomor 44 Tahun 2016 tentang Daftar Bidang Usaha yang Tertutup dan Bidang Usaha yang Terbuka dengan Persyaratan di Bidang Penanaman Modal sebagai landasan bidang-bidang usaha apa saja yang dapat dibeli sahamnya.

F. Pola Hubungan Antarpihak dalam ECF

Secara yuridis keberadaan ECF di Indonesia merupakan hal yang baru, tetapi pada praktiknya kegiatan penawaran saham oleh pengusaha (penerbit) ke masyarakat (pemodal) ini sudah berlangsung cukup lama di

masyarakat, baik melalui pasar modal yang diatur dalam UU Pasar Modal atau pun atas inisiatif sendiri dengan menawarkan langsung kepada masyarakat.

Secara sederhana, proses kegiatan ECF ini yaitu penerbit (pengusaha) yang menawarkan sahamnya ke pemodal (masyarakat), pemodal yang berminat akan saham dari penerbit akan membelinya. Terjadinya proses tersebut harus dilakukan lewat pihak ketiga (penyelenggara). Posisi penyelenggara ini menyediakan tempat bertemunya antara penerbit dan pemodal, mirip dengan pasar tradisonal yang mempertemukan antara penjual dan pembeli. Bagan berikut menjelaskan alur ECF:



Gambar 1. Struktur *Equity Crowdfunding* (Sumber: hukumonline.com).

Ada yang menyebut pola hubungan antara Penerbit, Pemodal, dan Penyelenggara di atas disebut dengan triangular relationship (Ratna, 2020). Pola hubungan diantara ketiga subyek tersebut saling berhubungan satu sama lain dan dapat dijabarkan sebagai berikut:

1. Pola Hubungan antara Penerbit dengan Pemodal

Pola hubungan antara Penerbit dengan Pemodal dalam ECF seperti pola hubungan jual-beli seperti yang dimaksud dalam pasal 1457 KUHPerdata. Penerbit terlebih dahulu menetapkan jumlah dana yang akan dihimpun dalam penawaran saham dan tujuan penggunaan dana tersebut. Penerbit dapat menetapkan jumlah minimum dana yang harus diperoleh dalam penawaran saham tersebut (Pasal 34 ayat

(1) POJK No. 57/POJK.04/2020), misalnya usaha-usaha tertentu yang memang harus butuh modal tertentu.

Pemodal yang membeli saham kepada penerbit pemodal yang membeli saham penerbit harus menyetorkan sejumlah dana pada *escrow account*. *Escrow account* merupakan bank yang digunakan untuk menampung sementara dana yang sudah disetorkan pemodal, salah tujuan dari *escrow account* adalah untuk memitigasi risiko. Setelah memperoleh dana dari pemodal, Penerbit wajib mencatatkan pemodal dalam daftar pemegang saham dan Pemodal juga memperoleh bukti pembelian saham berupa catatan kepemilikan efek yang terdapat dalam rekening efek pada Bank Kustodian. Secara tersirat dalam ECF juga terdapat ketentuan pembelian kembali (*buy back*) saham oleh Penerbit (Pasal 54 huruf b POJK No. 57/POJK.04/2020).

2. Pola Hubungan antara Penyelenggara dengan Pemodal

Sebagai platform tempat bertemunya Penerbit dan Pemodal, Penyelenggara mempunyai tugas agar hak-hak Pemodal dapat terpenuhi, yaitu memperoleh bagian saham dan bagian deviden dari Penerbit. Sebelum berinvestasi di layanan urun dana, seorang pemodal harus memenuhi beberapa ketentuan yang diwajibkan oleh OJK seperti kemampuan penghasilan pertahun dan pengalaman yang dimiliki oleh Pemodal. Oleh karena itu, Penyelenggara diwajibkan menyediakan sistem bahwa yang dapat membeli saham penerbit adalah pemodal yang sudah mengonfirmasi dirinya telah memenuhi syarat untuk berinvestasi di layanan urun dana (Pasal 16 ayat (1) POJK No. 57/POJK.04/2020). Sebagai penyedia platform, pihak penyelenggara tidak bertanggungjawab atas kerugian yang dialami oleh Pemodal apabila Penerbit mengalami kerugian usaha atau bangkrut.

Hubungan antara Penyelenggara dengan Pemodal dapat dituangkan dalam bentuk perjanjian baku (Pasal 64 POJK No. 57/POJK.04/2020). Terdapat sedikit perbedaan terkait bentuk perjanjian tersebut jika dibandingkan dengan POJK Nomor 37/POJK.04/2018. Pada POJK Nomor 57/POJK.04/2020 bentuk perjanjian baku tersebut bukan merupakan suatu kewajiban. Hal tersebut karena terdapat kata "*dapat*" dalam Pasal 64 ayat (1) POJK *a*

quo. Namun dalam POJK Nomor 37/POJK.04/2018 bentuk perjanjian baku tersebut merupakan suatu kewajiban.

Perjanjian baku tersebut dibuat secara sepihak oleh pihak Penyelenggara untuk semua Pemodal yang berinvestasi di platform penyelenggara. Perjanjian dengan klausul baku tersebut wajib disusun sesuai dengan ketentuan peraturan perundang-undangan (Pasal 78 ayat (1) POJK No. 57/POJK.04/2020). Terdapat peraturan OJK yang mengatur mengenai Perjanjian Baku di sektor Jasa Keuangan yaitu: POJK Nomor 1/POJK.07/2013 tentang Perlindungan Konsumen Sektor Jasa Keuangan Jo. Surat Edaran OJK Nomor 13/SEOJK.07/2014 tentang Perjanjian Baku.

Bukti adanya perjanjian antara Penyelenggara dengan Pemodal terjadi ketika Pemodal memberi persetujuan secara elektronik atas isi perjanjian (Pasal 64 ayat (2) POJK No. 57/POJK.04/2020). Perjanjian tersebut dapat memuat ketentuan pemberian kuasa kepada Penyelenggara untuk mewakili Pemodal sebagai pemegang saham penerbit termasuk dalam rapat umum pemegang saham (RUPS) Penerbit dan penandatanganan akta serta dokumen terkait lainnya (Pasal 64 ayat (3) POJK No. 57/POJK.04/2020).

3. Pola Hubungan antara Penyelenggara dengan Penerbit

Sama seperti hubungan antara Penyelenggara dengan Pemodal, Penyelenggara menyediakan suatu platform (tempat bertemunya Penerbit dengan Pemodal). Penyelenggara bertugas untuk me-*review* Penerbit yang ingin menawarkan efek (saham). Dalam menghimpun dana pada platform Penyelenggara, setiap Penerbit wajib menyampaikan informasi paling sedikit mengenai: (a) Legalitas Perusahaan, (b) informasi terkait susunan permodalan sebelum dan sesudah penghimpunan dana, (c) daftar riwayat hidup pemegang saham pendiri, direksi dan dewan komisaris atau daftar riwayat hidup yang setara untuk badan usaha lainnya, (d) jenis dan jumlah efek yang ditawarkan, (e) persetujuan rapat umum pemegang saham yang menyetujui peningkatan modal melalui penawaran Efek dan perubahan anggaran dasar dengan memuat ketentuan penitipan kolektif, (f) jumlah dana yang akan dihimpun dan tujuan penggunaannya, (g) jumlah minimum dana yang harus diperoleh, jika

Penerbit menetapkan jumlah minimum dana yang harus diperoleh, (h) kebijakan dividen, (i) rencana bisnis, (j) mekanisme penetapan harga saham, (k) perizinan yang berkaitan dengan usaha penerbit, (l) laporan keuangan dengan standar akutansi minimal untuk skala usaha mikro kecil menengah, (m) surat pernyataan kesanggupan untuk melakukan perjanjian dengan Lembaga Penyimpanan dan Penyelesaian dalam rangka pendaftaran saham dalam penitipan kolektif, (n) informasi material lainnya yang perlu disampaikan kepada calon Pemodal, jika ada, (o) risiko utama yang dihadapi Penerbit, dan (p) informasi mengenai tidak likuidnya saham yang ditawarkan (Pasal 47 ayat (1) dan ayat (2) POJK No. 57/POJK.04/2020).

Untuk Penerbit yang menjalankan kegiatan usaha berdasarkan prinsip syariah wajib menyampaikan dokumen mengenai: (a) fotokopi anggaran dasar yang menyatakan kegiatan dan jenis usaha, serta cara pengelolaan usahanya, berdasarkan prinsip syariah, dan (b) keputusan rapat umum pemegang saham terkait pengangkatan dewan pengawas syariah (Pasal 47 ayat (6) POJK No. 57/POJK.04/2020).

Hubungan antara Penyelenggara dengan Penerbit wajib dituangkan dalam akta, baik itu akta di bawah tangan atau akta autentik. Perjanjian dalam akta tersebut paling sedikit wajib memuat mengenai: (a) nomor perjanjian, (b) tanggal perjanjian, (c) identitas para pihak, (d) ketentuan mengenai hak dan kewajiban para pihak, (e) jangka waktu atau pengakhiran perjanjian, (f) jumlah dana yang akan dihimpun dan efek yang ditawarkan, (g) jumlah minimum dana, jika penerbit menetapkan minimum dana yang harus diperoleh, (h) besarnya komisi dan biaya, (i) ketentuan mengenai denda, jika terdapat denda, (j) mekanisme penyelesaian sengketa, (k) mekanisme penyelesaian dalam hal Penyelenggara tidak dapat melanjutkan kegiatan operasionalnya, dan (l) larangan bagi Penerbit untuk menawarkan saham pada Penyelenggara Layanan Urun Dana lain (Pasal 62 ayat (4) dan ayat (5) POJK No. 57/POJK.04/2020).

Terkait dengan ketentuan komisi dan biaya, bahasa yang digunakan dalam praktik dibahasakan sebagai *fee* dan *annual fee* (Santara, 2020). *Fee* adalah komisi yang diperoleh Penyelenggara dari Penerbit atas total seluruh dana yang terkumpul saat penawaran saham berakhir,

sedangkan *annual fee* adalah biaya pemasaran dan *maintenance* Penyelenggara yang harus dibayar Penerbit setiap pembagian dividen tahunan.

Penerbit wajib menyampaikan laporan tahunan kepada Penyelenggara paling lambat 6 (enam) bulan setelah tahun buku berakhir dan laporan tersebut nantinya akan ditampilkan di situs Penyelenggara (Pasal 50 ayat (1) dan ayat (2) POJK No. 57/POJK.04/2020). Penerbit dapat dibebaskan dari kewajiban menyampaikan laporan tahunan dengan syarat: (a) Penerbit telah menyampaikan paling sedikit 3 (tiga) laporan tahunan setelah penawaran saham melalui Layanan Urun Dana dan jumlah pemegang saham kurang dari 50 (lima puluh) pihak atau, dan (b) seluruh saham yang dijual melalui Layanan Urun Dana dibeli kembali oleh Penerbit atau dibeli oleh pihak lain (Pasal 54 POJK No. 57/POJK.04/2020).

G. *Equity Crowdfunding, Securities Crowdfunding* dan Pasar Modal

Equity Crowdfunding adalah salah satu produk teknologi finansial yang didesain untuk mempermudah masyarakat dalam menghimpun dana. Setelah dua tahun OJK mengeluarkan regulasi mengenai *equity crowdfunding*, kemudian dikenal istilah s*ecurities crowdfunding* melalui POJK terbaru, yakni POJK No. 57/POJK.04/2020. Meskipun belum terlalu banyak dikenal dalam literatur, *securities crowdfunding* merupakan bagian dari perkembangan *equity crowdfunding* dengan tujuan memperluas jangkauan pemanfaatan kegiatan layanan urun dana, sehingga dapat mencakup usaha kecil dan menengah serta usaha pemula (*start-up company*). Kegiatan *equity crowdfunding* yang saat ini diperluas menjadi *securities crowdfunding* juga dikenal sebagai kegiatan "*mini-IPO*" (Ong, 2020). Pada dasarnya, suatu perusahaan penerbit menawarkan saham/efek yang diterbitkannya kepada publik melalui suatu platform penyelenggara layanan urun dana. Oleh karenanya, agar dapat dibedakan dengan IPO (*Initial Public Offering*) dalam pasar modal, POJK Nomor 57/POJK.04/2020 memuat beberapa ketentuan mengenai batasan antara *Securities Crowdfunding* dan Kegiatan Pasar Modal. Adapun

perbedaan antara *equity crowdfunding*, *securities crowdfunding*, dan pasar modal dapat dilihat pada tabel berikut.

Tabel 1. Tabel Perbedaan ECF, SCF, dan Pasar Modal.

No	Parameter	*Equity Crowdfunding*	*Securities Crowdfunding*	Pasar Modal
1	Pihak yang terlibat	Penerbit, Penyelenggara, Pemodal	Penerbit, Penyelenggara, Pemodal, Bank Kustodian	Emiten, Perusahaan Efek, Bursa Efek, Pemodal, Bank Kustodian
2	Obyek yang ditawarkan	Saham	Efek berupa efek bersifat ekuitas, efek bersifat utang, dan sukuk	Efek berupa efek bersifat penyertaan, efek bersifat utang, efek syariah. Jenis efek antara lain adalah saham, HMETD, waran, opsi, obligasi dan unit penyertaan.
3	Entitas Penerbit/ Emiten	Perseroan Terbatas	Badan usaha Indonesia baik yang berbentuk badan hukum maupun badan usaha lainnya.	Perseroan Terbatas
4	Entitas Penyelenggara Layanan Urun Dana	Dapat berbentuk: **PT:** dapat berupa Perusahaan Efek yang telah memperoleh persetujuan dari OJK untuk melakukan kegiatan sebagai Penyelenggara. **Koperasi:** terbatas pada koperasi jasa.	Dapat berbentuk: **PT:** dapat didirikan dan dimiliki oleh WNI, BHI, WNA dan/atau BHA, dengan ketentuan saham WNA d/a BHA adalah 49%. **Koperasi:** terbatas pada koperasi jasa.	Perseroan yang telah memperoleh izin usaha dari Bapepam, dengan pemegang saham adalah Perusahaan Efek yang telah memperoleh izin untuk melakukan kegiatan sebagai Perantara Pedagang Efek.
5	Kegiatan Penawaran Efek	- Penyelenggara memperoleh izin OJK; - Jangka waktu penghimpunan dana paling lama 12 bulan; - Total dana yang dihimpun maksimum Rp	- Penyelenggara memperoleh izin OJK; - Jangka waktu penghimpunan dana paling lama 12 bulan; - Total dana yang dihimpun maksimum Rp	- Terdiri dari tahap sebelum emisi, tahap emisi dan tahap sesudah emisi. - Tahap sebelum emisi berjalan pada internal perusahaan dan proses

		10.000.000.000,- atau nilai lain yang ditetapkan OJK.	10.000.000.000,- atau nilai lain yang ditetapkan OJK.	penyampaian pernyataan pendaftaraan pada OJK; - Tahap Emisi terjadi pada saat Emiten melakukan penawaran efek di pasar perdana, dan terjadinya perdagangan efek di pasar sekunder. - Tahap sesudah Emisi adalah pelaporan.

Peran Lembaga dalam *Equity Crowdfunding*

II

A. Kewenangan Otoritas Jasa Keuangan di Indonesia

Equity Crowdfunding (ECF) sudah dikenal lama di masyarakat global, tetapi di Indonesia baru memperoleh legitimasi pada 31 Desember 2018 ketika Otoritas Jasa Keuangan (OJK) mengeluarkan POJK Nomor 37/POJK.04/2018 tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi *(Equity Crowdfunding)*. Dari aturan tersebut, OJK merasa masih terdapat kekurangan terkait luas cakupan dari ECF. Oleh sebab itu, ECF diperluas menjadi *Securities Crowdfunding* melalui POJK Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun dana Berbasis Teknologi Informasi.

Pertanyaan awal dalam memulai subbab ini adalah ketika OJK membuat hubungan hukum yang baru bernama Layanan Urun Dana itu berdasarkan kewenangan apa? OJK berdasarkan UU Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan mempunyai tugas pengaturan dan pengawasan terhadap: (a) kegiatan jasa keuangan di sektor Perbankan, (b) kegiatan jasa keuangan di sektor Pasar Modal, dan (c) kegiatan jasa keuangan di sektor Perasuransian, Dana Pensiun, Lembaga Pembiayaan, dan Lembaga Jasa Keuangan lainnya. Intinya adalah OJK mempunyai kewenangan mengatur dan pengawasan dalam semua bentuk kegiatan jasa keuangan.

Pada Pasal 8 UU OJK mengenai tugas pengaturan disebutkan bahwa salah satu bentuk tugas pengaturan adalah menetapkan peraturan perundang-undangan di sektor jasa keuangan. Sebagai salah satu bentuk penafsiran Pasal *a quo*, maka OJK berwenang menetapkan suatu lembaga hukum/hubungan hukum masuk ke dalam kualifikasi sektor Jasa Keuangan, termasuk menetapkan Layanan Urun Dana ke dalam sektor Jasa Keuangan.

Permasalahan mulai terjadi ketika ECF ini dikualifikasikan dalam kegiatan Jasa Keuangan di sektor Pasar Modal oleh OJK. Masalahnya adalah dengan memasukkan ECF dalam kegiatan Jasa Keuangan di sektor Pasar Modal tentu ECF wajib tunduk kepada ketentuan induknya yaitu Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal (UUPM). Apalagi ECF dibuat dengan POJK yang sudah semestinya aturan lebih rendah harus sesuai dengan aturan yang lebih tinggi (UUPM). Akan tetapi, ketentuan dari ECF ternyata tidak mengikuti ketentuan dari UUPM, bahkan membuat syarat-syarat baru supaya kegiatan dari ECF tidak dapat disebut sebagai kegiatan Pasar Modal.

Contoh dari ketidakkonsistenan tersebut ada pada masalah definisi. Pasar Modal dalam UUPM didefinisikan sebagai kegiatan yang bersangkutan dengan Penawaran Umum dan perdagangan Efek, Perusahaan Publik yang berkaitan dengan Efek yang diterbitkannya, serta lembaga dan profesi yang berkaitan dengan Efek (Pasal 1 ayat (13) UUPM). Penawaran Umum adalah kegiatan penawaran Efek yang dilakukan oleh Emiten untuk menjual Efek kepada masyarakat berdasarkan tata cara yang diatur dalam Undang-undang ini dan peraturan pelaksanaannya (Pasal 1 ayat (15) UUPM).

Sedangkan Penawaran Efek dalam POJK Nomor 57/POJK.04/2020 menyebutkan bahwa: Penawaran Efek oleh setiap Penerbit melalui Layanan Urun Dana bukan merupakan penawaran umum seperti yang dimaksud dalam Undang-Undang mengenai pasar modal jika: (a) penawaran Efek dilakukan melalui Penyelenggara yang telah memperoleh izin dari Otoritas Jasa Keuangan, (b) penawaran Efek dilakukan dalam jangka waktu paling lama 12 (dua belas) bulan, dan (c) total dana yang dihimpun melalui penawaran Efek paling banyak Rp. 10.000.000.000,- (sepuluh miliar rupiah).

Kata sambung "*jika*" dalam pasal tersebut sebagai syarat yang ditetapkan oleh OJK agar Layanan Urun Dana ini bukan Penawaran Umum sebagaimana dimaksud dalam Pasar Modal. Pertanyaannya adalah jika Penawaran Efek bukan merupakan suatu Penawaran Umum yang dimaksud dalam Pasar Modal, lalu buat apa menyebutkan bahwa ECF termasuk kegiatan di sektor Pasar Modal? Mengapa pula disebutkan dalam konsideran mengingat bahwa salah satu dasar dikeluarkannya

POJK Nomor 57/POJK.04/2020 adalah UUPM? Artinya Pasal 2 ayat (1) POJK *a quo* dengan Pasal 3 ayat (1) POJK *a quo* saling bertentangan satu sama lain dan secara kaidah dua hal yang saling bertentangan itu tidak mungkin saling menghimpun (Nuruddin, 2019).

Selanjutnya, ketentuan mengenai Penerbit, Dalam POJK Nomor 57/POJK.04/2020 disebutkan bahwa Penerbit merupakan perusahaan publik seperti yang dimaksud dalam Undang-Undang mengenai pasar modal jika: (a) jumlah pemegang saham Penerbit lebih dari 300 (tiga ratus) pihak, dan (b) jumlah modal disetor Penerbit lebih dari Rp 30.000.000.000,- (tiga puluh miliar rupiah). Ketentuan tersebut tidak hanya saling berlawanan dengan UUPM, tetapi juga sudah menyimpang dari UUPM itu sendiri. UUPM mendefinisikan Perusahaan Publik adalah Perseroan yang sahamnya telah dimiliki sekurang-kurangnya oleh 300 (tiga ratus) pemegang saham dan memiliki modal disetor sekurang-kurangnya Rp. 3.000.000.000,- (tiga miliar rupiah) atau suatu jumlah pemegang saham dan modal disetor yang ditetapkan dengan Peraturan Pemerintah.

Dari ketentuan di atas terlihat bahwa modal disetor untuk dapat masuk kualifikasi Pasar Modal berdasarkan UUPM adalah Rp. 3.000.000.000,- (tiga miliar rupiah) atau suatu modal yang ditetapkan dengan Peraturan Pemerintah dan sampai tulisan ini dibuat, tidak ditemukan adanya Peraturan Pemerintah yang mengharuskan Perusahan Publik memiliki modal disetor lebih dari Rp. 3.000.000.000,- (tiga miliar rupiah). Pertanyaannya, apa landasan yuridis OJK untuk dapat mengatakan syarat menjadi Perusahaan Publik ialah memiliki modal disetor menjadi Rp. 30.000.000.000,- (tiga puluh miliar) dalam POJK Nomor 57/POJK.04/2020?

Dari beberapa permasalahan di atas menimbulkan ketidakpastian hukum akan pengaturan ECF. Oleh karena itu, penulis mengusulkan dua solusi untuk mengatasi permasalahan tersebut, yaitu: (1) merevisi UUPM dengan memasukkan ECF sebagai bagian dari Pasar Modal, atau (2) membuat peraturan tersendiri mengenai ECF dan menyatakan ECF bukan bagian dari Pasar Modal tetapi menyatakan ECF merupakan lembaga jasa keuangan lainnya yang dapat diawasi oleh OJK.

Perkembangan dunia sekarang atau yang sering disebut industri 4.0 memunculkan banyak sekali inovasi-inovasi di bidang keuangan, salah satunya adalah ECF. Inovasi yang terlalu cepat dalam bidang keuangan ini biasanya tidak dapat diikuti oleh hukum. *Het recht hink achter de feiten aan* (hukum selalu tertatih-tatih mengejar fakta yang terjadi di masyarakat). ECF sebagai suatu fenomena yang muncul di tengah masyarakat tentu memunculkan sisi positif dan negatif.

Sisi positifnya adalah bagi Usaha kecil (UMKM) yang tidak bisa dibankkan, keberadaan ECF ini sebagai alternatif pendanaan bagi usahanya. sisi negatifnya adalah adanya potensi risiko yang tinggi sehingga akan merugikan pemodal. UMKM pada umumnya adalah usaha yang baru berjalan, yang kemungkinan masih mencari ceruk pasar. Berbeda dengan usaha besar/skala nasional, bagi mereka ceruk pasarnya sudah terbentuk dan stabil.

Penulis melihat pengaturan ECF (yang sekarang menjadi SCF) oleh OJK semata untuk mengatasi kekosongan hukum yang ada. Dengan alasan kekosongan hukum, menurut penulis tindakan OJK dapat dibenarkan untuk mengeluarkan POJK mengenai ECF. Artinya adanya dasar hukum dan lembaga yang mengatur dan mengawasi ECF akan lebih baik daripada tidak adanya sama sekali lembaga yang mengatur dan mengawasi ECF, meskipun aturan yang ada sekarang menimbulkan ketidakpastian hukum.

Menurut penulis, meskipun ke depannya OJK berwenang untuk menetapkan peraturan mengenai ECF, tetapi pengaturan mengenai keberadaan ECF seharusnya tidak diatur oleh OJK, karena tugas pokok dari OJK bukan untuk mendorong pertumbuhan dan pemerataan ekonomi. Tugas pokok OJK sebagaimana termaktub dalam konsideran UU OJK adalah terselenggaranya sektor jasa keuangan yang teratur, adil, transparan dan akuntabel (dapat dipertanggungjawabkan), serta mampu mewujudkan sistem keuangan yang tumbuh secara berkelanjutan dan stabil, dan mampu melindungi kepentingan konsumen dan masyarakat.

B. Peran Kementerian Komunikasi dan Informatika

Salah satu persyaratan yang harus dipenuhi oleh Penyelenggara Layanan Urun Dana untuk dapat beroperasi adalah terdaftar sebagai Penyelenggara Sistem Elektronik pada kementerian yang menyelenggarakan urusan pemerintahan di bidang komunikasi dan informatika (Menkominfo). Peraturan Pemerintah No. 71/2019 tentang Penyelenggaraan Sistem dan Transaksi Elektronik sebagai landasan yuridis bagi pelaku usaha di industri digital untuk mendaftarkan perusahaannya sebagai Penyelenggara Sistem Elektronik.

Pengertian Penyelenggara Sistem Elektronik adalah setiap orang, penyelenggara negara, badan usaha, dan masyarakat yang menyediakan, mengelola, dan/atau mengoperasikan sistem elektronik secara sendiri-sendiri maupun bersama-sama kepada pengguna sistem elektronik untuk keperluan dirinya dan/atau keperluan pihak lain (Pasal 1 PP No. 71/2019). Ruang lingkup Penyelenggaran sistem elektronik terbagi menjadi dua lingkup, yaitu: (a) Penyelenggara sistem elektronik lingkup publik; (b) Penyelenggara sistem elektronik lingkup privat.

1. Penyelenggaran Sistem Elektronik lingkup publik terdiri dari:
   a) Instansi, dan
   b) Institusi yang ditunjuk oleh Instansi
2. Penyelenggara Sistem Elektronik lingkup privat terdiri dari
   a) Penyelenggara sistem elektronik yang diatur atau diawasi oleh Kementerian atau Lembaga berdasarkan ketentuan peraturan perundang-undangan; dan
   b) Penyelenggara Sistem Elektronik yang memiliki portal, situs, atau aplikasi dalam jaringan melalui internet yang dipergunakan untuk:
      (1) Menyediakan, mengelola, dan/atau mengoperasikan penawaran dan/atau perdagangan barang dan/atau jasa,
      (2) Menyediakan, mengelola, dan/atau mengoperasikan layanan transaksi keuangan,
      (3) Pengiriman materi atau muatan digital berbayar melalui jaringan data baik dengan cara unduh melalui portal atau situs,

pengiriman lewat surat elektronik, atau melalui aplikasi lain ke perangkat pengguna,

(4) Menyediakan, mengelola, dan/atau mengoperasikan layanan komunikasi meliputi namun tidak terbatas pada pesan singkat, panggilan suara, panggilan video, surat elektronik, dan percakapan dalam jaringan dalam bentuk platform digital, layanan jejaring dan media sosial,

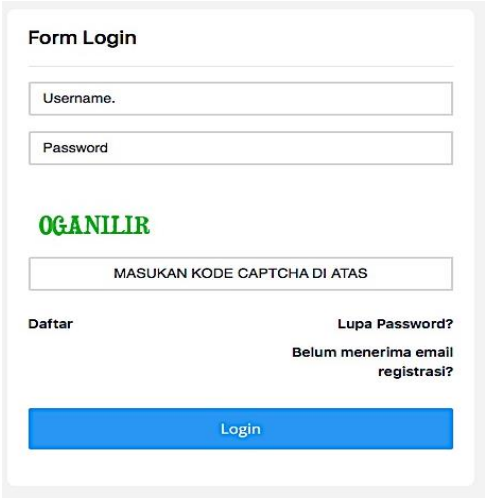
(5) Layanan mesin pencari, layanan penyediaan Informasi Elektronik yang berbentuk tulisan, suara, gambar, animasi, musik, video, film, dan permainan atau kombinasi dari sebagian dan/atau seluruhnya, dan/atau

(6) Pemrosesan data pribadi untuk kegiatan operasional melayani masyarakat yang terkait dengan aktivitas transaksi elektronik.

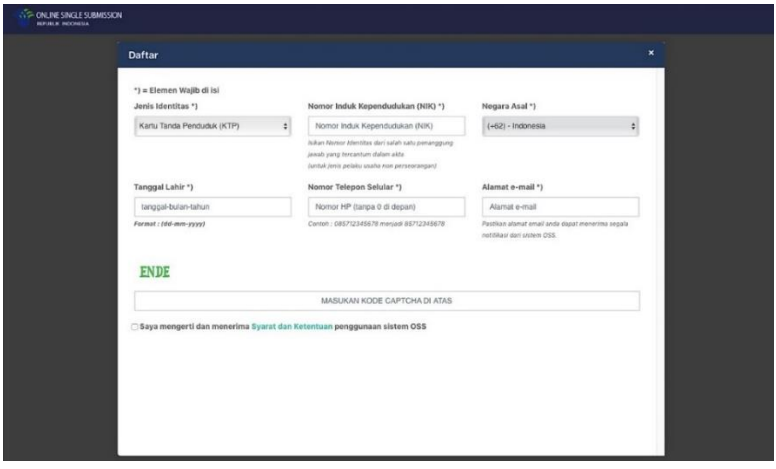
Penyelenggara Layanan Urun Dana termasuk dalam Penyelenggara Sistem Elektronik lingkup privat. Oleh karena itu, Penyelenggara Layanan Urun Dana wajib melakukan pendaftaran sebagai penyelenggara sistem elektronik (Pasal 6 ayat (1) PP *a quo*). Pendaftarannya diajukan kepada menteri melalui pelayanan perizinan berusaha terintegrasi secara elektronik sesuai dengan ketentuan peraturan perundang-undangan (Pasal 6 ayat (3) PP *a quo*). Dengan diterbitkannya PP No. 24/2018 tentang Pelayanan Perizinan Berusaha Terintegrasi Secara Elektronik maka Penyelenggara Layanan Urun Dana wajib mengajukan izin ke lembaga OSS (*Online Single Submission*).

Lembaga OSS adalah lembaga non kementerian yang menyelenggarakan urusan pemerintahan di bidang koordinasi penanaman modal. Lembaga OSS inilah yang nantinya akan mengeluarkan izin usaha dan izin komersial atau operasional. Keluarnya izin tersebut untuk dan atas nama menteri, pimpinan lembaga, gubernur, atau bupati/wali kota meskipun diterbitkan oleh lembaga OSS.

Setiap pelaku usaha yang ingin mendaftarkan usahanya melalui perizinan berusaha terintegrasi secara elektronik (OSS) wajib mendaftarkan usahanya dengan mengakses laman OSS di https://oss.go.id/portal/. Selanjutnya masuk ke kolom daftar/masuk sebagaimana gambar di bawah ini:



Gambar 2. Tampilan untuk Masuk ke Akun.



Gambar 3. Formulir Pendaftaran Akun.

Selanjutnya pelaku usaha mengisi jenis identitas dan memasukkan nomor identitas pribadi (KTP atau Paspor), memilih negara asal, tanggal lahir, nomor telepon seluler dan alamat email kemudian kita akan memperoleh pemberitahuan lewat email yang menyatakan pendaftaran/ registrasi OSS telah berhasil kemudian klik AKTIVASI untuk memperoleh username dan password yang akan kita gunakan login di akun OSS.

Gambar 4. Tampilan untuk Aktivasi Akun.

Gambar 5. Tampilan Konfirmasi Akun Registrasi.

Dalam akun OSS tersebut pelaku usaha wajib mengisi data-data yang dibutuhkan untuk pembuatan NIB (Nomor Induk Berusaha). Setelah memperoleh NIB, sesuai dengan PP No. 24/2018 maka Penyelenggara Layanan Urun Dana wajib memperoleh izin komersial dari lembaga OSS. Menkominfo juga menetapkan syarat-syarat yang

wajib dipenuhi untuk terdaftar sebagai penyelenggara sistem elektronik yaitu (Permekominfo No. 7/2019):

1. Gambaran umum pengoperasian sistem elektronik, terdiri atas:
   a. Nama sistem elektronik
   b. Sektor sistem elektronik
   c. URL website
   d. Domain name sistem dan/atau alamat IP Server
   e. Deskripsi singkat fungsi sistem elektronik dan proses bisnis sistem elektronik
   f. Keterangan penggunaan hosting
   g. Kesediaan melakukan perlindungan data pribadi
2. Sertifikat keamanan informasi sesuai dengan kategori sistem elektronik berdasarkan sistem manajemen keamanan informasi atau surat pernyataan pemenuhan komitmen memiliki sertifikat keamanan informasi jika belum memiliki sertifikat keamanan informasi

Setelah itu kemudian menunggu verifikasi. Setelah proses verifikasi dan data-data dinyatakan lengkap, Menkominfo akan menerbitkan tanda daftar Penyelenggara Sistem Elektronik (lewat OSS). Pelaku Usaha dapat melihat hasilnya pada website https://pse.kominfo.go.id dengan hasil sebagai berikut:

Gambar 6. Tampilan Tanda Daftar Penyelenggara pada Laman OSS.

C. Bank Kustodian untuk *Equity Crowdfunding* di Indonesia

Kustodian merupakan pihak yang memberikan jasa penitipan efek dan harta lain yang berkaitan dengan efek serta jasa lain, termasuk menerima dividen, bunga dan hak-hak lain, menyelesaikan transaksi efek, dan mewakili pemegang rekening yang menjadi nasabahnya (Pasal 1 ayat (8) UUPM). UUPM menyebutkan bahwa yang dapat menyelenggarakan kegiatan usaha sebagai kustodian adalah Lembaga Penyimpanan dan Penyelesaian, Perusahaan Efek, atau Bank Umum yang telah memperoleh persetujuan Bapepam (OJK).

Bank Kustodian dalam penyelenggaran Layanan Urun Dana mempunyai peran yang penting dalam menjaga transaksi yang teratur, wajar dan efisien. Bahkan syarat bagi Penyelenggara yang akan mengajukan izin kepada OJK adalah wajib ada dokumen perjanjian dengan Bank Kustodian dan Lembaga Penyimpanan dan Penyelesaian (KSEI). Hal ini berarti bahwa Penyelenggara harus menunjuk pihak yang akan menjadi Bank Kustodian.

Bank Kustodian adalah bank umum yang telah memperoleh persetujuan dari OJK untuk melakukan kegiatan usaha sebagai kustodian. Bank kustodian berada di bawah Lembaga Penyimpanan dan Penyelesaian (PT. KSEI) sebagai pihak yang menyelenggarakan kegiatan kustodian sentral bagi bank kustodian, perusahaan efek, dan pihak lain.

Fungsi dari Bank Kustodian dalam penyelenggaran ECF antara lain:

1. Pembukaan rekening efek, *Single* Investor ID (SID) dan Sub Rekening Efek (SRE) atas nama Pemodal
2. Pembukaan *escrow account*
3. Menyimpan dan mencatat kepemilikan atas efek yang diterbitkan oleh Penerbit
4. Penyelesaian transaksi di Pasar Sekunder *(Secondary Market)*
5. Menerbitkan dan mengirimkan konfirmasi bulanan kepada Penyelenggara mengenai kepemilikan efek atas nama Pemodal
6. Rekonsiliasi atas dana dan/atau efek
7. Mendistribusikan manfaat (dividen) yang menjadi hak dari Pemodal
8. Menyampaikan laporan bulanan kepemilikan efek kepada Pemodal

Pada saat awal adanya ECF, bukti kepemilikan saham tidak diwajibkan untuk dicatat oleh kustodian. Hal tersebut dapat dilihat pada distribusi saham yang dibeli oleh pemodal, memungkinkan untuk didistribusikan secara fisik melalui pengiriman sertifikat saham. Namun, setelah adanya POJK No. 54/POJK.04/2020, syarat untuk menjadi pemodal adalah harus memiliki rekening efek pada bank kustodian yang khusus untuk menyimpan efek dan/atau dana melalui layanan urun dana (Pasal 56 ayat (1) POJK No. 54/POJK.04/2020). Artinya tidak ada lagi distribusi saham secara fisik saat ini atau di POJK No.54/POJK.04/2020.

Peran sentral bank kustodian adalah terkait kewajiban penggunaan *escrow account* oleh Penyelenggara Layanan Urun Dana. *Escrow account* adalah rekening yang dibuka oleh bank untuk tujuan tertentu berdasarkan persyaratan tertentu sesuai dengan perjanjian tertulis. Tujuan dari penggunaan *escrow account* dalam penyelenggaran kegiatan layanan urun dana adalah agar pihak Penyelenggara tidak menghimpun/ menyimpan dana Pemodal. Jadi, bank kustodian ini adalah pihak yang bertugas menampung sementara dana hasil dari pembelian efek oleh Pemodal yang nantinya dana tersebut didistribusikan kepada Penerbit.

Ketentuan Pasal 37 ayat (6) POJK POJK No. 54/POJK.04/2020 menyebutkan bahwa dana yang disetor pada *escrow account* dilarang dipindahbukukan, selain kepada Penerbit dan Pemodal. *Escrow account* juga dilarang digunakan untuk penampungan dana selain pembelian efek oleh Pemodal. Dalam hal penawaran efek syariah (Sukuk) maka *escrow account* yang digunakan wajib menggunakan bank syariah.

Perlindungan Investor pada ECF dalam Perspektif Hukum Perjanjian

III

Adanya *equity crowdfunding* di Indonesia ini diharapkan memberikan fasilitas terhadap keberhasilan pendanaan secara efektif selain dengan cara konvensional. Bahwa dengan adanya paltform *equity crowdfunding*, dapat menciptakan peluang baru untuk mengum-pulkan dana dalam kegiatan bisnis serta memungkinkan investor nonprofesional untuk memasukkan modal mereka tanpa perantara sistem keuangan. Istilah perlindungan investor atau *investor protection* merupakan istilah umum yang merujuk perlindungan hukum yang diberikan oleh negara yang fungsinya untuk pencegahan *prohibited* dan hukuman (*sanction)* (La Porta et al., 1999).

Perlindungan hukum merupakan suatu perlindungan yang diberikan kepada subjek hukum baik itu perorangan maupun nonperorangan dalam suatu perangkat bersifat preventif maupun bersifat represif, sehingga perlindungan hukum merupakan konsep untuk mewujudkan adanya keadilan, kepastian, dan kemanfaatan bagi subjek hukum tersebut (Tampubolon, 2016).

Khusus perlindungan hukum dalam sektor pasar modal khususnya Penyelenggaraan *equity crowdfunding* melibatkan para pihak pelaku pasar modal terutama pihak emiten, investor dan lembaga-lembaga penunjang kegiatan pasar modal yang mana para pihak tersebut didominasi oleh subjek hukum berupa badan hukum berbentuk perseroan terbatas. Subjek hukum dalam hukum perdata terdapat dua subjek hukum, yaitu subjek hukum orang pribadi dan subjek hukum berupa badan hukum. Subjek hukum orang pribadi atau *natuurlijkepersoon* adalah orang atau manusia yang telah dianggap cakap menurut hukum. Selanjutnya, subjek hukum dalam hukum perdata adalah badan hukum atau *rechtspersoon*. Badan hukum merupakan kumpulan manusia pribadi atau pula dapat merupakan kumpulan dari badan hukum. Pembagian badan hukum ada

dua bentuk, yaitu badan hukum publik atau Publik Rechtspersoon dan badan hukum privat atau *Privat Rechtspersoon* (Rahardjo, 2006).

Menurut Satjipto Rahardjo, hukum melindungi kepentingan seseorang dengan cara mengalokasikan kekuasaan kepadanya untuk bertindak dalam rangka kepentingannya secara terukur. Kepentingan merupakan sasaran dari hak karena hak mengandung unsur perlindungan dan pengakuan. Jadi, dapat disimpulkan bahwa perlindungan hukum atau legal protection merupakan kegiatan untuk menjaga atau memelihara masyarakat demi mencapai keadilan. Kemudian perlindungan hukum dikonstruksikan sebagai; a) Bentuk pelayanan, pelayanan ini diberikan oleh aparat penegak hukum dan aparat keamanan, b) Subjek yang dilindungi (HS & Nurbani, 2013).

Sebelum lahirnya POJK Nomor 57 tahun 2020 ("POJK 2020"), ECF telah terlebih dulu diatur di dalam peraturan OJK NOMOR 37/POJK.04/2018 ("POJK 2018"). Selain sebagai penyelenggara platform *equity crowdfunding*, juga wajib menjaga kerahasiaan data dari investor tersebut. Otoritas Jasa Keuangan (OJK) sebagai lembaga yang memiliki kewenangan dalam melakukan pengawasan dalam terselenggaranya kegiatan oleh *Fintech* jenis *equity crowdfunding* memberikan upaya perlindungan terhadap pihak-pihak yang terlibat di dalam *fintech* tersebut salah satunya adalah investor sebagai pihak yang memasukkan modalnya ke dalam platform.

POJK baru yaitu POJK No. 57 tahun 2020 pada pasal 27 juga telah mengakomodir perlindungan yang dapat diberikan kepada investor melalui sebuah pernyataan Penyelenggara yang dianggap sebagai salah satu pemberitahuan akan risiko untuk Pemodal atau Investor, dengan bunyi sebagai berikut:

a. Otoriras Jasa Keuangan tidak memberikan persetujuan terhadap Penerbit dan tidak memberikan pernyataan menyetujui dan tidak menyetujui efek ini, tidak juga menyatakan kebenaran atau kecukupan informasi dalam Layanan Urun Dana ini. Setiap perbuatan yang bertentangan dengan hal tersebut adalah perbuatan melanggar hukum,
b. Informasi dalam Layanan Urun Dana ini penting dan perlu memperoleh perhatian segera. Apabila terdapat keraguan pada

tindakan yang akan diambil sebaiknya berkonsultasi dengan Penyelenggara, dan

c. Penerbit dan Penyelenggara, baik sendiri-sendiri maupun bersama-sama, bertanggung jawab sepenuhnya atas kebenaran semua informasi yang tercantum dalam Layanan Urun Dana ini.

Kemudian, perlu dilihat kembali penjelasan mengenai kewajiban Penerbit untuk menyampaikan laporan tahunannya diatur Penerbit hanya diwajibkan memberikan Laporan Tahunan saja yang mana berdasarkan POJK 2020 pasal 51 ayat 5 menyebutkan Penerbit dalam Laporan Tahunannya memuat informasi mengenai paling sedikit:

a. realisasi penggunaan dana hasil penawaran Efek bersifat utang atau Sukuk melalui Layanan Urun Dana, dan
b. perkembangan Proyek termasuk hambatannya, jika terdapat hambatan.

Pada peraturan ini dijelaskan bahwa kegiatan ECF merupakan penyelenggaraan layanan penawaran efek yang dilakukan oleh Penerbit untuk menjual efek secara langsung kepada pemodal melalui jaringan sistem elektronik yang bersifat terbuka (Peraturan Otoritas Jasa Keuangan Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020).

Peraturan terbaru POJK 2020 tentang prinsip keterbukaan hanya merujuk sebatas laporan-laporan penerbit dengan sedikit perincian tambahan. Pasal 50 (1) laporan tahunan kepada penyelenggara paling lambat enam bulan setelah tahun buku Penerbit berakhir. Pasal 50 (2) mewajibkan penyelenggara memuat laporan tahunan Penerbit dalam situs web Penyelenggara. Sedangkan penyampaian laporan secara berkala setiap 3 (tiga) bulan, pada bulan Maret, Juni, September, dan Desember kepada Penyelenggara. Perubahan peraturan laporan sebelumnya hanya 1 (satu) kali laporan, sekarang menjadi 3 (tiga) kali laporan tahunan sebagaimana laporan tengah tahun, tahunan, dan insedentil. Pasal 53 menjelaskan bahwa laporan keuangan yang dimuat dalam laporan tahunan sebagaimana dimaksud dalam Pasal 50 ayat (1) wajib menggunakan paling rendah standar akuntansi keuangan untuk entitas tanpa akuntabilitas publik.

Dalam POJK 2020 mengenai Penerbit, tidak ada kewajiban atau syarat Penerbit menyampaikan atau setidak-tidaknya melampirkan dokumen asli setiap kejadian perusahaan Penerbit menjadi menarik ketika Penerbit justru memberikan dokumen yang tidak sesuai dengan realita atau aslinya. Selanjutnya, OJK mengatur bahwa penyelenggara maupun pengguna platform *equity crowdfunding* wajib menjaga kerahasiaan data yang terdapat dalam platform tersebut baik data informasi mengenai penerbit saham maupun data terkait dengan investor. Penyelenggara juga wajib menyediakan sistem pengamanan seperti yang tertuang dalam pasal 70 POJK No. 57 tahun 2020 tersebut. Segala sistem keamanan yang disyaratkan oleh OJK tidak lepas dari upaya–upaya dalam memberikan perlindungan bagi siapa pun yang menggunakan platform layanan urun dana dalam transaksi keuangan. Mengingat bahwa keuntungan investor berupa pembagian deviden tergantung pada tingkat keberhasilan dari penerbit yang dibeli sahamnya, sehingga dapat dimungkinkan investor tidak memperoleh pembagian deviden apabila perusahaan penerbit tidak mengalami keuntungan.

Namun, perlu digarisbawahi, perlindungan investor *Equity Crowdfunding* tidak sesistematis dalam pasar modal karena sistem perdagangan efek dalam pasar modal memberikan perlindungan pada investornya melalui mekanisme transparansi informasi atau keterbukaan informasi *(full disclosure principle)* dan melalui aturan pencegahan manipulasi pasar termasuk larangan *insider trading*. Ketidakakuratan atau ketidakjelasan informasi yang disampaikan dalam prospektus sebagai wujud keterbukaan informasi dalam sektor pasar modal menimbulkan akibat hukum. Pasal 81 ayat (1) Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal ("UUPM") berbunyi:

> "Setiap pihak yang menawarkan atau menjual efek dengan menggunakan prospektus atau dengan cara lain, baik tertulis mapun lisan, yang memuat informasi yang tidak benar tentang Fakta Materiel atau tidak memuat informasi tentang Fakta Materiel dan pihak tersebut mengetahui atau sepatutnya mengetahui mengenai hal tersebut wajib bertanggung jawab atas kerugian yang timbul akibat perbuatan dimaksud".

Sebagai acuan pula untuk memberikan perlindungan terhadap investor ECF berdasarkan rumusan *Organization for Economic Corporation*

and Development (OECD) yang mana telah merumuskan 4 (empat) prinsip GCG yaitu (Balfas, 2012):

1. *Transparancy* atau transparansi sebagai suatu keterbukaan atau pengungkapan informasi, dimulai dari proses pengambilan keputusan hingga mengungkapkan informasi material yang relevan secara terbuka, tepat waktu, dan jelas mengenai keadaan perusahaan, baik itu keadaan keuangan, pengelolaan perusahaannya, keuangannya, dan kepemilikan perusahaan. Sedangkan pembebanan penyampaian laporan yang wajib disampaikan antara Penyelenggara yang terdiri laporan tahunan, tengah tahun, dan insidentiil. Sedangkan Penerbit hanya berupa laporan tahunan, dan insendentiil yang ditujukan kepada Penyelenggara ECF untuk dipublikasikan ke publik khususnya investor tanpa ada aturan langsung untuk melaporkannya ke Lembaga pengawas keadaan ini belum cukup mencerminkan prinsip transparansi (Pasal 50 POJK No. 57/POJK.04/2020).
2. *Fairness* atau keadilan menjamin adanya perlindungan hak-hak para pemegang sahamnya, termasuk hak-hak pemegang saham minoritas, kesemuanya memiliki hak yang sama. Artinya, Penyelenggaraan ECF harus memperhatikan aspek keadilan terhadap pemberian hak investor baik dari akses informasi yang benar.
3. *Accountability* (akuntabilitas), yaitu menjelaskan mengenai kejelasan fungsi, struktur, dan pertanggungjawaban organ perusahaan agar manajemen pengelolaan perusahan dapat terlaksana secara efektif dan efisien, sehingga terjamin pula kepentingan pemegang saham. Penerapan *review* kegiatan ECF sendiri pun sudah tidak disebutkan dalam regulasi baru penyelenggaraan ECF hal ini semakin menjadi pertanyaan mengenai akuntabilitas laporan yang diberikan karena meyebutkan kewajiban untuk melibatkan profesi independen untuk melakukan verifikasi kebenaran/atau kejelasan informasi mengenai fakta material yang disampaikan Penerbit dalam prospektusnya. Perlu dipahami pula bahwa prospectus ECF bukanlah sekedar proposal promosi untuk penerbit mencari investornya. Bahkan dalam POJK yang baru menyebutkan Penerbit tidak lagi memenuhi kriteria harta kekayaan bersih sebagai Penerbit diperbolehkan membuat laporan

paling rendah standar akuntansi keuangan untuk entitas tanpa akuntabilitas publik (Pasal 53 POJK No. 57/POJK.04/2020).

4. *Responsibility* (pertanggungjawaban), yaitu memastikan bahwa perusahaan harus mampu mematuhi peraturan perundang-undangan serta melaksanakan tanggung jawab terhadap masyarakat dan lingkungan. Kegiatan ECF dalam hal ini yang berkaitan dengan keterbukaan informasi, maupun perlindungan data pribadi sebagaimana yang tercantum pada Penyelenggara wajib:

   a. menjaga kerahasiaan, keutuhan, dan ketersediaan data pribadi, data transaksi, dan data keuangan yang dikelola Penyelenggara sejak data diperoleh hingga data tersebut dimusnahkan,

   b. memastikan tersedianya proses autentikasi, verifikasi, dan validasi yang mendukung kenirsangkalan dalam mengakses, memproses, dan mengeksekusi data pribadi, data transaksi, dan data keuangan yang dikelola Penyelenggara,

   c. menjamin bahwa perolehan, penggunaan, pemanfaatan, dan pengungkapan data pribadi, data transaksi, dan data keuangan yang diperoleh oleh Penyelenggara berdasarkan persetujuan pemilik data pribadi, data transaksi, dan data keuangan, kecuali ditentukan lain oleh ketentuan peraturan perundang-undangan,

   d. menyediakan media komunikasi lain selain Sistem Elektronik Layanan Urun Dana untuk memastikan kelangsungan layanan Pemodal yang dapat berupa surat elektronik, pusat panggilan, atau media komunikasi lainnya, dan

   e. memberitahukan secara tertulis kepada pemilik data pribadi, data transaksi, dan data keuangan, jika terjadi kegagalan dalam perlindungan kerahasiaan data pribadi, data transaksi, dan data keuangan yang dikelola Penyelenggara (Pasal 70 POJK No. 57/POJK.04/2020).

Perihal aturan tersebut bahwa peran penyelenggara menjadi sentral dengan regulasi yang lemah hanya pada tataran Peraturan OJK saja karena pada dasarnya penyelenggaraan ECF sendiri menggunakan sistem elektronik yang memang semua orang dapat mengakses platform bahkan

melakukan peretasan situs Platform ECF. Walaupun Kementerian Komunikasi dan Informatika Republik Indonesia mewajibkan Penyelenggara harus memiliki izin Penyelenggaraan Sistem Elektronik, tetapi aturan ini hanya bentuk uapaya penghimpunan data dari pemerintah, bukan merupakan perangkat sistem untuk *cyber security*. Artinya, hal tersebut bukan menjadi bentuk perlindungan nyata dari Pemerintah terhadap perlindungan data pribadi investor, terlebih penyelenggara ECF sendiri sudah berlangsung, tetapi bentuk kepastian hukum perlindungan data pribadi dalam tataran Undang-undang masih belum tersedia atau belum disahkan.

Kerahasiaan dan keamanan data haruslah mampu dijaga oleh Penyelenggara. Secara eksplisit, Penyelenggara yang bertugas untuk menyediakan layanan ECF ini memegang penuh kendali mengenai data baik Penerbit maupun Pengguna (investor). Di Singapura telah mengatur secara khusus regulasi bagi perusahaan *Financial Technology* (Fintech) guna memberikan perlindungan data pribadi nasabah yang diatur dalam "*The Personal Data Protection Act (PDPA)*" yaitu setiap perusahaan fintech wajib memilik *personal data privacy policy* yang dapat diakses publik atas persetujuan penggunaan data dan membangun pengamanan penyalahgunaan data nasabahnya. Perusahaan *fintech* juga harus memenuhi ketentuan "*Anti-Money Laundering & Counter Financial Terrorism Controls* untuk mengetahui dan melakukan verifikasi profil nasabahnya agar dapat memantau ulasan akun dan melaporkan setiap transaksi keuangan nasabahnya. Salah satu risiko penggunaan transaksi penghimpunan dana berbasis fintech adalah risiko keamanan data (*cybersecurity)* (OJK, 2017).

A. Investor sebagai Subjek Hukum dalam Suatu Perjanjian

Equity Crowdfunding merupakan metode pembiayaan baru yang berbeda dari sistem keuangan konvesional sebab mempertimbangkan model urun dana dalam bentuk ekuitas (Nasrabadi, 2016). *Equity Crowdfunding* dianggap sebagai inovasi model keuangan baru yang menjelaskan keterbukaan penggalangan dana dan memiliki penyesuaian minimum modal dan keuntungan yang diarahkan untuk berbagai kelompok kalangan masyarakat (Khoramchahi, 2020). Istilah *Equity*

Crowdfunding menekankan pada "*tapping the crowd*" (Belleflamme et al., 2014; Sahm et al., 2014), keterlibatan urun dana yang melibatkan banyak pihak bukan sekedar investor professional tetapi juga sebagai alat pembiayaan yang menjanjikan untuk usaha inovatif yang tergolong baru (Ahlers et al., 2015).

Kegiatan investasi tersebut timbullah suatu hubungan antara dua orang tersebut yang dinamakan perikatan. Pengertian lain dari Yahya Harahap adalah Perjanjian atau *Verbintenis* mengandung pengertian bahwa suatu hubungan hukum kekayaan/harta benda antara dua orang atau lebih yang memberikan kekuatan hak pada satu pihak untuk memperoleh prestasi dan sekaligus mewajibkan pihak lainnya untuk menunaikan prestasi. Tentunya pada hubungan hukum yang dibangun dalam penyelenggaraan ECF itu sendiri (Harahap, 1986). Baik itu dari Penyelenggara-Penerbit, dan Penyelenggara-Pemodal (Investor), lalu bagaimana syarat sah perjanjian dalam hubungan hukum yang dibuat tersebut apabila ditelaah pada syarat sahnya Perjanjian?

Syarat sahnya suatu perjanjian dijelaskan dalam Pasal 1320 Kitab Undang-undang Hukum Perdata (KUHPer). Pasal 1320 Kitab Undang-undang Hukum Perdata (KUHPer) berbunyi bahwa untuk sahnya suatu perikatan diperlukan empat syarat menurut Subekti dan Tjirosudibio (2001) sebagai berikut:

1. Sepakat dari Mereka yang Mengikatkan Dirinya

   Kata *sepakat* yang dimaksud adalah persesuaian kehendak atau persetujuan kehendak, sehingga memang dikehendaki oleh semua pihak dalam perjanjian tersebut. Kata sepakat bersifat bebas yang artinya tanpa ada tekanan maupun paksaan dari suatu pihak, sehingga benar-benar berasal atas kemauan sukarela para pihak. Kata sepakat dapat dilakukan secara tegas maupun secara diam-diam. Dalam perjanjian investasi *Equity Crowdfunding* ini terjadi saat pihak yang ingin berinvestasi menyetujui syarat dan ketentuan yang berlaku saat melakukan proses pendaftaran akun. Kemauan pihak investor dan penerbit yang dilakukan atas kemauan sendiri secara diam-diam telah terjadi kata sepakat yang melahirkan perjanjian dan telah meletakkan kewajiban kepada dua belah pihak.

2. Kecakapan Untuk Membuat Suatu Perikatan

Maksud *cakap* adalah orang yang membuat perjanjian itu harus cakap menurut hukum. Pasal 1330 KUHPerdata menerangkan subjek hukum yang tidak cakap untuk membuat suatu perjanjian adalah:

a) Orang-orang yang belum dewasa,
b) Mereka yang ditaruh di bawah pengampuan,
c) Orang-orang perempuan, dalam hal yang ditetapkan oleh undang-undang, dan pada umumnya semua orang kepada siapa undang-undang telah melarang membuat perjanjian-perjanjian tertentu.

Seiring perkembangannya, mengenai kecakapan dalam melakukan perbuatan hukum mengalami beberapa perubahan. Berdasarkan Pasal 330 KUHPerdata bahwa usia cakap melakukan perbuatan hukum yaitu 21 tahun. Kemudian baik untuk Penerbit, Investor, dan Penyelenggara juga diatur jelas pada Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi. Dari sisi Penyelenggara ECF sendiri sudah sangat jelas diatur yang mana menyebutkan Penyelenggara Layanan Urun Dana adalah badan hukum Indonesia yang menyediakan, mengelola, dan mengoperasikan Layanan Urun Dana (Pasal 1 angka 5 POJK No. 57/POJK.04/2020). Artinya, untuk membuktikan Penyelenggaraan sendiri wajib untuk melampirkan dokumen-dokumen seperti akta pendirian maupun identitas pendiri dari badan hukum tersebut, hal tersebut untuk menunjukan kecakapan dari penyelenggara itu sendiri (Pasal 13 POJK No. 57/POJK.04/2020). Begitu juga dengan Penerbit maupun Investor yang membuat perikatan bersama dengan penyelenggara untuk wajib melampirkan surat-surat yang berharga untuk menunjukan kecakapan dari Penerbit maupun Investor.[1]

3. Suatu Hal Tertentu

Suatu hal tertentu yang dimaksud Pasal 1320 KUHPerdata adalah kejelasan mengenai isi atau objek dari perjanjian tersebut yang diperuntukkan agar para pihak melaksanakan hak dan kewajibannya.

[1] Dapat dilihat pada Website Penyelenggara ECF di bagian Syarat dan Ketentuan Penerbit dan Pemodal (Investor).

Sebagai syarat yang ketiga ini menerangkan tentang harus adanya objek dalam perjanjian tersebut yang jelas. Pasal 1333 KUHPerdata menjelaskan bahwa, "Suatu persetujuan harus mempunyai pokok berupa suatu barang yang sekurang-kurangnya ditentukan jenisnya. Jumlah barang itu tidak perlu pasti asal saja jumlah itu dapat ditentukan atau dihitung."

Terhadap syarat sahnya perjanjian investasi saham pada *Equity Crowdfunding* sebagai benda yang dapat dijadikan objek perjanjian dan termasuk ke dalam jenis benda surat berharga yang mana dijadikan objek investasi dari investor atau penerbit.

4. Suatu Sebab yang Halal

Sebab adalah suatu yang mengakibatkan orang membuat perjanjian, tetapi yang dimaksud dalam suatu sebab yang halal, sebagaimana ketentuan Pasal 1320 KUHPerdata, bukanlah sebab dalam artian yang menyebabkan atau yang mendorong orang membuat perjanjian, yang dimaksud dalam hal ini adalah terkait objek dari perjanjian tersebut. Pasal 1335 KUHPerdata yang berbunyi "Suatu perjanjian tanpa sebab, atau yang telah dibuat karena sesuatu sebab, yang palsu atau terlarang, tidak mempunyai kekuatan." Pada pasal tersebut menegaskan kembali mengenai salah satu syarat objektif suatu keabsahan perjanjian mengenai suatu sebab yang halal. Suatu perjanjian jika bertentangan dengan undang-undang, kesusilaan atau ketertiban umum, maka perjanjian tersebut tidak mempunyai kekuatan hukum yang lazim atau yang disebut batal demi hukum.

Selanjutnya Pasal 1336 yang berbunyi, "Jika tidak dinyatakan sesuatu sebab tetapi ada suatu sebab yang halal, ataupun jika ada suatu sebab lain, daripada yang dinyatakan, perjanjiannya namun demikian adalah sah." Penyelenggaraan ECF sebagai objek investasi, pemerintah tidak melarangnya bahkan memberikan payung hukum yang jelas yaitu diterbitkannya Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 57/Pojk.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi dan tentunya langsung diawasi oleh Otoritas Jasa Keuangan.

Istilah "Perjanjian" dalam hukum perjanjian merupakan kesepadanan dari istilah "*Overeenkomst*" dalam bahasa Belanda, atau "*Agreement*" dalam bahasa Inggris. Pasal 1313 KUHPerdata menjelaskan pengertian dari perjanjian adalah suatu perbuatan hukum dengan mana satu orang atau lebih mengikatkan dirinya terhadap satu orang lain atau lebih. Sistem pengaturan hukum perjanjian adalah sistem yang bersifat terbuka, artinya bahwa setiap orang bebas untuk mengadakan perjanjian, baik yang sudah diatur maupun yang belum diatur di dalam undang-undang (Windari, 2014).

Dasar hukum jual beli adalah Pasal 1457 sampai dengan 1540 Kitab Undang-Undang Hukum Perdata (KUHPerdata). Penerbit dalam hal ini bertindak selaku perseroan terbatas yang menjual saham yang dimilikinya (saham tersebut berasal dari saham dalam portepel) kepada pemodal. Berdasarkan konsep perjanjian jual beli tersebut, penerbit memiliki kewajiban untuk menyerahkan saham kepada pemodal selaku pembeli dan pemodal memiliki kewajiban untuk memberikan sejumlah uang pembayaran atas saham yang dibeli.

B. Hak dan Kewajiban Investor dalam Perjanjian ECF

Berdasarkan Pasal 64 ayat (1) "Perjanjian penyelenggaraan Layanan Urun Dana antara Penyelenggara dan Pemodal sebagaimana dimaksud dalam Pasal 61 huruf c dapat dituangkan dalam bentuk perjanjian baku dengan memenuhi keseimbangan, keadilan, dan kewajaran." Artinya, perjanjian tidak perlu menggunakan akta otentik sama yang mana digunakan pada perjanjian antara Penyelenggara layanan urun dana dan penerbit yang harus menggunakan akta notaris. Kemudian dalam POJK tersebut juga tidak sama sekali mencantumkan struktur ketentuan perjanjian baku tersebut.

Sebagai salah satu contoh, hak dan kewajiban yang timbul pada perjanjian baku penyelenggara layanan urun dana yaitu Santara, sebagai berikut:

"*VIII. KEWAJIBAN PEMODAL*

Tanpa mengesampingkan hak dan kewajiban lainnya sebagaimana telah tersebut dalam Perjanjian ini, maka kewajiban Pemodal adalah sebagai berikut:

1. *Pemodal wajib menjaga nama baik dan reputasi Penyelenggara dengan tidak melakukan aktifitas yang mengandung unsur suku, agama, dan ras, atau tidak melakukan penyebaran informasi yang tidak benar dengan mengatasnamakan Penyelenggara.*
2. *Pemodal wajib tunduk dan patuh pada ketentuan* terms and conditions *yang tercantum dalam* website *Penyelenggara serta tunduk dan patuh pada POJK Layanan Urun Dana dan peraturan perundang-undangan yang berlaku di Negara Republik Indonesia.*
3. *Pemodal wajib setuju dan sepakat bersedia untuk memberikan akses audit internal maupun audit eksternal yang ditunjuk Penyelenggara serta audit Otoritas Jasa Keuangan (OJK) atau regulator berwenang lainnya setiap kali dibutuhkan terkait pelaksanaan Layanan Urun Dana ini."*

"IX. HAK PEMODAL

Tanpa mengesampingkan hak dan kewajiban lainnya sebagaimana telah tersebut dalam Perjanjian ini, maka hak Pemodal adalah sebagai berikut:

1. *Pemodal berhak untuk melakukan pembelian Saham yang ditawarkan Penerbit melalui Layanan Urun Dana yang diselenggarakan Penyelenggara.*
2. *Pemodal berhak memperoleh manfaat atas pembagian dividen yang dilakukan oleh Penerbit melalui Penyelenggara."* (Santara, 2019)

Pada perjanjian tersebut bagian hak pemodal/investor sama sekali tidak menyebutkan hak Pemodal/investor untuk memperoleh hak atas pertanggungjawaban kerugian yang terjadi akibat penerbit, penyelenggara, atau penerbit dan penyelenggara. Apalagi hak untuk memperoleh perlindungan hukum dari lembaga pengawas, dalam hal ini OJK (Otoritas Jasa Keuangan).

C. Keseteraan Hubungan Hukum antara Investor dengan Penyelenggara

Penyelenggara dan pemodal dalam *equity crowdfunding* memiliki hubungan hukum yang lahir dari perjanjian penyelenggaraan Layanan Urun Dana yang mana berdasarkan Pasal 64 ayat (1) POJK No. 57 Tahun 2020, "Perjanjian penyelenggaraan Layanan Urun Dana antara Penyelenggara dan Pemodal sebagaimana dimaksud dalam Pasal 61 huruf c dapat dituangkan dalam bentuk perjanjian baku dengan memenuhi keseimbangan, keadilan, dan kewajaran". Mengikatnya perjanjian tersebut terjadi pada saat Pemodal menyatakan persetujuan secara elektronik atas isi perjanjian tentang Layanan Urun Dana. Perjanjian tersebut dapat memuat ketentuan mengenai pemberian kuasa kepada penyelenggara untuk mewakili pemodal sebagai pemegang saham penerbit termasuk dalam rapat umum pemegang saham penerbit dan penandatanganan akta serta dokumen terkait lainnya.

Berdasarkan perjanjian antara penyelenggara dan pemodal, pemodal membeli saham milik penerbit yang ditawarkan melalui penyelenggara dengan menyetorkan sejumlah dana pada *escrow account*. Hal tersebut berdasarkan Pasal 37 ayat (1), "Penyelenggara wajib menggunakan *escrow account* pada bank yang digunakan untuk menerima dana hasil penawaran Efek melalui Layanan Urun Dana". *Escrow account* adalah rekening yang dibuka secara khusus untuk tujuan tertentu guna menampung dana yang dipercayakan kepada Bank Indonesia berdasarkan persyaratan tertentu sesuai dengan perjanjian tertulis. Tujuan penggunaan *escrow account* dalam hal ini yaitu melarang penyelenggara melakukan penghimpunan dana masyarakat melalui rekening penyelenggara.

Penerbit dan pemodal (investor) dalam *equity crowdfunding* tidak bertemu secara langsung, melainkan melalui perantara/platform penyelenggara *equity crowdfunding*. Dengan demikian, penerbit dan pemodal memiliki hubungan hukum yang lahir dari perjanjian investasi. Hubungan hukum investasi ini tersirat dari berbagai pasal dalam POJK No. 57/POJK.04/2020 tentang Layanan Urun Dana Melalui Penawaran Efek Berbasis Teknologi Informasi. Maksud dari pengaturan yang dalam POJK tersebut jelas mengarah kepada perjanjian investasi antara penerbit dan pemodal melalui penyelenggara secara elektronik.

Saham merupakan sejumlah uang yang di investasikan oleh investor dalam suatu perseroan dan atas investasi pemegang saham *(aandelholder/ shareholder)* memperoleh keuntungan dari perseroan dalam bentuk deviden. Saham dalam hukum perdata dianggap benda bergerak yang tidak berwujud. Pasal 60 ayat (1) Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas menyatakan bahwa saham merupakan benda bergerak. Selanjutnya Pasal 56 ayat (1) Undang- Undang No. 40 Tahun 2007 tentang Perseroan Terbatas menyatakan bahwa pemindahan hak atas saham dilakukan dengan akta pemindahan hak. Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas hanya mengakui saham atas nama saja. Akta pemindahan hak tersebut dapat dilakukan dengan akta notaris (akta otentik) maupun dengan akta di bawah tangan (*private deed*).

D. Potensi permasalahan dan upaya hukum di dalam Perjanjian ECF

Untuk penerbit sendiri terdapat perbedaan pengaturan dari POJK No. 37 tahun 2018 ke POJK No. 57 tahun 2020 yang mana OJK resmi memperluas penerbitan efek yang sebelumnya hanya mencakup saham, kini ditambah mengakomodasi efek bersifat utang atau obligasi, dan *sukuk*. Perbedaan lain yang tampak dari regulasi baru ini, yaitu masa penawaran efek oleh platform. Apabila regulasi lama memperbolehkan masa penawaran maksimal 60 hari, kini hanya 45 hari saja. OJK pun melengkapi regulasi baru ini untuk mengakomodasi penawaran obligasi atau *sukuk* yang digelar secara bertahap. Namun, batasannya masih sama seperti sebelumnya. Alih-alih membuat pengaturan yang lebih baik, dalam POJK No. 57 tahun 2020 sudah tidak menyebutkan pelaksanaan *Review* kembali yang dilaksanakan oleh Penyelenggara terhadap penerbit atas laporan keuangan maupun dokumen lainnya yang menunjukan keadaan riil dari penerbit tersebut.

Sebagai bentuk upaya pengawasan penyelenggara terhadap penerbit regulasi baru Penerbit hanya diwajibkan memberikan Laporan Tahunan saja yang mana berdasarkan POJK No. 57 Tahun 2020 pasal 51 ayat 5 menyebutkan Penerbit dalam Laporan Tahunannya memuat informasi mengenai paling sedikit: a) realisasi penggunaan dana hasil penawaran Efek bersifat utang atau Sukuk melalui Layanan Urun Dana, dan b)

perkembangan proyek termasuk hambatannya, jika terdapat hambatan. Pada peraturan ini dijelaskan bahwa kegiatan ECF merupakan penyelenggaraan layanan penawaran efek yang dilakukan oleh penerbit untuk menjual efek secara langsung kepada pemodal melalui jaringan sistem elektronik yang bersifat terbuka (Peraturan Otoritas Jasa Keuangan Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020) Dan Laporan Insidental. Laporan ini wajib disampaikan apabila Penerbit terdapat kejadian atau informasi material yang dapat memengaruhi kelangsungan usaha Penerbit atau kesanggupan Penerbit dalam melakukan pengembalian dana (Pasal 52 ayat (1) POJK No. 57/POJK.04/2020).

Kemudian perihal kerugian/kelalaian yang dapat terjadi dari penerbit dalam pengelolaan dananya sama sekali tidak menjadi perhatian pada regulasi baru ini. Regulasi baru hanya fokus pada pelaksanaan penyelenggara terlihat pada Pasal 79 POJK No 57 tahun 2020, "Penyelenggara wajib bertanggung jawab atas kerugian Pengguna yang timbul akibat kesalahan dan/atau kelalaian direksi, pegawai, dan/atau pihak lain yang bekerja untuk Penyelenggara." Artinya, kerugian yang terjadi terhadap pengelolaan keuangan dari penerbit bukan menjadi perhatian terhadap kerugian yang akan terjadi pada investor. Seharusnya bentuk mitigasi risiko yang diberikan tidak hanya *disclaimer*/peringatan dalam bentuk tertulis pada platform penyelenggara saja, tetapi juga ada bentuk perlindungan hukum terhadap pemodal atas dana yang diinvestasikannya kepada penerbit, walaupun Pasal 58 POJK No.57/POJK.04/2020 mengatur perlindungan hukum bagi pemodal bahwa dapat membatalkan rencana pembelian saham melalui situs *equity crowdfunding* dalam jangka waktu 48 jam setelah melakukan pembelian saham dan sebelum penyelesaian atas transaksi dilakukan melalui Penyelenggara, Namun, hal tersebut hanya bentuk kepastian pengaturan pada batas rencana pembelian saham saja.

Bukti lain yang menunjukkan penyelenggaraan ECF di Indonesia sendiri mengalami Penegakan hukum yang sangat lemah dapat terlihat pada POJK No 57 tahun 2020 yang hanya mengakomodasi sanksi administratif untuk penyelenggara yang dianggap melanggar

kewajibannya berdasarkan pasal 85 ayat 4 POJK No.57 tahun 2020, "sanksi administratif sebagaimana dimaksud pada ayat (1) berupa:

a. peringatan tertulis,
b. denda yaitu kewajiban untuk membayar sejumlah uang tertentu,
c. pembatasan kegiatan usaha,
d. pembekuan kegiatan usaha,
e. pencabutan izin usaha,
f. pembatalan persetujuan, dan/atau
g. pembatalan pendaftaran."

Sedangkan bentuk perlindungan hukum atas hak-hak investor itu sendiri hanya diakomodasi pada perjanjian baku yang dibuat oleh penyelenggara untuk pemodal/investor sendiri. Artinya, apabila itu didasari pada perjanjian, maka lahirlah hubungan keperdataan yang mana hal-hal yang dapat diperkarakannya hanya wanprestasi dan perbuatan melawan hukum.

Selain itu, penerbit memiliki kewajiban untuk melaksanakan *disclosure information*. Penerbit wajib menyampaikan informasi mengenai perusahaan yang dikelola termasuk perubahan material yang dapat memengaruhi keputusan investasi Pemodal. Keterbukaan informasi tersebut juga harus memuat mengenai risiko, paling sedikit meliputi risiko usaha, investasi, likuiditas, dan kelangkaan pembagian dividen, dengan menunjukkan kondisi riil dari penerbit itu sendiri dalam menjalankan bisnisnya sebagai bentuk pertanggungjawaban pengelolaan Investasi dari Pemodal atau Investor itu sendiri. Di dalam POJK baru sama sekali tidak menyebutkan adanya profesi penunjang yang independen untuk melakukan audit terhadap dokumen/informasi yang diberikan baik untuk dokumen sebelum dan sesudah penawaran, POJK tersebut hanya penyebutkan laporan harus dibuat oleh akuntan, menjadi pertanyaan apakah akuntan tersebut merupakan akuntan internal atau akuntan publik yang independen.

Sebab tidak adanya pihak ketiga yang dilibatkan dalam melakukan audit dokumen prospectus, laporan keuangan, dan lain-lain berupa Profesi Penunjang untuk perlindungan bagi investor ECF terjamin dan

investor dapat terhindar diri risiko *misleading information* dan penipuan akibat keterbukaan informasi yang tidak menyeluruh. Dengan cara mengakomodasi keterbukaan informasi dengan prinsip-prinsip GCG *(Good Corporate Govarnance)* dan di dalamnya melibatkan profesi penunjang yang akuntabilitas serta independen untuk menjaga marwah dari kebenaran informasi tersebut tanpa adanya intervensi dari pihak mana pun.

Perlindungan Data dan Privasi pada *Equity Crowdfunding*

IV

Fenomena revolusi industri tahap keempat (revolusi industri 4.0) abad ke-21 telah melahirkan berbagai penemuan teknologi terbarukan. Keadaan ini kemudian menuntun terjadinya persaingan antarnegara dalam melakukan berbagai macam inovasi di bidang teknologi. Terhitung dalam kurun waktu beberapa tahun terakhir, banyak bermunculan penemuan baru dari hasil pengembangan terhadap sarana perangkat pintar dan sistem siber. Hal tersebut kemudian mendukung terciptanya mata uang digital *(crypto currency)*, kendaraan otomatis yang dapat beroperasi tanpa manusia, teknologi nano, layanan *cloud storage* untuk menyimpan suatu data, kecerdasan buatan *(artificial intelligence/ AI)*, percetakan 3 dimensi (*3D Printing*), dan aplikasi berbasis internet yang mencuri perhatian banyak orang di bidang layanan keuangan yang dikenal dengan teknologi finansial *(Financial Technology)*.

Persaingan sengit dunia internasional dalam penemuan teknologi baru meningkatkan angka produktivitas masyarakat yang mendorong pada tingginya penilaian terhadap kualitas negara yang bersangkutan. Keadaan ini pula dimanfaatkan oleh negara-negara berkembang untuk turut mengambil bagian dalam pengembangan ilmu pengetahuan dan teknologi agar tidak tertinggal jauh dari negara-negara *super power* dan mampu menyeimbangkan ritme perkembangan zaman yang semakin pesat. Di Indonesia, melihat tantangan global yang semakin kompleks, pemerintah segera menginstruksikan jajarannya untuk mempersiapkan diri dalam menghadapi perkembangan arus globalisasi dengan mempersiapkan segala kebutuhan akan sarana dan prasarana pendukung serta membuat regulasi hukum sebagai pengawal untuk membatasi setiap pergerakan berlebihan yang akan membahayakan demi terwujudnya suatu kepastian, keadilan, dan kemanfaatan sebagaimana tujuan hukum dalam paham positivisme.

Salah satu bukti keseriusan pemerintah dapat dilihat dari terealisasinya program pembangunan infrastruktur "Tol Langit" yang telah diresmikan oleh Presiden Joko Widodo pada bulan Oktober dua tahun silam. Perkembangan teknologi internet yang terus melaju mendorong terbentuknya pembangunan tersebut dengan harapan mampu memadukan jaringan telekomunikasi yang menghubungkan beberapa kabupaten dan kota yang tersebar di seluruh pelosok negeri dalam menunjang pertumbuhan ekonomi dan pemerataan pembangunan sosial menuju ke arah yang lebih baik (Faizal, 2016). Tercatat pasca terlaksananya program ini, terjadi peningkatan kapasitas pengguna teknologi informasi berbasis internet yang saat ini mencapai 73,3% atau setara dengan 196,7 juta pengguna dari total keseluruhan populasi Indonesia (Irawan et al., 2020). Angka ini kemudian diyakini mampu mendorong kemajuan dalam sektor ekonomi digital sehingga dapat bersaing dengan negara lain baik ditingkat Asia maupun dunia.

Seiring perkembangannya, internet telah memberikan pengaruh besar dalam kehidupan manusia. Keberadaannya pun semakin digilai masyarakat layaknya idola (Rahma, 2018). Hal ini terlihat dari kehidupan manusia yang tak dapat dipisahkan karena tuntutan era modern yang bergantung pada kemajuan teknologi (Arief, 2005). Para generasi milenial, contohnya mereka menghabiskan banyak waktunya untuk gawai dan internet, bahkan segala aktivitas dilakukan secara *online*, seperti berbelanja atau pun melakukan pembayaran-pembayaran. Hal ini juga didukung dengan munculnya berbagai situs perbelanjaan *online* yang mempermudah setiap aktivitas manusia tanpa harus mendatangi toko yang dituju dan hanya memanfaatkan platform yang tersedia hingga akhirnya berbagai macam bisnis konvensional terduplikasi menjadi bisnis berbasis *online*. Peralihan yang terjadi kemudian mengubah wajah bisnis global yang lebih milenial dengan segala bentuk kepraktisan sebagai nilai unggulnya. Keadaan ini yang pada akhirnya menjadikan manusia semakin apatis karena kurangnya interaksi sosial secara langsung.

Perubahan pola hidup manusia seiring dengan perkembangan teknologi mengakibatkan jasa dalam bidang layanan keuangan atau *financial technology* terus mengalami kemajuan. Berbagai keunggulan seperti kemudahan akses, praktis, nyaman, dan ringan biaya atau inovasi disruptif

yang diberikan teknologi finansial telah memperoleh kepercayaan masyarakat global tak terkecuali Indonesia (OJK, 2017). Bentuk kemudahan yang diberikan kepada masyarakat menjadikan tiap pekerjaan dan aktivitas menjadi lebih cepat terselesaikan. Teknologi jenis ini dapat diakses dalam berbagai keadaan di segala tempat, sepanjang masih didukung oleh kekuatan internet, sehingga pihak yang akan melakukan transaksi tidak dibebankan untuk datang langsung ke perusahaan finansial dengan berbagai SOP yang terkadang memberatkan pihak tersebut. Produk *fintech* didesain untuk mempermudah masyarakat dalam mengakses kegiatan berupa pinjaman, pembayaran *online*, penghimpunan dana kolektif, modal, dan investasi (Nugroho & Rachmaniyah, 2019).

Sejak awal kemunculannya hingga saat ini, eksistensi *fintech* belum tergantikan di hati masyarakat. Tren perkembangannya menunjukkan peluang yang bagus pada layanan *fintech* untuk terus berkembang di era digital (Pranoto, Kholil, dan Tejomurti, 2019). Terbukti dalam beberapa tahun terakhir, perkembangan *fintech* terus mengalami peningkatan yang signifikan. Berdasarkan data yang ada, tercatat hingga akhir November 2020, jumlah perusahaan *fintech* berizin dan terdaftar di OJK berjumlah 153 perusahaan, yang sebelumnya hanya berjumlah 99 per Januari 2019. Keadaan ini dipicu oleh layanan *fintech* yang hadir sebagai sarana peningkatan layanan jasa dalam bidang perbankan oleh perusahaan rintisan melalui pemanfaatan teknologi internet, komunikasi, *software* dan komputerisasi (Ansori, 2019). Oleh karenanya, berbagai respons positif terus berdatangan seiring dengan perjalanan teknologi ini.

Salah satu layanan *fintech* yang terus diganderungi oleh masyarakat adalah *crowdfunding* (urun dana). Istilah *crowdfunding* bermakna kegiatan pengumpulan dana dari gabungan beberapa investor atau patungan dengan bantuan platform internet khusus (Herna et al., 2019). Dapat pula diartikan bahwa *crowdfunding* ialah pendanaan terbuka dalam bentuk donasi yang memanfaatkan platform internet untuk suatu tujuan tertentu (Barthelemy & Irwansyah, 2019). Artinya, pihak yang menjadi sasaran *crowdfunding* adalah mereka yang akan mengembangkan usaha tetapi terbentur dari sisi permodalan. Secara umum, penghimpunan dana yang dilakukan melalui layanan ini diperuntukkan untuk suatu proyek dan penggalangan dana sosial (Njatrijani, 2019). Jika diperhatikan, konsep

kerja *crowdfunding* sama dengan prinsip gotong royong yang mencerminkan budaya bangsa Indonesia, yaitu ditandai dengan adanya perlakuan tolong menolong atas sesuatu yang melibatkan banyak pihak di dalamnya yang dalam hal ini yaitu mengumpulkan bantuan berupa uang.

Secara historis, layanan *crowdfunding* pertama kali dipraktikkan di Amerika pada tahun 2009 melalui situs Artistshare (Ariyanti et al., 2020). Situs ini diprakarsai oleh sekumpulan musisi yang terhenti produksi atas suatu karya, sehingga membutuhkan dukungan dana dari para penggemar. Setahun setelahnya, muncul pula situs lainnya yang bergerak pada bidang yang sama setelah melihat respons postitif yang diberikan pada kegiatan sebelumnya. Sementara di Indonesia, tahun 2011 menjadi tahun perdana layanan *crowdfunding* dijalankan. Saat itu, aksi penggalangan dana dilakukan untuk membantu terlaksananya produksi film Antabuana 39 Celcius yang terhenti karena ketidaksesuaian dana yang ada dengan dana yang akan dikeluarkan serta penggalangan untuk aksi menolak penggusuran lahan sekolah di Depok dengan adanya ikon tagar *SaveMaster* (Ariyanti et al., 2020). Dua tahun kemudian, muncul pula situs yang bernama *Kitadapat.com* dalam melakukan penggalangan dana (Intyaswati, 2016). Berbeda dari situs sebelumnya, *Kitadapat.com* mengalami sedikit perubahan dari kegiatan sebelumnya. Platform *Kitadapat.com* membutuhkan media sosial sebagai fasilitas tambahan untuk membantu mensosialisasikan dan mengampanyekan kegiatan yang sedang membutuhkan bantuan finansial hingga akhirnya situs ini semakin mengalami kemajuan dan dipandang sebagai salah satu situs yang paling dipercaya hingga sekarang.

Menurut Schwienbacher dan Larralde (2010), kegiatan *crowdfunding* dalam perkembangannya terbagi atas empat jenis yaitu *donation-based crowdfunding*, *reward-based crowdfunding*, *lending-based crowdfunding,* dan *equity-based crowdfunding* dan *equity crowdfunding* menjadi salah satu jenis yang paling banyak diminati. Konsep *equity crowdfunding* mengarah pada pembiayaan proyek yang ditujukan pada pelaku usaha kecil dengan keterbatasan modal tanpa mengajukan pinjaman kepada pihak profesional dengan segala prosedurnya, tetapi hanya memanfaatkan kecanggihan teknologi. Penggunaan platform yang disediakan juga tidak

menyulitkan pengguna. Pelaku usaha yang memerlukan suntikan dana dari para investor hanya dituntun untuk mengajukan proposal yang berisikan jumlah nominal yang dibutuhkan beserta rincian kegiatan dan batas waktu pelaksanaan program melalui situs yang menjadi pilihan dengan kemudian menunggu investor yang tertarik dengan isi proposal yang diajukan. Kemudahan-kemudahan inilah yang kemudian membuat *equity crowdfunding* menjadi semakin besar.

Melihat semakin luasnya perkembangan *equity crowdfunding* di Indonesia, Pemerintah melalui Otoritas Jasa Keuangan (OJK) dengan sigap mengeluarkan peraturan teknis terkait *fintech* yaitu POJK No.37/POJK-04/2018 tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi *(Equity Crowdfunding)*. Sayangnya, penerbitan aturan ini tidak dibarengi dengan aturan khusus yang lebih spesifik, sehingga memunculkan berbagai kekhawatiran yang terus membayangi setiap langkah pihak-pihak yang terlibat. Ibarat koin yang memiliki dua sisi yang saling bertolak belakang, kegiatan *equity crowdfunding* selain memiliki sisi yang menguntungkan juga terdapat sisi yang saling berbenturan yang berpotensi menimbulkan risiko-risiko. Hal ini dapat dilihat pada tingginya tindakan penyadapan, pembobolan hingga *cybercrime* yang kerap menimpa situs-situs *online* (Chrismastianto, 2017).

Di Denmark, kegiatan *equity crowdfunding* hanya dapat dilakukan oleh perusahaan tertentu. Dalam pengoperasiannya, platform urun dana harus tunduk pada peraturan perundang-undangan fiskal yang berlaku. Terhadap kejahatan yang kerap menimpa situs *online*, pemerintah Denmark menyediakan fitur keamanan khusus untuk melakukan pengujian terhadap platform yang akan digunakan. Sebelum para pihak menggunakan platform yang tersedia, pihak penyelenggara diharuskan untuk melakukan penilaian kepada pihak yang menggunakan platform terkait pengetahuan dan pengalaman mereka dalam bisnis jenis ini serta pemahaman terhadap risiko yang diakibatkan oleh adanya transaksi dengan model demikian.

Kendati telah memiliki sebuah regulasi untuk membarengi setiap kegiatan *equity crowdfunding*, keadaan ini justru tidak membuat pelaksanaannya baik-baik saja. Perkembangannya yang semakin besar mendatangkan permasalahan yang tak berkesudahan. Lahirnya berbagai

kejahatan terus membayangi setiap pelaksanaan kegiatan jenis ini. Sementara di sisi lain, kejahatan yang terjadi terus berubah-ubah sampai pada titik regulasi yang ada tidak mampu memayungi setiap permasalahan yang baru muncul. Akibatnya, ketakutan tidak adanya suatu kepastian hukum, tidak terwujudnya suatu keadilan, dan tidak terpenuhinya perlindungan terhadap pihak yang menjalankan sebagaimana tujuan dari adanya hukum tidak mampu ditegakkan. Belum lagi jika terdapat pergesekan antara regulasi yang satu dengan regulasi lainnya yang memberikan suatu ketidakpastian hukum.

Ketentuan dalam POJK No.37/POJK-04/2018 dengan Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal jo Undang-Undang Nomor 21 Tahun 2012 tentang OJK menjadi salah satu contoh dari adanya pertentangan pada penegakan hukum mengenai urun dana. Undang-Undang Nomor 21 Tahun 2012 menjelaskan bahwa *equity crowdfunding* merupakan kegiatan jasa keuangan dalam ruang lingkup pasar modal memberikan kewenangan kepada Otoritas Jasa Keuangan untuk melakukan pengawasan terhadap jalannya kegiatan ini. Sementara dalam Undang-Undang Nomor 8 Tahun 1995 tidak mencantumkan *equity crowdfunding* sebagai definisi dari pasar modal.

Di samping permasalahan tersebut, kekhawatiran lain yang begitu mendesak ialah belum tersedianya aturan hukum jelas yang mengatur perihal *fintech* terkait perlindungan data dan privasi pengguna yang mendaftarkan dirinya pada platform *online* yang tersedia. Melihat pelaksanaan di berbagai negara, terdapat ketentuan yang harus diperhatikan mengenai perlindungan data dan privasi, tetapi tidak demikian dengan Indonesia. Mengingat maraknya kejahatan dunia maya yang terjadi dan kerap teretasnya gudang data, menjadikan perlindungan data dan privasi sudah pada tingkat kegentingan yang memerlukan perealisasiannya dengan segera.

Menyikapi permasalahan-permasalahan yang terus terjadi dalam pelaksanaan *equity crowdfunding*, Pemerintah baru-baru ini mengeluarkan kebijakan baru yang tertuang dalam POJK No.57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi. Ketentuan ini merupakan wujud keseriusan Pemerintah dalam menyikapi ketidakpastian hukum yang selama ini terus membayangi

pelaksanaan kegiatan *equity crowdfunding*, khususnya mengenai perlindungan hukum bagi para pihak yang melakukan bisnis *crowdfunding*. Menariknya, salah satu bunyi pasal dalam peraturan terbaru tepatnya Pasal 91 menyatakan bahwa, "Pada saat POJK ini mulai diberlakukan, aturan mengenai layanan urun dana melalui penawaran saham berbasis teknologi informasi dalam POJK Nomor 37/POJK.04/2018 resmi dicabut dan dinyatakan tidak berlaku". Artinya, ketentuan POJK Nomor 57/POJK.04/2020 menggantikan posisi POJK Nomor 37/POJK.04/2018.

Kemudian muncul pertanyaan, apakah aturan hukum baru terkait *equity crowdfunding*, sebagaimana diinformasikan di atas, mampu untuk memberikan kepastian hukum terhadap perlindungan data dan privasi yang selama ini menjadi kekurangan dari aturan sebelumnya? Inilah yang kemudian menarik untuk dikaji lebih lanjut. Berdasarkan beberapa uraian yang telah dikemukakan di atas, terkait dengan peraturan POJK No.37/POJK.04/2018, Undang-Undang Pasar Modal hingga peraturan POJK No.57/POJK.04/2020 yang menghapus pemberlakuan peraturan POJK sebelumnya mengenai *equity crowdfunding*, dapat disimpulkan bahwa perlu adanya pengkajian lebih lanjut untuk melihat sejauh mana aturan hukum yang ada menjamin kepastian terhadap perlindungan data dan privasi para pihak yang melakukan kegiatan layanan urun dana.

A. Pengelolaan dan Perlindungan Data dan Privasi di Indonesia

Perkembangan teknologi informasi berbasis internet telah memengaruhi setiap perjalanan hidup manusia. Hadirnya platform *online* memberikan kemudahan kepada masyarakat dalam menjalankan aktivitas seiring dengan perkembangan teknologi tersebut. Perkembangan teknologi saat ini tidak hanya menawarkan berbagai keunggulan dalam penggunaannya, tetapi juga sisi gelap yang dapat menghancurkan tatanan kehidupan dan kebudayaan manusia itu sendiri (Tumalun, 2018). Pada era digital, kita dihadapkan pada keadaan bahwa toko-toko perbelanjaan mulai sepi pengunjung dan bank konvensional yang tidak melayani nasabah sebagaimana biasanya. Keadaan di atas timbul karena adanya perubahan gaya hidup masyarakat dari konvensional tradisional menjadi komputerisasi/digital yang lebih modern (Ekawati, 2018). Dengan

kecanggihan teknologi, seseorang dapat mengakses segala keperluannya melalui telepon seperti berbelanja, melakukan transaksi keuangan, dan sebagainya tanpa harus mengantri atau berdesakan di tempat secara langsung. Meskipun demikian, teknologi informasi saat ini dapat menjelma menjadi sarana efektif perbuatan melawan hukum (Agus & Riskawati, 2016). Hal ini dikarenakan adanya anggapan bahwa informasi merupakan penguasa yang dapat menentukan nasib seorang manusia (Siagian et al., 2018).

Dewasa ini, teknologi informasi merupakan media penghubung informasi antarnegara. Untuk mengetahui kondisi di suatu negara tidak lagi sesulit biasanya. Teknologi informasi akan memberikan segala hal yang dibutuhkan walaupun sesuatu itu tidak berada di sekitar kita, bahkan sampai mengharuskan kita datang ke tempat tersebut untuk memperoleh informasi tersebut. Yang dibutuhkan hanyalah koneksi antarnegara untuk saling bertukar data yang dibutuhkan. Keadaan demikian menjadikan manusia semakin dekat dengan teknologi ini, bahkan tingkat ketergantungan masyarakat kian meningkat. Sebaliknya, tingginya tingkat ketergantungan manusia pun sebanding dengan tingkatan risiko yang ditimbulkan (Napitupulu, 2017).

Beredarnya berbagai informasi yang diterima masyarakat membuat sulitnya penerimaan kebenaran oleh si penerima data. Setiap data yang diterima seolah benar tanpa dilakukan penyaringan dan pengecekan terlebih dahulu. Suatu kebohongan informasi bahkan dapat menjadi suatu kebenaran. Selain itu, dunia digital juga menumbuhkan kejahatan lain seperti penipuan, manipulasi data, penyadapan data orang lain, *hacking*, dan *spaming email*. Indikasi kejahatan tersebut telah terjadi sejak tahun 2003, hanya saja bentuk kejahatan yang terjadi saat itu terkait perjudian *online*, *money laundering*, pornografi, ATM/EDC *skimming, malware (virus/bots/ worm),* dan kejahatan lainnya (Aswandi et al., 2020). Segala bentuk kejahatan *cyber* terus berlangsung, bahkan kejahatan tersebut telah merambah ke ranah pengelolaan data dan informasi terutama pada perlindungan data pribadi *(the protection of privacy rights)*.

Kemajuan teknologi informasi mengakibatkan data privasi seseorang menjadi mudah tersebar. Sebagai contoh, saat seseorang mengakses salah satu teknologi informasi seperti *mailing list* di internet,

maka ada kewajiban yang dibebankan kepada pengguna untuk mengisi data terkait data pribadi yang dibutuhkan untuk kepentingan platform yang digunakan (Latumahina, 2014). Seperti nama lengkap, tempat tanggal lahir, dan nomor telepon, kendati *website* yang kita gunakan telah mengetahui IP kita. Data pribadi dalam Kamus Besar Bahasa Indonesia adalah suatu data yang menyajikan informasi berupa nama, umur, jenis kelamin, pendidikan, pekerjaan, dan alamat seseorang. Data pribadi merupakan ranah privasi seseorang yang tidak dapat dipaksakan publikasinya kepada pihak lain. Teori hak privasi diperkenalkan melalui karya Samuel Warren dan Louis Brandeis dalam *The Right to Privacy* pada tahun 1890 pada *Harvard Law Review*. Dalam tulisannya diusulkan adanya pengakuan hak individu *"right to be let alone"* dan pandangan bahwa hak jenis ini merupakan hak asasi manusia yang harus dilindungi keberadaannya (Dewi, 2016).

Suatu informasi dikatakan data pribadi jika bertalian dengan seseorang serta dari data tersebut dapat dilakukan pengidentifikasian terhadap si pemilik data (Dewi Rosadi & Gumelar Pratama, 2018). Identifikasi terhadap seseorang dapat dilakukan melalui kartu identitas menggunakan nomor yang tertera dan terhadap fisik, psikologi, sosial dan budaya. Mengenai hal perlindungan data pribadi, perlu dipahami bahwa hak perlindungan data pribadi merupakan transisi dari hak menghormati kehidupan pribadi *(the right to private life)*. Oleh karena itu, orang perorangan merupakan pihak utama atas hak perlindungan data pribadi.

Perlindungan data pribadi mencakup dua kategori subjek hukum. *Pertama* adalah pengelola data pribadi yang dapat berupa orang atau badan hukum, dan organisasi kemasyarakatan yang mengelola data pribadi baik secara sendiri-sendiri maupun bersama-sama. Dalam melakukan pengelolaan data pribadi, pihak pengelola menjalankan serangkaian kegiatan atas data pribadi dengan menggunakan alat olah data secara otomatis atau manual, terstruktur ke dalam suatu sistem penyimpanan data. *Kedua*, badan hukum publik atau swasta dan organisasi masyarakat yang melakukan pemrosesan data atas nama pengelola data.

Adanya perlindungan atas suatu data pribadi dan privasi telah dijamin dalam konstitusi negara Indonesia. Pada ketentuan Pasal 28G menyatakan dengan tegas bahwa diakuinya hak atas perlindungan diri

pribadi, keluarga, kehormatan, martabat, dan harta benda yang berada pada penguasaannya. Kaidah ini lahir karena adanya pengakuan nilai nilai Hak Asasi Manusia yang diatur dengan sangat kompleks dalam Undang-Undang Dasar Tahun 1945 serta pemberian apresiasi atas hak perseorangan. Untuk itu dalam menjamin setiap hak yang telah diberikan oleh UUD 1945 dibutuhkan pengaturan tambahan yang lebih memperkuat penjaminan atas keamanan privasi dan data pribadi serta menjamin terlaksananya iklim dunia usaha yang stabil dan kondusif. Apabila terhadap suatu data pribadi dan privasi diberikan perlindungan hukum, maka akan meningkatkan nilai kemanusiaan, kemandirian dalam mengontrol, dan meningkatkan toleransi serta terhindar dari perbuatan diskriminatif dan kesewenangan-wenangan penguasa (Budhijanto, 2010).

Di Indonesia, ketentuan mengenai perlindungan data pribadi dan privasi telah teraplikasi dalam beberapa peraturan perundang-undangan. Pengaturannya tidak hanya ditemui pada permasalahan di bidang perekonomian, tetapi aspek lain yang membutuhkan pengaturan yang serupa. Berbagai aturan tersebut dapat dijumpai pada Undang-Undang Nomor 10 Tahun 1998 tentang Perbankan, tepatnya pada Pasal 40, yang menyatakan bahwa bank berkewajiban untuk merahasiakan keterangan terkait nasabah dan simpanan yang dimilikinya. Selain itu, seiring dengan berjalannya era digital, telekomunikasi menjadi wadah terpenting dalam transaksi elektronik dan pertukaran informasi, sehingga lahirlah Undang-Undang Nomor 36 Tahun 1999 tentang Telekomunikasi yang mencantumkan tentang larangan penyadapan pada data pribadi seseorang. Aturan hukum ini juga mewajibkan pihak penyelenggara jasa telekomunikasi untuk merahasiakan informasi yang ada pada saat terselenggaranya kegiatan melalui jaringan telekomunikasi.

Perlindungan privasi dan data pribadi dapat digolongkan dalam bentuk data sensitif dan data nonsensitif sebagaimana ditemui di *Uni Eropa Directive* berdasarkan tingkatan berbahayanya data jika diakses oleh pihak luar. Untuk Indonesia, data yang masuk dalam kategori data sensitif adalah data seputar kesehatan. Mengingat betapa krusialnya jika terjadi kebocoran data tersebut, maka Pemerintah telah membuat aturan yang akan melindungi setiap data yang diberikan kepada pelayanan kesehatan.

Pengelolaan administrasi kependudukan juga tak luput dari pengaturan serupa.

Di tengah keberadaan peraturan-peraturan yang mengatur tentang perlindungan data dan privasi di Indonesia, seperti dijelaskan di atas, tidak menjadikan Indonesia terbebas dari segala bentuk kejahatan yang mengakibatkan kebocoran data dan privasi. Dalam kurun waktu beberapa tahun belakangan, ada banyak kasus pencurian data dan jual-beli data pada situs *dark web* dan informasi pribadi oleh oknum yang tidak bertanggung jawab. Meskipun jaminan perlindungan data telah diatur dalam Pasal 15 ayat (1) Undang-Undang ITE yang mewajibkan tiap platform elektronik untuk menjaga keamanannya. Kasus-kasus ini dapat dilatarbelakangi oleh dua factor, yaitu lemahnya sistem keamanan platform dan kurangnya pengawasan dari pihak terkait.

Pada praktiknya, penggunaan istilah setingkat data pribadi di beberapa negara maju dikenal dengan istilah *privasi*. Privasi menggambarkan sebuah kebebasan, kontrol, dan *self-determination* (menentukan nasib sendiri). Menurut *Solove* (Yuniarti, 2019) 6 (enam) rumusan privasi, yaitu:

1. *The right to be let alone*

   Pengertian ini menjelaskan bahwa tiap manusia memiliki hak untuk menyendiri tanpa adanya gangguan dari hiruk pikuk kehidupan luar. Dalam istilah kekinian hal ini sama pemaknaannya dengan istilah *me time* yang memberikan kesempatan kepada diri sendiri untuk mengeksplor segala hal yang ingin dilakukan tanpa adanya gangguan dari luar.

2. *Limited access to the self*

   Rumusan kedua berarti hak untuk menutup diri dari orang lain. Jelas bahwa setiap orang memiliki pilihan untuk kapan ia membagikan informasi tentangnya kepada orang lain atau sebaliknya menutup segala informasi dari pihak luar.

3. *Secrecy*

   Secrecy bermakna hak untuk menutup suatu hal tertentu dari orang lain. Tidak semua bentuk informasi dapat dikonsumsi publik. Semua

orang pasti memiliki rahasia yang tidak ingin dibagi kepada pihak lain. Konsep rahasia ini memiliki persamaan dengan *secrecy*.

4. *Control over the personal information*

   Terkait *control over the personal information*, lebih mengarah pada hak dalam mengendalikan informasi pribadi. Si pemilik informasi akan menentukan bagian mana dalam dirinya yang dapat untuk dipublikasikan dan bagian mana yang hanya akan disimpan sendiri sebagai suatu privasi.

5. *Personhood*

   Berarti hak untuk melindungi kepribadian.

6. *Intimacy*

   Hak untuk berhubungan dengan pihak lain. Sebagai manusia, hubungan sosial menjadi sangat penting mengingat manusia tidak dapat hidup sendiri.

Pengertian privasi dalam pandangan Alan Westin (Cate, 2000) adalah suatu bentuk informasi yang diklaim oleh perorangan atau kelompok yang mengontrol atas informasi mereka dalam menentukan kapan suatu informasi diumumkan, bagaimana cara mempublikasikannya, dan sejauh mana informasi terkait dirinya dibagikan kepada pihak lain (Cate, 2000). Privasi diakui sebagai suatu hak dasar yang telah melekat dari diri manusia sejak ia dilahirkan. Untuk itu, privasi keberadaannya harus dilindungi oleh negara dengan membuat aturan hukum agar kedudukan kuat di mata hukum itu sendiri. Konsep privasi sebagaimana muncul dari gagasan Hakim Amerika Serikat berdasarkan pada dua hal penting, yaitu menyangkut kehormatan atas pribadi seseorang dan kemandirian pribadi (Djafar, 2019). Situasi ini yang kemudian menghadirkan pembenaran terhadap konsep privasi di berbagai negara seiring dengan munculnya berbagai gejolak yang menuntut adanya perlindungan terhadap hak tersebut. Berdasarkan hal itu, lahirlah ruang lingkup hak privasi apabila terdapat suatu fenomena yang mengakibatkan terganggunya data pribadi. Adapun ruang lingkup yang dimaksud oleh Prosser (2010) adalah sebagai berikut:

1. Gangguan terhadap aksi pengasingan diri,
2. Fakta pribadi yang dipublikasikan,
3. Suatu keadaan yang menempatkan seseorang bersalah di hadapan umum,
4. Tanpa izin memiliki suatu data diri orang lain untuk kepentingan yang dapat merugikan si pemilik identitas.

Kendati didefinisikan sebagai sesuatu hal yang menyangkut identitas seseorang, Yuwinanto memandang privasi sebagai konsep abstrak yang memiliki banyak pengertian (Sautunnida, 2018). Berbeda dengan Gavison yang mengkategorikan privasi dalam tiga unsur independen, yaitu kerahasiaan, anonimitas, dan kesendirian (Gavison, 1980). Dalam istilah bahasa Inggris, privasi yang berasal dari kata *privacy* memiliki pengertian yang intinya kemampuan seseorang dalam memilih mana yang akan dibagikan kepada khalayak dan mana yang hanya menjadi rahasia pribadi. Data pribadi tidak dapat dipisahkan dari konsep privasi. Bocornya data pribadi akan menjadi hal yang mengganggu privasi seseorang. Artinya, data pribadi merupakan suatu bahan yang kemudian apabila terekspos akan menjadikan dunia luar mengetahui siapa dan segala informasi yang berkenaan dengan dirinya.

Pengaturan privasi dan data pribadi sebagai suatu hak asasi manusia dijamin dalam Pasal 12 Deklarasi Universal Hak-hak Asasi Manusia yang dengan tegas menyatakan bahwa kemajuan suatu peradaban pada sebuah negara ditentukan sejauh mana negara mengapresiasi privasi warga negaranya dan merumuskannya dalam suatu aturan perundang-undangan (Priscyllia, 2019). Ketentuan ini dipertegas dalam Pasal 17 Konvenan Internasional tentang Hak Sipil dan Politik, yang telah diterjemahkan dalam bahasa Indonesia dengan pengertian sebagai berikut:

1. Tiada seorang pun yang dapat dicampuri urusan yang menyangkut pribadi, keluarga, dan segala hal yang bertalian dengannya, seperti dalam hubungan surat-menyurat dengan sewenang-wenang serta tindakan yang mengakibatkan terserangnya kehormatan dan nama baik.
2. Terhadap kegiatan yang mengusik ranah privasi tersebut, pihak yang berhak atas data privasi diberikan suatu jaminan yang dapat melindungi dirinya dari kegiatan yang membahayakan tersebut.

Meskipun keberadaan privasi telah diatur sedemikian rupa, tetapi terdapat pengecualian yang harus diperhatikan oleh pihak-pihak yang menguasai data pribadi dan privasi. Merujuk pada ketentuan OECD, suatu privasi menjadi tidak absolut jika berhubungan dengan kebutuhan akan data privasi itu dalam penerapannya untuk kepentingan negara sepanjang terhadap data yang bersangkutan tidak disalahgunakan dan dijadikan konsumsi publik. Artinya, dalam kegiatan ini, hanya negara melalui lembaga yang berwenang yang mengetahui data privasi seseorang yang diminta data-datanya. Ini pula yang kemudian dikembangkan oleh Warren (Warren et al., 1890) yang membuat beberapa pengecualian atas keabsolutan data privasi sebagaimana dijelaskan di atas, yaitu:

1. Adanya kemungkinan publisitas data pribadi seseorang ke ranah public,
2. Suatu perlindungan tidak dapat diberikan jika tidak menimbulkan kerugian,
3. Privasi tidak berlaku jika disetujui oleh pihak yang memiliki data pribadi untuk disebarluaskan,
4. Privasi yang dilindungi karena kerugiannya yang sulit dinilai karena berkenaan dengan mental seseorang sehingga kerugiannya lebih besar dari kerugian fisik.

Konsep perlindungan data pribadi tidak terlepas dari teori informasi pribadi dan data pribadi. Pada penerapannya di Amerika Serikat, istilah yang digunakan negara ini adalah informasi pribadi, sedangkan untuk wilayah Uni Eropa dan negara lain, termasuk Indonesia, menggunakan istilah data pribadi. Saat ini, terdata sebanyak 107 negara yang telah memiliki perlindungan data pribadi.

B. Perlindungan Data dan Privasi di Berbagai Negara

Perlindungan data pribadi dan privasi merupakan hak fundamental yang dimiliki oleh setiap manusia dan diakui sebagai suatu Hak Asasi Manusia (HAM). Sejumlah negara telah mengakui pentingnya perlindungan terhadap data pribadi dan privasi dengan menuangkannya dalam bentuk peraturan perundang-undangan atau dalam bentuk "*habeas data"* yakni bentuk hak atas rasa aman terhadap data sekaligus pembenaran apabila ditemukan kesalahan pada data tersebut. Pada

praktiknya di beberapa negara, perlindungan yang diberikan oleh negara kepada warga negaranya mengenai data pribadi dan privasi bervariatif. Terhadap penegakannya di berbagai negara juga berbeda ditandai dengan adanya negara yang membentuk suatu lembaga pengawas khusus sebagai penegak aturan dan pihak yang melakukan pengawasan atas terlindunginya data dan privasi dalam bentuk lembaga independen dan negara yang hanya memberdayakan lembaga yang telah ada yang diberikan wewenangnya oleh aturan perundang-undangan negara yang bersangkutan.

Pengaturan mengenai perlindungan data pribadi dan privasi di kawasan *European Union* (Uni Eropa) dimuat dalam *The European Union Chapter of Fundamental Right*. Namun seiring perkembangannya, muncul permasalahan di negara-negara anggota Uni Eropa dalam pelaksanaan aturan ini yang mengakibatkan timbulnya inkonsistensi, ketidakpastian hukum, dan kompleksitas. Fenomena ini yang kemudian mendorong lahirnya *The General Data Protection Regulation* (GDPR) sebagai suatu aturan yang dapat memperkuat upaya perlindungan hukum oleh negara terhadap data pribadi yang berlaku sejak tanggal 25 Mei 2018 sebagai suatu aturan yang dapat diadopsi oleh 28 negara anggota Uni Eropa. Selain itu, Uni Eropa membentuk lembaga yang diberi nama *Police Directive* sebagai lembaga yang berwenang untuk melakukan pengawalan jalannya ketentuan yang diamanatkan undang-undang. Dalam pembentukannya, EU GDPR bertujuan untuk memperkuat perlindungan pada data pribadi dan privasi dan menjamin konsistensi pelaksanaannya di seluruh wilayah Uni Eropa. Adanya aturan baru ini juga untuk menyeimbangkan perkembangan teknologi digital yang semakin kompleks, mengingat aturan sebelumnya hanya mengatur perihal penting sebelum teknologi *smartphone* dan internet merambah ke kehidupan manusia era modern.

Pada era digital, ketentuan sebagaimana dalam aturan baru menuntut pembentukan lembaga khusus dalam melakukan pengawasan dan perlindungan bagi seluruh warga Negara Uni Eropa perihal proses data pribadi dan menjatuhi hukuman berupa sanksi apabila ditemui pelanggaran penggunaan data pribadi oleh pihak lain. Aturan tersebut juga mengatur tentang kategori khusus terkait data pribadi. Yang

termasuk dalam klasifikasi khusus tersebut, di antaranya seputar data ras atau etnis, agama, keanggotaan serikat pekerja, opini politik, data kesehatan, hingga data seputar kehidupan seksual dan data genetik. Penggolongan ini dibuat dengan tujuan pengidentifikasian orang secara alami. Pada pelaksanaanya, GDPR dijadikan acuan peraturan untuk adanya aturan baru yang berlaku pada tiap-tiap negara anggota Uni Eropa. Artinya GDPR adalah aturan tertinggi pada Uni Eropa yang menjadi rujukan dalam pembentukan aturan yang sama pada masing-masing negara di wilayah Uni Eropa.

Jerman didaulat sebagai negara pertama yang mengesahkan peraturan perundang-undangan mengenai perlindungan data pada tahun 1970. Regulasi yang dimiliki oleh negara Jerman bahkan lebih dahulu ada dibandingkan EU GDPR. Pada tahun 1983, Mahkamah Konstitusi Jerman menyatakan bahwa pengendalian terhadap data pribadi merupakan hak dari si pemilik data secara penuh. Untuk itu, dalam pengaplikasiannya, dirumuskan dalam suatu aturan yang menyatakan bahwa perlindungan data dan privasi sebagai hak konstitusional tiap individu yang bertanggung jawab penuh atas datanya. Tiga tahun setelahnya, tahun 1973, Swedia menjadi negara kedua yang memberlakukan aturan nasional perihal perlindungan data dan privasi yang diikuti pula oleh Perancis, Swiss, dan Austria pada 1978.

Sementara di Inggris, regulasi perlindungan data dan privasi diatur dalam *Data Protection Act* 1998. Pada ketentuan ini menjelaskan adanya lembaga independen yang dibentuk untuk mengawasi hak informasi dalam perlindungan data dan pemberi jaminan atas perlindungan jaminan tersebut sebagaimana termaktub dalam *Privacy and Economic Communication (EC Directive) Regulation 2003, Freedom of Information Act 2000, the Environmental Information Regulation 2004, INSPIRE Regulations, dan Re-Use of Public Sector Information Regulation* (ICO, 2019). Pengelolaan data pribadi harus didasarkan pada persetujuan guna mencegah adanya penyalahgunaan penggunaan data yang berujung pada kerugian terhadap pihak yang datanya disalahgunakan, sebagaimana diamanatnya melalui data *protection act* 1998. Aturan ini juga mencantumkan kebijakan transfer data terhadap negara tujuan yang akan ditransfer terhadapnya suatu data untuk menjamin keamanan data dari segala bentuk tindakan.

Terhadap negara tujuan diharuskan memiliki aturan yang menjamin terlindunginya data yang ditransfer dari Inggris ditandai dengan adanya regulasi hukum yang sepadan dengan ketentuan sebagaimana berlaku di negara asal. Jika negara tujuan belum memiliki aturan mengenai perlindungan data pribadi atau sudah memiliki tapi dianggap tidak menjamin terlindunginya data, maka data pribadi yang akan ditransfer tidak dapat dilakukan karena dianggap akan membahayakan keselamatan data pribadi tersebut. Akibatnya, muncul kekhawatiran terhambatnya perdagangan dan bisnis skala internasional di berbagai belahan. Untuk itu, *The Organization for Economic and Corporation Development* (OECD) selaku organisasi internasional yang bergerak di bidang kerjasama ekonomi dan pembangunan mengeluarkan *guidelines* dengan sebutan *Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data.*

Berhubungan dengan perlindungan data dan privasi, OECD turut serta mengeluarkan kebijakan menyangkut prinsip dasar yang dapat dijadikan pedoman dalam membuat suatu aturan. Adapun prinsip dasar yang dimaksud adalah sebagai berikut (OECD, 2019):

1. Prinsip pengumpulan batasan *(collection limitation principle),*
2. Prinsip kualitas *(data quality principle),*
3. Prinsip tujuan khusus *(purpose specification principle),*
4. Prinsip batasan penggunaan *(use limitation principle),*
5. Prinsip perlindungan keamanan *(security safe-guard principle),*
6. Prinsip keterbukaan *(openness principle),*
7. Prinsip partisipasi individual *(individual participation principle),*
8. Prinsip akuntabilitas *(accountability principle).*

Prinsip tersebut kemudian diadopsi oleh beberapa negara, tak terkecuali Malaysia. Penerapan prinsip-prinsip tersebut dituangkan dalam kaidah perundang-undangan Malaysia yang diberi nama *Personal Data Protection Act* No. 709 of 2010 (PDPA). Ketentuan ini mengatur tentang ketentuan denda yang tertera dalam KUHP Malaysia dan regulasi terkait data pribadi yang harus dilindungi telah ada sejak tahun 2013 (Greenleaf, 2013). Pada ketentuan tersebut memuat tujuh ketentuan prinsip perlindungan data pribadi sebagaimana dapat dilihat pada Part 2 tentang *Personal Data Protection Division 1 Section 5* yang berisikan tentang

perlindungan data pribadi oleh pengguna data harus disesuaikan dengan prinsip data pribadi tersebut. Adapun tujuh prinsip yang dimaksud adalah (Rizal, 2019):

1. Prinsip umum,
2. Prinsip pemberitahuan dan pilihan,
3. Prinsip pengungkapan,
4. Prinsip keamanan,
5. Prinsip retensi,
6. Prinsip integritas data,
7. Prinsip akses.

Pihak yang dibebankan atas tujuh prinsip di atas adalah setiap orang yang memproses dan memiliki kendali dalam pengelolaan data pribadi dalam melakukan aktivitas transaksi komersial. Selain PDPA, Malaysia juga mengatur ketentuan sanksi yang akan dibebankan kepada pihak yang menyalahgunakan berupa hukuman penjara maksimal lima tahun dan denda maksimal lima ratus ribu ringgit Malaysia atau juga kedua-duanya jika pihak tersebut mencampuri ranah privasi orang lain. PDPA Malaysia tidak hanya mengatur prinsip yang telah disebutkan di atas, melainkan juga ketentuan terkait hak-hak pemilik data, tata cara pemindahtanganan data, dan kewajiban penyimpanan data oleh pihak yang berwenang untuk itu serta tata cara pengajuan komplain jika terdapat suatu keadaan dimana data pribadi seseorang dipindahtangankan secara tidak sah.

Pihak yang bertugas untuk menerima laporan dari adanya peristiwa pemindahan data secara melawan hukum dan penyalahgunaan data pribadi yang ada adalah Komite Penasihat Perlindungan Data Pribadi (Wahyudi, 2016). Dibentuk pula peradilan khusus, yaitu peradilan banding sebagai lembaga yang menyelesaikan masalah terkait secara yudisial. Aturan dalam PDPA bertujuan untuk mengatur pengolahan data pribadi oleh pengguna dalam melaksanakan transaksi komersial demi terlindunginya kepentingan subjek data. Tujuan ini tercapai dengan memastikan adanya persetujuan dari pemilik data yang diperoleh sebelum terjadinya pengolahan data serta diberikannya hak untuk mengakses dan mengontrol pengolahan data pribadi tersebut.

Apabila dibandingnya dengan Indonesia, ketentuan ini dapat dijumpai pada Pasal 26 Undang-Undang Nomor 11 Tahun 2008 tentang Informasi

dan Transaksi Elektronik jo Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, yaitu "penggunaan segala bentuk informasi melalui media elektronik terkait data pribadi seseorang harus dilakukan seizin pihak yang bersangkutan, kecuali ditentukan lain oleh suatu aturan undang-undang," (ITE, 2016). Apabila terdapat suatu bentuk pelanggaran, maka pihak yang dirugikan dapat mengajukan gugatan atas kerugian yang ada. Kendati demikian, dalam konteks perlindungan data pribadi dalam pengaturan ini belum mencerminkan suatu ketegasan yang komprehensif.

Tak jauh berbeda dengan Malaysia, Hongkong adalah negara Asia pertama yang meluncurkan peraturan perundang-undangan terkait privasi data, sebagaimana tercantum dalam *Personal Data Privacy Ordinance of* 1995 (PDPO). Pelaksanaan PDPO dilaksanakan oleh *Privacy Commisioner for Personal Data* (PCDP) selaku otoritas yang menangani segala bentuk permasalahan yang berkenaan dengan privasi data. Aturan sebagaimana tertera dalam PDPO pernah mengalami perubahan pada tahun 2012 karena terdapat prinsip yang tidak dapat diaplikasikan (Greenleaf, 2013). Prinsip yang dimaksud adalah sebagai berikut:

1. Batasan pengumpulan data

   Sama halnya seperti Malaysia, Hongkong juga mengadopsi prinsip batasan pengumpulan data sebagai prinsip yang harus dipatuhi. Prinsip ini berarti pengumpulan data pribadi terbatas pada data yang sah. Tujuannya untuk menyelaraskan fungsi dari adanya pengumpulan data (Alhadeff et al., 2012).
2. Penggunaan dan pengungkapan data pribadi

   Penggunaan dan pengungkapan data pribadi merupakan tindakan yang dilarang, kecuali jika pemilik data pribadi tersebut telah memberikan persetujuan tersurat atau tersirat, atau untuk berbagai pengecualian biasa lainnya. Ada juga pengecualian yang tidak jelas di mana pemrosesan data diperlukan untuk kepentingan yang sah oleh penyelenggara termasuk pengungkapan kepada pihak ketiga, kecuali jika kepentingan tersebut dikesampingkan oleh hak konstitusional pemilik data.
3. Kewajiban kualitas data dan pemberian saran kepada pihak ketiga

Tujuannya lebih pada menjamin akurasi data pribadi dan menghapus jika terdapat data yang tidak sesuai dengan memperhatikan tujuan penggunaan dan tujuan langsung saling berhubungan. Data tidak akurat, menurut Mutiara & Maulana (2020), diartikan sebagai data yang tidak sesuai dengan kebenaran, tidak lengkap, dan menyesatkan. Apabila terdapat data yang tidak akurat, maka Komisioner akan mengeluarkan surat teguran (*enforcement notice*) yang berisikan permintaan dilakukannya perbaikan terhadap perbuatan yang tidak melakukan penjaminan akurasi data secara sistematis.

4. Penghapusan data pribadi

   Data pribadi bukan sesuatu yang dapat disimpan selamanya. Terdapat batasan waktu yang harus diperhatikan oleh pengguna untuk pemenuhan tujuannya.
5. Kewajiban keamanan data

   Pengelola data pribadi diwajibkan untuk menjamin terlindunginya data pribadi dari segala bentuk tindakan pengaksesan tak disengaja, penghapusan, penghilangan, dan penggunaan secara melawan hukum.
6. Keterbukaan mengenai praktik-praktik

   Setiap organisasi dan badan hukum di Hongkong wajib mempublikasikan kebijakan privasi *(privacy policy statement)* ke ranah publik. Apabila tidak diindahkan, maka Komisioner Hongkong dapat melayangkan surat teguran *(enforcement notice)*.

C. Perlindungan Data dan Privasi Pemilik Usaha serta Pemodal *Platform Equity Crowdfunding* Berdasarkan Peraturan Perundang-undangan Indonesia

Pesatnya perkembangan teknologi informasi berbasis internet memicu lahirnya berbagai bentuk kejahatan dunia maya seperti peretasan, penipuan, dan perjualbelian data seseorang pada platform gelap yang begitu membahayakan keselamatan dan keamanan pemilik data. Layanan urun dana *(equity crowdfunding)* juga terkena dampak kejahatan ini. ECF sebagaimana sebutan singkat untuk *equity crowdfunding* merupakan aktivitas yang dilakukan melalui bantuan teknologi internet bahkan

kegiatan ini lahir dari perkembangan teknologi yang terus melakukan inovasi setiap saat. Akibatnya, ECF berada pada posisi yang sangat rentan akan kejahatan-kejahatan yang disebutkan di atas terutama yang berkaitan dengan data pribadi dan privasi. Untuk itu, dalam rangka terpenuhinya rasa aman sebagai suatu hak yang dimiliki oleh warga negara, pemberian suatu perlindungan hukum terhadap keberadaan data dan privasi tersebut menjadi sesuatu hal yang harus diperhatikan.

Sebelumnya perlu dipahami terlebih dahulu mengenai *equity crowdfunding* dan elemen-elemen yang ada di dalamnya. ECF didefini-sikan sebagai suatu kegiatan pengumpulan dana yang dihimpun oleh beberapa orang atau lebih untuk membantu membiayai suatu kegiatan baik sosial maupun usaha yang membutuhkan suntikan dana agar tidak terhenti di tengah jalan (A Schwienbacher, 2019).

Para pihak yang terlibat dalam aktivitas *crowdfunding* terdiri dari tiga pihak yang dikenal dengan istilah *triangular relationship* yaitu Penerbit, penyelenggara, dan pemodal. Adapun penjelasannya dapat diuraikan sebagai berikut.

1. Penerbit

   Penerbit adalah badan hukum yang berbentuk Perseroan Terbatas yang menawarkan sahamnya melalui situs layanan urun dana yang dikelola oleh penyelenggara. Penerbit haruslah berbentuk Perseroan Terbatas, mengingat badan hukum Indonesia yang diberikan kewenangannya oleh undang-undang untuk menerbitkan saham yaitu perseroan terbatas. Pada pelaksanaan *equity crowdfunding*, penerbit yang melakukan penawaran saham tidak dapat disamakan dengan yang dimaksud dalam Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal. Terhadap kegiatan ECF, penerbit bukanlah perseroan yang berbentuk perusahaan publik yang mengharuskan pemegang saham penerbit berjumlah tidak lebih dari 300 orang atau badan hukum dengan jumlah modal yang tidak lebih dari 30 Miliar rupiah.

   Penerbit yang menawarkan saham melalui *equity crowdfunding* tidak dapat berupa:

   a) Perusahaan yang dikendalikan oleh suatu kelompok usaha atau seseorang baik secara langsung maupun tidak langsung

b) Perusahaan terbuka termasuk anak perusahaan terbuka
c) Perusahaan yang memiliki kekayaan lebih dari Rp. 10.000.000.000,- (sepuluh miliar rupiah), tidak termasuk akumulasi tanah dan bangunan.

Sebelum menawarkan sahamnya, penerbit diwajibkan untuk mendaftarkan kepemilikan saham yang dimiliki dalam daftar pemegang saham serta menginformasikannya dalam bentuk laporan tahunan pada Otoritas Jasa Keuangan dan masyarakat melalui pengumuman pada situs yang tersedia dalam jangka waktu selambat-lambatnya 6 (enam) bulan pasca berakhirnya tahun buku penerbit. Laporan tahunan yang diserahkan harus berisikan mengenai informasi dan penggunaan dana yang berasal dari penawaran saham melalui *equity crowdfunding,* sebagaimana diatur dalam peraturan perundang-undangan Perseroan Terbatas.

2. Penyelenggara

Definisi penyelenggara dalam kegiatan *equity crowdfunding* adalah badan hukum Indonesia yang berbentuk perseroan terbatas dan/atau koperasi (Pasal 8 POJK No. 57/POJK.04/2020). Mengenai perusahaan terbatas dapat berupa perusahaan efek yang sebelumnya telah memperoleh persetujuan dari Otoritas Jasa Keuangan untuk melakukan kegiatan di luar kegiatan penyelenggara, sementara terhadap koperasi hanya sebatas koperasi yang bergerak di bidang jasa. Dalam menjalankan kegiatan ECF, perseroan terbatas dan koperasi yang bertindak sebagai penyelenggara diwajibkan untuk memiliki modal paling sedikit Rp. 2.500.000.000,- (dua milyar lima ratus juta rupiah) yang disetorkan pada saat mengajukan permohonan izin. Setelah itu, penyelenggara yang telah melewati semua proses di atas diharuskan pula untuk memiliki izin usaha yang dikeluarkan oleh lembaga yang berwenang dalam hal ini Otoritas Jasa Keuangan.

Perusahaan yang telah memperoleh izin OJK dapat menjalankan tugasnya sebagai penyelenggara setelah melakukan pendaftaran diri selaku penyelenggara sistem elektronik pada Kementerian Komunikasi dan Informatika dengan dibebankan kewajiban sebagai berikut (Pasal 70 dan 72 POJK No. 57/POJK.04/2020):

a) Melakukan kajian terhadap penerbit, meliputi legalitas penerbit yang ditandai dengan bukti pengesahan badan hukum, struktur perseroan, aspek penambahan modal, batasan penerbit, dan perizinan yang berkaitan dengan kegiatan usaha penerbit yang akan didanai melalui penawaran saham EFC, serta dokumen atau informasi dalam bentuk lain oleh penerbit pada saat penawaran saham melalui EFC.
b) Menjaga kerahasiaan, integritas dan ketersediaan data baik data pribadi, data transaksi dan data keuangan.
c) Menggunakan Escrow dalam penerimaan dana yang terkumpul dari penawaran saham melalui EFC.
d) Memanfaatkan pusat data dan pemulihan bencana di Indonesia.
e) Memenuhi batas standar minimum sistem teknologi informasi, pengamanan teknologi informasi, gangguan dan kegagalan sistem juga alih kelola sistem.
f) Mengaplikasikan prinsip perlindungan pengguna di antaranya transparansi, perlakuan yang adil, keandalan, kerahasiaan data beserta keamanannya, dan penyelesaian sengketa pengguna secara sederhana, cepat, dan biaya murah saat melakukan penyelesaian sengketa internal dan eksternal.

Pada praktiknya, penyelenggara membuat suatu wadah yang menjadi penghubung antara calon pengguna dengan penyelenggara sendiri melalui sebuah platform berbasis *online*. Tujuannya agar terjalin komunikasi yang mudah antara pihak lain dengan penyedia atau pengelola situs dalam menjalankan kegiatan layanan urun dana karena ECF merupakan bisnis berbasis platform dengan memanfaatkan kecanggihan teknologi. Pada platform yang tersedia pula pihak penyelenggara akan mengunggah atau mempublikasikan dokumen dan informasi dalam bentuk apa pun pada situs web penyelenggara agar tersampainya informasi kepada calon pengguna demi terwujudnya transparansi.

3. Pemodal

Pemodal diartikan sebagai pihak yang membeli saham penerbit melalui web penyelenggara. Pemodal dapat berupa orang perorangan atau badan hukum dengan ketentuan yang sebelumnya telah diatur.

Bagi pemodal perseorangan yang belum berpengalaman dalam melakukan investasi pasar modal harus memiliki rekening efek minimal dua tahun sebelum dilakukannya penawaran saham dalam rangka pemenuhan kualifikasi Pasal 42 POJK No.37/POJK.04/2018 tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi. Adapun ketentuannya adalah:

a) Pemodal yang memiliki penghasilan sebesar Rp. 500.000.000,- (lima ratus juta rupiah) dalam hitungan tahun, diberikan kesempatan untuk membeli saham sebesar 5% dari penghasilan yang diperoleh dalam setahun.
b) Pemodal dengan catatan penghasilan di atas Rp. 500.000.000,- (lima ratus juta rupiah) per tahun, dapat membeli saham sebesar 10% dari total penghasilan per tahunnya.

Ketentuan di atas tidak dapat diberlakukan bagi pihak orang perorangan atau badan hukum yang telah berpengalaman dalam dunia investasi pasar modal. Aturan sebagaimana dalam POJK tersebut tidak membatasi adanya kepemilikan saham asing pada kegiatan ini. Artinya aktivitas *equity crowdfunding* tidak hanya diperuntukkan oleh orang perorangan dan badan hukum yang ada di Indonesia saja melainkan juga perorangan dan badan hukum asing.

Setiap pihak yang terlibat dalam kegiatan ECF memiliki kedudukan sesuai porsinya masing-masing. Kedudukan yang dimaksud adalah yang berkenaan dengan kewenangan yang dimiliki beserta hak dan kewajiban yang harus diperhatikan selama kegiatan *crowdfunding* berlangsung. Dalam pelaksanaannya, para pihak yang ada pada ECF memiliki hubungan hukum yang berbeda antara satu dengan yang lain. Misalnya, akibat-akibat yang timbul dari hubungan hukum antara penerbit dan penyelenggara, pemodal dengan penyelenggara, hingga penerbit dan pemodal memiliki hubungan hukum yang berbeda tetapi saling bertalian. Teruntuk penerbit dan pemodal, pada saat menggunakan platform ECF diharuskan adanya pengisian-pengisian data sebagai identitas yang diketahui oleh penyelenggara untuk memverifikasi kebenaran dari pihak yang mengakses web penyelenggara.

Atas data-data yang diberikan oleh pihak-pihak tersebut, maka terhadapnya dibutuhkan suatu perlindungan untuk menjaga identitas mereka dari pihak yang berencana untuk melakukan perbuatan yang melawan hukum, serta sebagai bentuk penghindaran atas kejahatan-kejahatan yang akan membahayakan keselamatan dan keamanan si pemilik data dari pihak yang tidak bertanggung jawab. Mengingat kegiatan *equity crowdfunding* dilakukan pada suatu situs *online* yang rentan terjadinya sabotase dan pengklaiman data oleh pihak lain, sehingga perlindungan yang dibutuhkan haruslah kuat dan termaktub dalam suatu peraturan perundang-undangan.

Sebelum membahas mengenai perlindungan terhadap data dan privasi seperti apa yang akan dikaji, terlebih dahulu kita harus memahami konsepsi dari perlindungan hukum itu sendiri. Bentuk perlindungan hukum yang diberikan oleh suatu Negara dikategorikan dalam dua sifat, yaitu *prohibited* (pencegahan) dan *sanction* (ganjaran atau hukuman) (La Porta et al., 2000). Perlindungan hukum didefinisikan sebagai suatu upaya pemberian bantuan dan pemenuhan hak dalam memberikan rasa aman kepada korban atau saksi yang diwujudkan melalui pemberian kompensasi, bantuan hukum, pelayanan medis, dan restitusi (Soekanto, 2006). Tujuan diberikannya suatu perlindungan hukum adalah untuk merealisasikan terwujudnya keadilan, kepastian, kemanfaatan, ketertiban, dan keamanan sebagaimana positivisme hukum mengaturnya sebagai tujuan dari hukum itu sendiri. Menurut pandangan Muchsin (2003), perlindungan hukum adalah suatu bentuk tindakan yang memberikan perlindungan terhadap individu berdasarkan nilai dan norma yang hidup dan tercermin dalam bentuk sikap dan perilaku demi terwujudnya suatu ketertiban dalam pergaulan hidup manusia. Pendapat berbeda dikemukakan oleh Satjipto Raharjo (2000) yang turut memberikan pandangan bahwa perlindungan hukum adalah suatu bentuk pengayoman yang diberikan negara kepada subjek hukum baik orang maupun badan hukum terhadap hak-hak yang diberikan oleh hukum.

Sedangkan Philipus M. Hadjon (1987) menggambarkan perlindungan hukum sebagai suatu upaya perlindungan atas harkat dan martabat seseorang dari segala bentuk tindakan yang melanggar batas dan pengakuan atas hak mutlak yang melekat pada tiap manusia yang dikenal sebagai Hak

Asasi Manusia. suatu perlindungan hukum dapat ditempuh melalui dua cara, yaitu membuat suatu regulasi guna menjamin hak-hak yang dimiliki oleh subjek hukum serta pemberian hak dan kewajiban yang semestinya diperoleh oleh setiap manusia. Cara kedua yaitu menegakkan peraturan yang telah ada sebagai bentuk pengawalan dan perlindungan yang diberikan oleh negara kepada seluruh warga negaranya melalui lembaga yang mempunyai andil untuk menegakkan aturan yang ada (La Porta et al., 2000).

Setidaknya dalam perkembangan hukum di Indonesia, terdapat dua hal perlindungan hukum yang diberikan oleh masyarakat dalam pandangan Hadjon (1987): perlindungan hukum preventif dan perlindungan hukum represif. Perlindungan hukum preventif adalah perlindungan yang ditujukan kepada rakyat tanpa terkecuali dan diberikannya kesempatan untuk mengajukan keberatan kepada pihak yang merasa haknya terbelenggu tepat sebelum keputusan pemerintah dikeluarkan. Sementara, perlindungan hukum represif diartikan sebagai perlindungan kepada rakyat yang sedang bersengketa. Artinya, perlindungan hukum jenis ini berfokus pada penyelesaian sengketa antar pihak yang terlibat di dalamnya.

Perlindungan hukum tidak hanya berbicara mengenai keadaan fisik seseorang, tetapi telah merambah ke keadaan lain yang bahkan tidak dapat dirasakan tetapi memiliki dampak signifikan bagi keselamatan dan keamanan. Sasaran lain yang dimaksud adalah perlindungan terhadap data dan privasi. Perkembangan era digital yang semakin pesat menjadikan privasi bukan lagi sebagai sesuatu hal yang mahal, tetapi sebagai sesuatu yang dapat dikonsumsi publik dengan sangat mudah. Begitu pula terhadap data pribadi seseorang. Media sosial yang terus berimprovisasi mengikuti perkembangan zaman menjadikan data pribadi seseorang menjadi jaminannya. Mengapa demikian? Saat mengakses salah satu jejaring sosial, seperti *facebook*, calon pengguna diwajibkan untuk melakukan registrasi dengan melampirkan nama lengkap, jenis kelamin, nomor telepon, dan alamat email sebagai suatu persyaratan wajib dan informasi tambahan seperti riwayat pendidikan, riwayat pekerjaan, nama orangtua, pekerjaan, hobi, status dan lain-lainnya. Keseluruhan informasi

ini kemudian ketika kita setujui akan terpampang pada data profil yang dapat dilihat oleh pihak luar.

Dewasa ini, kebijakan mengenai perlindungan data dan privasi telah ada sejak lama. Namun, konteks perlindungan yang diatur berbeda-beda sesuai dengan sasaran kejahatan yang terjadi. Di Indonesia, setidaknya lebih dari lima aturan hukum yang di dalamnya mengatur perihal perlindungan data dan privasi. Pada bidang perekonomian misalnya, memasuki era digital yang semakin canggih mampu mengubah kultur budaya dalam dunia perbisnisan. Model bisnis yang selama ini berlangsung secara konvensional dalam arti saling bertatap muka berubah ke era modern yang berlandaskan pada pemanfaatan kecanggihan teknologi melalui *platform* perbelanjaan yang memberikan kemudahan bagi pengguna dari sisi keunggulannya. Namun, sisi buruknya hadir dari rentannya situs *online* tersebut dari kejahatan seperti peretasan data pengguna.

Pertengahan tahun 2020 silam menjadi catatan kelam bagi tiga situs belanja *online* yang begitu menyita perhatian. Platform *online* besar yang diyakini masyarakat memiliki tingkat keamanan data yang kuat akhirnya berhasil diretas oleh pihak yang tak bertanggung jawab. Tak hanya itu, terhadap data-data yang berhasil diambil alih kemudian diperjualbelikan dalam situs gelap untuk kepentingan pribadi. Adapun ketiga web tersebut adalah (Malia, 2021)

1. Tokopedia. Pada 1 Mei 2020 merupakan hari kelabu bagi salah satu situs *e-commerce* terbesar ini. Tercatat sebanyak 91 juta data pengguna dikabarkan bocor dan setelah dilakukan penelusuran kese-mua data tersebut ditemui pada forum *hacker* untuk dijual seharga lima ribu US dolar.
2. Lima hari setelahnya, tepatnya pada 6 Mei 2020, dilaporkan sebanyak 12,9 juta data pengguna *Bukalapak* kembali ditemukan dalam situs gelap. Data tersebut merupakan data yang telah dicuri sejak tahun 2019. Kasus ini terjadi karena adanya kelalaian dari pihak *Bukalapak* yang mengamini adanya akses tidak sah terhadap *cold storage* yang baru mereka rilis.
3. Kasus yang tak kalah menghebohkan pengguna situs *online* yaitu bocornya data *Bhinneka* sebanyak 1,2 juta data pengguna. Terhadap

data yang berhasil diretas ditemukan pada situs jual beli data di forum pasar gelap *(dark web)*. Pihaknya kemudian menyatakan masih melakukan investigasi terhadap kasus kebocoran tersebut.

Tiga kasus di atas adalah contoh kasus yang mengancam data pengguna yang telah beredar pada situs *dark web*. Kasus yang terjadi pun sangat meresahkan mengingat di Indonesia belum ada aturan hukum yang mengatur mengenai perlindungan data secara spesifik. Terhadap perlindungan data dan privasi, kaidah hukum yang dapat dijadikan rujukan dapat ditemui dalam beberapa peraturan perundang-undangan seperti Undang-Undang Nomor 19 Tahun 2016 tentang perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, Undang-Undang Perlindungan Konsumen, Undang-Undang kesehatan, dan beberapa peraturan perundang-undangan lainnya. Dalam Undang-undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-undang Nomor 11 Tahun 2008 tentang ITE mencantumkan aturan mengenai perlindungan data dan privasi yang dapat ditemui pada pasal-pasalnya mengenai apa yang dimaksud dengan data pribadi dan privasi hingga pemberlakuan sanksi jika terdapat suatu keadaan yang membahayakan jiwa si pemilik data akibat dari adanya keadaan yang menyebabkan bocornya suatu data.

Terkait kegiatan *equity crowdfunding*. Perlindungan terhadap data dan privasi diatur dalam POJK No. 57/POJK.04/2020 pada Pasal 72 hingga 81. Ketentuan Pasal 72 aturan ini mengatur perihal konsep dasar yang dijadikan prinsip dalam perlindungan pengguna sebagai kewajiban penyelenggara yang meliputi:

1. Transparansi

   Prinsip ini mewajibkan adanya transparansi yang terjalin antara penyelenggara, pemodal, dan penerbit terkait aktivitas yang sedang dijalani bersama. Konsep transparansi berarti tiada suatu masalah dalam bentuk apa pun yang ditutupi oleh pihak-pihak tersebut. Penyelenggara juga dibebankan kewajiban untuk melaporkan setiap informasi yang ada kepada pemodal dan penerbit. Sebaliknya, penerbit dan pemodal juga diwajibkan untuk menyerahkan data-data yang sejujur-jujurnya sebagai arsip yang disimpan oleh penyelenggara untuk

mengetahui kejelasan identitas pihak yang menggunakan jasa platform yang disediakan penyelenggara.

2. Perlakuan yang adil

   Dalam menjalankan kegiatan layanan urun dana, penyelenggara tidak diperkenankan untuk memberikan perlakuan yang khusus kepada salah satu pihak di antara pemodal dan penerbit. Dua belah pihak memperoleh hak yang sama dari penyelenggara.

3. Keandalan

   Dalam menjalankan kegiatan layanan urun dana, penyelenggara harus dapat memberikan layanan yang akurat melalui sistem, prosedur, infrastruktur, dan sumber daya manusia yang andal kepada pihak yang menggunakan jasa platform yang disediakan oleh penyelenggara.

4. Kerahasiaan dan keamanan data

   Satu hal yang sangat krusial untuk diperhatikan, yaitu terkait kerahasiaan dan keamanan data. Setiap data yang masuk pada platform terdaftar adalah menjadi tanggung jawab penyelenggara. Kerahasiaan dan keamanan data ini sebagai bentuk perlindungan dan pemberian rasa nyaman dan aman oleh penyelenggara kepada penerbit dan investor yang telah menggunakan jasa platformnya dalam melakukan kegiatan urun dana.

5. Penyelesaian sengketa pengguna secara sederhana, cepat, dan biaya yang mampu dijangkau oleh pihak yang bersangkutan.

   Perihal pembahasan keamanan data seperti yang disinggung pada poin 4 di atas adalah sesuatu hal yang harus dilakukan pembahasan lebih lanjut. Sebagaimana penjabaran kasus yang terjadi pada tiga platform *online* terbesar dalam dunia bisnis menjadi penting untuk diketahui cara penyelesaiannya. Jika diperhatikan lebih lanjut, aturan yang tercantum dalam POJK No. 37/POJK.04/2018 hanya mengatur kewajiban adanya perlindungan atas data dan privasi dengan dibebankan pada pihak penyelenggara. Ketentuan dalam aturan ini sayangnya tidak mencantumkan jenis elemen yang ada pada data yang harus dilindungi tersebut. Oleh karena adanya kekosongan substansi pada aturan tersebut, kita dapat merujuk pada Surat Edaran Otoritas Jasa Keuangan Nomor 14/SEOJK.07/2014 tentang kerahasiaan dan

keamanan data atau informasi pribadi konsumen dengan menitikberatkan pada poin penggolongan data pribadi berupa:

a) Data orang perorangan yang terdiri atas nama lengkap, domisili, tempat dan tanggal lahir, nomor telepon yang aktif, umur, serta nama ibu kandung.
b) Data yang melibatkan korporasi, terdiri atas nama korporasi, alamat lengkap, nomor telepon, struktur direksi dan komisaris, bukti tanda pengenal seperti KTP/Paspor, surat izin menetap dan struktur pemegang saham.

Dalam ketentuan setingkat, diatur pula mengenai elemen data pribadi yang dapat dilihat pada Surat Edaran Otoritas Jasa Keuangan Nomor 18/SEOJK.02/2017 yang berisikan:

a) Data perseorangan yang meliputi data nama, tempat tinggal, tanda pengenal (KTP/Paspor), NPWP (Nomor Pokok Wajib Pajak), tanggal kelahiran, usia, alamat email, nomor telepon, *IP address*, nomor rekening, nama ibu kandung, tanda tangan, nomor kartu kredit, riwayat pendidikan, riwayat pekerjaan, catatan harta kekayaan, rekening Koran dan data lain yang dibutuhkan.
b) Terhadap korporasi, data pribadi meliputi nama, kedudukan, alamat lengkap, nomor ponsel, susunan direksi dan komisaris dilengkapi dengan tanda pengenalnya, daftar nama pemegang saham dalam bentuk struktur, rekening Koran, data aset, serta dokumen lain yang menyangkut perusahaan dan data lainnya.
c) Data nonpublik yang hanya diketahui secara pribadi seperti laporan keuangan, keputusan, kinerja dan manajemennya.
d) Data terkait transaksi keuangan
e) Data-data yang menjadi bagian dalam perjanjian.

Berdasarkan ketentuan yang telah ditetapkan dalam Surat Edaran OJK mengenai hal yang dikategorikan dalam data pribadi, akan memberikan kemudahan dari pelaksanaannya dalam menentukan mengenai perbuatan yang terjadi menyinggung ranah data pribadi yang mengakibatkan terusiknya privasi seseorang atau tidak. Tak jauh berbeda dengan pernyataan dalam General Data *Protection Regulation* (GDPR) yang secara spesifik menjabarkan data pribadi sebagai berikut:

a) Nama
b) Nomor identitas
c) Informasi terkait lokasi
d) Identifikasi secara online
e) Informasi terkait keadaan fisik, psikologis, genetik, keadaan ekonomi, sosial dan budaya dari seseorang tersebut.

Selain ketentuan dalam Pasal 53, Pasal 54 ketentuan POJK No. 37/POJK.04/2018 ini juga mengatur hal yang berkenaan dengan perlindungan data dan privasi. Namun, ketentuan dalam aturan ini mencerminkan kesenjangan yang berujung pada tidak terwujudnya perlindungan terhadap para pihak terutama investor. Pasal 54 ayat (2) mengamanatkan bahwa segala bentuk informasi yang ada pada ayat (1) dipublikasikan pada situs web penyelenggara. Sehubungan dengan kaitannya dalam Undang-Undang Perlindungan Konsumen tepatnya Pasal 4 ayat (3) yang intinya hak atas informasi yang benar, jelas, dan jujur atas kondisi dan jaminan barang atau jasa yang bersangkutan. Artinya pihak yang berhak atas informasi adalah keseluruhan pihak yang berhak untuk itu.

Jika diperhatikan secara umum, tidak ada suatu pertentangan yang terdapat dalam dua aturan di atas. Akan tetapi, dari segi pengertiannya, terdapat adanya pertentangan bahwa pada regulasi dalam POJK. Penyelenggara hanya menyampaikan informasi terkait kegiatan urun dana melalui platform penyelenggara, sementara terhadap pemodal yang merupakan salah satu pihak yang berhak atas informasi tersebut tidak diberitahukan secara langsung melalui nomor telepon dan *email*. Kontradiksi ini jika dikaitkan dengan pasal dalam Undang-Undang perlindungan konsumen yang mengharuskan adanya pemberitahuan informasi secara jelas kepada pihak yang berwenang untuk itu. Maka, akan ada potensi lahirnya ketidakpastian hukum bagi investor.

Selain itu, keadaan di atas memiliki pertalian dengan prinsip dalam layanan urun dana, bahwa setiap pihak yang terlibat dalam kegiatan urun dana berhak atas kesamaan informasi yang ditandai dengan tidak adanya perlakuan berbeda yang diberikan oleh penyelenggara. Dengan demikian, tidak dijalankannya ketentuan yang diamanatkan dalam prinsip pelaksanaan urun dana menggambarkan suatu pelanggaran yang

mencederai pelaksanaan kegiatan tersebut. Ketentuan mengenai pelanyalahgunaan data oleh pihak lain dikarenakan adanya kegiatan peretasan oleh *hacker* di Indonesia tidak dipayungi oleh aturan yang memberikan sanksi yang berat. Kita dapat menelaahnya pada kasus Tokopedia pada tahun 2020 silam.

Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik diperkuat dalam Peraturan Pemerintah Nomor 71 Tahun 2019 tentang Penyelenggaraan Sistem dan Transaksi Elektronik menjadi rujukan hukum atas peristiwa kebocoran data pada platform *Tokopedia*. Berdasarkan aturan yang ada, terhadap kejahatan yang tertuju pada berpindah tangannya informasi akan data seseorang akibat dari kegiatan pencurian oleh pihak luar dikenakan tiga sanksi yang diberikan secara bertahap jika ketentuan dalam pasal yang sebelumnya tidak diindahkan oleh pihak yang melakukan perbuatan melawan hukum tersebut.

Sanksi pertama dalam bentuk surat peringatan. Pemberian surat peringatan ini diberikan oleh penyelenggara kepada pihak luar yang mengambil data tanpa izin sebagai bentuk adanya kesempatan yang diberikan agar data yang ada pada kekuasaannya dikembalikan berdasarkan asas itikad baik. Sanksi kedua yaitu mempublikasikan kasus yang terjadi ke media. Apabila peringatan pertama tidak diindahkan oleh pihak yang bersangkutan, maka penyelenggara diberikan kewenangan untuk mengumumkan peristiwa yang terjadi ke media agar menjadi pembelajaran sekaligus memberikan peringatan kepada platform lain yang ada kemungkinan menjadi incaran selanjutnya. Sanksi ketiga yang menjadi langkah terakhir dalam penegakannya adalah dengan melakukan pemblokiran terhadap platform. Kemudian muncul pertanyaan, apakah dengan melakukan pemblokiran akan menimbulkan efek jera bagi pihak yang melakukan perbuatan tidak menyenangkan tersebut? Berbicara dari segi hukum pidana, segala bentuk pencurian memperoleh hukuman berupa denda dan/atau penjara karena pencurian adalah bentuk perbuatan yang mengambil barang milik orang lain tanpa sepengetahuan si pemilik barang tersebut. Keadaan ini tentunya menimbulkan kerugian bagi pihak yang menguasai barang.

Jika dikaitkan dengan kasus pembobolan data yang dilakukan seharusnya tidak jauh berbeda karena bentuk kejahatannya sama, yaitu mengambil data milik orang lain tanpa sepengetahuan orang tersebut, dan terhadap barang yang dicuri dijadikan sebagai objek yang dapat merugikan pihak yang dicuri datanya. Keadaan demikian kemudian mengharuskan agar kejadian serupa tidak akan terjadi untuk kesekian kalinya. Konsep pemberian hukuman memang bukan untuk memberikan efek jera bagi pelakunya, tetapi tujuan pemberian hukum adalah untuk mencegah terjadinya pengulangan kegiatan yang sama untuk kedua kalinya, sehingga pemberian hukuman harus disesuaikan dengan bentuk kejahatan, akibat dari adanya kejahatan, dan faktor lainnya yang setara. Mengingat akibat yang ditimbulkan dari perlakuan ini mengarah pada keselamatan seseorang maka pemberian sanksi administratif bukanlah sesuatu hal yang tepat.

Berkaca pada penegakan hukum di negara Malaysia terkait perlindungan data dan privasi mencerminkan sesuatu hal yang sangat tegas. Malaysia memberlakukan hukuman penjara dan denda terhadap pihak yang melakukan perbuatan melawan hukum pada aktivitas penyalahgunaan data dan privasi. Selain itu, dapat pula dilihat pada penerapannya di Inggris. Melalui peraturan dalam *The Data Protection Act* 1998, Inggris membentuk badan yang berwenang dalam melakukan pengawasan terhadap pengguna data pribadi. Jika dibandingkan dengan Indonesia, pelaksanaan ini dilakukan oleh Otoritas Jasa Keuangan yang memperoleh mandat dari Undang-undang. Tak jauh berbeda dengan Malaysia, Inggris juga sangat tegas dalam penerapan hukum yang berkenaan dengan data pribadi dan privasi. Misalnya saja dalam hal transfer data, Inggris memberikan kewajiban kepada negara tujuan untuk memiliki perlindungan data yang setara dengan Inggris karena jika tidak maka transfer data tidak akan dilakukan. Inilah yang kemudian menjelaskan betapa sangat hati-hatinya dua negara ini dalam melindungi masalah data pribadi dan privasi. Dengan pengaturan seperti ini, dapat dikatakan bahwa dalam penerapannya pun sanksi yang diberikan tidak main-main karena pelanggaran yang terjadi mengancam jiwa dan raga yang diinformasikan.

Terkait penerapannya dalam kegiatan *equity crowdfunding*, Inggris menggunakan *regulatory sandbox* sebagai solusi terbaik dalam memastikan keamanan inovasi sebelum digunakan oleh platform *fintech*. Pada dasarnya, prinsip kerja *regulatory sandbox* adalah memproses pembelajaran dan uji coba untuk memberikan ruang waktu kepada inovator dalam melakukan pembenahan dan perbaikan terhadap risiko bisnis. Dapat dikatakan bahwa *regulatoty sandbox* merupakan alarm yang dipakai pada kegiatan ini. Manfaat dari penggunaan *regulatory sandbox* yaitu untuk memastikan bahwa inovasi yang hadir telah teruji dan mengefisiensikan waktu dan biaya dalam melakukan pengujian, memungkinkan kerjasama yang tepat untuk beredar di pasaran, dan perlindungan terhadap produk dan layanan baru. Keberhasilan program ini kemudian mulai diterapkan dan diadopsi oleh negara-negara lain, seperti Malaysia, Amerika Serikat, dan Australia.

Program *regulatory sandbox* dewasa ini telah diterapkan di Indonesia oleh Bank Indonesia melalui PDAG Bank Indonesia Nomor 19/14/PADG/2017 tentang Ruang Uji Coba Terbatas *(regulatory sandbox)*. Hal serupa juga digunakan lembaga OJK dalam POJK No.13/2018. Sayangnya, penerapan ini tidak dipraktikkan dalam kegiatan *equity crowdfunding,* padahal program ini mampu memperbesar dan meningkatkan potensi perekonomian nasional karena adanya jaminan atas perlindungan data dan privasi pihak yang menjalankan.

Perlu diketahui, oleh karen ada kekurangan dalam pengaturan POJK No.37/POJK.04/2018, pemerintah melalui OJK mengeluarkan aturan baru, yaitu POJK No. 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi. Keberadaan aturan baru ini telah meniadakan ketentuan-ketentuan tentang *equity crowdfunding*, sebagaimana diatur dalam pengaturan POJK No.37/POJK.04/2020 dan tunduk pada ketentuan yang terbaru. Artinya, *equity crowdfunding* menjadi bagian dari regulasi tentang Penawaran Efek melalui layanan Urun Dana Berbasis Teknologi Informasi. Penegasan ini diatur dalam Pasal 91 POJK No.37/POJK.04/2020 yang menyatakan bahwa pada saat POJK ini berlaku, maka POJK POJK No.37/POJK.04/2020 dicabut dan dinyatakan tidak berlaku lagi.

Diharapkan dengan lahirnya POJK No. 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi tersebut mampu memperkuat aturan terkait perlindungan data dan privasi yang selama ini menjadi kekurangan dalam aturan sebelumnya. Pada aturan POJK terbaru, ketentuan mengenai kerahasiaan data dan perlindungan pengguna layanan urun dana diatur dalam Pasal 70, Pasal 72 sampai dengan Pasal 81. Ketentuan sebagaimana tercantum dalam Pasal 72 tidak mengalami perubahan sebagaimana terdapat dalam Pasal 53 POJK c yang sebelumnya berlaku. Pasal ini hanya menegaskan tentang prinsip dasar perlindungan pengguna yang harus ditaati dan diaplikasikan dalam pelaksanaannya. Selain itu, berdasarkan hasil penelaahan yang telah penulis lakukan terhadap pasal-pasal yang berkenaan dengan perlindungan pengguna layanan urun dana tidak dijumpai adanya bab khusus yang membahas tentang perlindungan data pribadi dan privasi beserta ketentuan sanksi jika terjadi pelanggaran atas itu.

Inilah yang kemudian sangat disayangkan. Meskipun aturan POJK yang terbaru telah mengalami penambahan ketentuan-ketentuan, tetapi keberadaannya masih belum menjawab kekhawatiran masyarakat akan terlindunginya data pribadi dan profesi yang selama ini begitu meresahkan dalam sebuah nomenklatur hukum. Regulasi yang ditambahkan bukan difokuskan pada perihal ini, melainkan hal lainnya yang tidak terlalu genting pembentukannya. Dalam beberapa aturan perundang-undangan memang telah ada kebijakan yang mencerminkan adanya bentuk perlindungan terhadap data dan privasi, tetapi segala bentuk kebijakan tersebut hanya menjelaskan konteks dari perlindungan data dan privasi dari segi pengertian dan siapa yang bertanggung jawab untuk menjaga keamanan data. Terkait ketentuan sanksi dan lainnya masih belum dijumpai pada beberapa ketentuan seperti dalam aturan layanan urun dana.

Terdapatnya kekosongan nomenklatur dalam aturan mengenai penawaran saham melalui layanan urun dana mengakibatkan lahirnya berbagai ketidakpastian hukum bagi para pihak yang menjalankan. Salah satu contohnya adalah ketika terdapat ketentuan yang tidak dijumpai pada ketentuan POJK terkait layanan urun dana kemudian menggunakan

rujukan pada aturan lain (surat edaran sebagaimana telah dijelaskan di atas) dalam menentukan kategori dari data pribadi yang harus dilindungi tak jarang menemui titik yang saling berseberangan. Mengingat berbagai aturan dibuat sesuai dengan konteks umum aturan yang ada, sehingga akan sulit untuk menemukan kebijakan yang memiliki keterkaitan.

Saat ini, Indonesia tengah berupaya membuat suatu aturan yang mengatur kebijakan atas data dan privasi secara khusus. Namun, sejak awal pembahasan hingga sampai detik ini, aturan hukum tersebut belum juga terselesaikan. Hampir dua tahun berjalan, aturan mengenai perlindungan data dan privasi hanya berupa *draft* Rancangan Undang-Undang. Lambannya proses pembuatan regulasi ini begitu mengecewakan banyak pihak mengingat perlindungan atas data dan privasi telah berada pada tingkatan kegentingan yang mengharuskan dengan segera terbentuk ketentuan yang diatur secara kompleks dalam bentuk peraturan perundang-undangan demi terwujudnya kepastian dan keadilan hukum. Hingga detik ini, keberadaan Undang-undang ini sangat dinantikan, terutama oleh pihak yang terlibat langsung dalam kegiatan yang memanfaatkan teknologi internet seperti layanan urun dana. Meskipun dalam pelaksanaannya, OJK telah mengeluarkan kebijakan terkait perlindingan data pribadi dan privasi pada kegiatan ECF, tetapi ketentuan hukum yang ada masih belum mampu memberikan kepastian hukum bagi pihak yang terlibat.

Dengan segala bentuk pertimbangan-pertimbangan, sebagaimana diuraikan di atas, perlu ditegaskan bahwa pemberlakuan aturan POJK No. 37/POJK.04/2018 hingga regulasi yang baru dalam POJK No. 57/POJK.04/2020 yang masih memiliki kekurangan, terutama yang menyangkut atas perlindungan data dan privasi, menjadi penting hadirnya pengaturan khusus yang dapat menyeimbangi pelaksanaannya.

Berdasarkan pembahasan yang telah dijelaskan di atas, dapat disimpulkan bahwa Indonesia sebagai negara yang mengadopsi kegiatan layanan urun dana telah membuat suatu kebijakan yang tertuang dalam peraturan OJK Nomor 37/POJK.04/2018 tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi. Kebijakan dalam aturan ini mengatur tentang kewajiban yang harus dipenuhi oleh penyelenggara ECF disertai dengan pemberian sanksi administratif atas pelanggaran

yang terjadi mulai dari peringatan tertulis, pengumuman ke ranah publik, dan pemblokiran platform. Salah satu kewajibannya yaitu menjaga kerahasiaan dan keselamatan data.

Terhadap perlindungan data dalam kegiatan *equity crowdfunding*, para pihak yang dibebankan oleh keberadaan peraturan ini, yaitu pemodal dan penerbit. Data pribadi yang diberikan oleh dua pihak kepada platform penyelenggara membutuhkan suatu perlindungan dari segala bentuk kebocoran data yang dapat membahayakan keselamatan si pemilik data mengingat maraknya kejahatan yang terjadi pada platform *online* akibat perkembangan teknologi yang sangat cepat. Bocornya data pengguna pada situs *online* bukan sesuatu hal baru karena telah banyak terjadi sebut saja seperti pada platform *Tokopedia, Bukalapak*, dan *Bhinneka* yang menghebohkan beberapa bulan yang lalu.

Regulasi terkait perlindungan data dan privasi melalui layanan urun dana diatur dalam POJK Nomor 37/POJK.04/2018. Namun, pengaturan pada kebijakan ini masih ditemui beberapa kelemahan jika dibandingkan dengan regulasi yang dalam penerapannya di negara lain, seperti Amerika, Inggris, dan Malaysia. Di Indonesia, peraturan terkait perlindungan yang diberikan negara terhadap data dan privasi seseorang tidak diatur secara implisit atau dikatakan bahwa aturan yang ada tidak diikuti oleh aturan khusus yang spesifik. Pada praktiknya, Indonesia memiliki berbagai regulasi terkait perlindungan data dan privasi yang dapat dijumpai pada Undang-Undang ITE, Undang-Undang Kesehatan, Undang-Undang Administrasi Kependudukan, dan aturan lainnya. Namun keseluruhan kebijakan yang ada membahas sebatas pada hal-hal umum.

Dengan demikian, terdapatnya kekosongan instrumen dalam aturan yang ada mengharuskan adanya modifikasi pada peraturan yang ada atau penciptaan aturan turunan yang mampu menjawab segala bentuk keresahan dalam pelaksanaan kegiatan ini demi terwujudnya hukum yang berkeadilan dan kepastian hukum.

Pengaturan *Equity Crowdfunding Syariah di Indonesia*

V

A. Pengaturan *Equity Crowdfunding* Syariah di Indonesia

Penduduk Indonesia yang mayoritas beragama Islam, di mana 64% masih *unbanked* memberi peluang besar bagi pengguna *financial tech-nology (Fintech)* berbasis syariah. Terlebih dukungan teknologi modern menjadikan ekonomi syariah semakin tumbuh secara signifikan dari tahun ke tahun. Apalagi keberadaan regulasi syariah menguatkan eksis-tensi *fintech* syariah untuk menciptakan inovasi bisnis baru (Rahmawati, Tanjung dan El-Badriati, 2018). Salah satu *fintech* syariah yang menarik minat publik adalah *equity crowdfunding*. Menurut Irwan Fauzy (2020), skema *equity crowdfunding platform* disebut sebagai bisnis yang menyelamatkan bagi pelaku usaha rintisan akibat krisis global yang mengharuskan adanya pergeseran mekanisme pencarian dana dengan cara mengumpulkan dana secara kolektif untuk membiayai kegiatan bisnis yang dikelola penerbit.

Pelaksanaan *equity crowdfunding* di Indonesia berpijak pada Peraturan Otoritas Jasa Keuangan (POJK) Republik Indonesia Nomor 37/POJK.04/2018 Tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi *(Equity Crowdfunding)*. Namun, sejak 10 Desember 2020 peraturan tersebut dicabut dan dinyatakan tidak berlaku sejak disahkannya Peraturan Otoritas Jasa Keuangan (POJK) Republik Indonesia Nomor 57 /POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi. Ini memberi penegasan jika *equity crowdfunding* pengaturannya mengikuti regulasi Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi. Latar belakang penggantian peraturan ini salah satunya untuk mengakomodasi kebutuhan Usaha Mikro Kecil Menengah (UMKM) dalam memanfaatkan layanan urun dana sebagai alternatif pencarian

sumber pendanaan. Keberadaan *equity crowdfunding* menjadi solusi untuk membantu pendanaan bagi perusahaan rintisan *(startup)* dan usaha kecil (Wahjono et al., 2015). Sebelumnya, (Apriliani, Ayunda dan Fathurochman (2019) mengungkapkan bahwa pengaturan *equity crowdfunding* dianggap belum mampu mengangkat perekonomian UMKM. Misalnya, platform *Bizhare* bergerak dalam segmen bisnis *franchise*, *Santara* bergerak di bidang UMKM, dan *Pramdana* di investasi sektor properti merupakan contoh penyelenggara *equity crowdfunding* yang berkembang di Indonesia saat ini. Melalui platform tersebut, pemodal dapat membeli saham atas bisnis yang dikelola penerbit yang menguntungkan sekaligus pemodal akan memperolah tambahan dari deviden atas saham yang dimiliki.

Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan, menjelaskan Otoritas Jasa Keuangan melakukan tugas pengaturan dan pengawasan terhadap kegiatan jasa keuangan di sektor pasar modal. Sementara, Undang-Undang Nomor 8 Tahun 1995 Tentang Pasar Modal belum mengatur secara tegas mengenai *equity crowdfunding*. Berbeda dengan POJK No. 37/POJK-04/2018, yang menegaskan jika *equity crowdfunding* masuk lingkup kegiatan jasa keuangan dalam naungan pasar modal, meskipun mekanisme penawaran sahamnya dilakukan melalui layanan urun dana bukan melalui bursa efek. Belum dilakukannya sinkronisasi antara POJK No.37/POJK-04/2018 dengan Undang-Undang Nomor 8 Tahun 1995 jo Undang-Undang Nomor 21 Tahun 2011 dapat menyebabkan terjadinya kontradiksi dalam penyelenggaraan layanan urun dana. Namun demikian, kehadiran *equity crowdfunding* memberikan inovasi baru dalam melakukan penawaran saham yang secara filosofis juga merupakan bagian dari kegiatan pasar modal dalam bentuk yang lebih sederhana.

Pokok-pokok yang diatur dalam POJK terbaru, meliputi layanan urun dana, penyelenggara, penerbit, dan pemodal. Sekarang efek yang dapat ditawarkan penerbit melalui layanan urun dana meliputi efek bersifat ekuitas, utang, atau *sukuk* dengan ketentuan batas maksimum satu tahun dan paling banyak 10 Miliar. Peraturan ini memperluas instrumen efek dari yang awalnya hanya berbentuk saham *(equity)* ditambah efek bersifat utang atau *sukuk*. Ekuitas *(equity)* berarti kepemilikan. Pemodal yang telah

menyetorkan dana untuk membeli saham akan menjadi pemilik atau bagian dari perusahaan yang menerbitkan saham tersebut.

Menurut Hutomo (2019), pelaksanaan *equity crowdfunding* yang melibatkan penyelenggara, penerbit, dan pemodal lebih sederhana dibanding melakukan proses penawaran umum perdana atau *Initial Public Offering* (IPO). Sesuai pendapat Ibrahim (2015), bahwa *equity crowdfunding* merupakan mini IPO bagi UMKM dan *startup* yang mencari dana kepada masyarakat. Penyelenggara (platform) layanan urun dana yang memiliki sistem teknologi informasi secara *online* wajib memiliki izin usaha dari OJK sesuai pengaturan badan hukum Indonesia, baik berbentuk perseroan terbatas atau koperasi. Jika perseroan terbatas merupakan perusahaan efek dapat melakukan kegiatan di luar kegiatan penyelenggara, tetapi manakala berbentuk koperasi hanya boleh bergerak di bidang jasa. Dalam hal kepemilikan saham penyelenggara dimiliki oleh warga negara asing dan/atau badan hukum asing tidak boleh lebih 49%. Saat mengajukan izin operasional usaha kepada OJK modal disetor minimal 2,5 Miliar. Penyelenggara ini yang menjadi penghubung antara pemodal dan penerbit dengan penyelenggara menggunakan platform secara *online* dengan tujuan menjalankan kegiatan *equity crowdfunding* (Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020).

Penerbit sebagai pihak yang memiliki saham adalah badan usaha Indonesia baik berbentuk badan hukum maupun badan usaha lainnya yang menerbitkan efek (saham) melalui layanan urun dana. Penerbit harus berbentuk Perseroan Terbatas (PT) yang menawarkan sahamnya melalui *equity crowdfunding platform* yang dikelola penyelenggara. Penerbitan saham dalam layanan urun dana bukan perusahaan publik sebagaimana diatur Undang-Undang Pasar Modal yang mengharuskan jumlah pemegang saham Penerbit tidak lebih dari 300 pihak dan jumlah modal disetor Penerbit tidak lebih dari 300 Miliar. Dalam menjalankan kegiatan usaha, penerbit dilarang dikendalikan oleh konglomerasi, perusahaan terbuka atau anak perusahaan terbuka, maupun badan usaha dengan kekayaan bersih melebihi 10 Miliar, tidak termasuk tanah dan bangunan tempat usaha (Peraturan Otoritas Jasa Keuangan Republik Indonesia

Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020).

Pemodal yang berkedudukan sebagai pembeli efek bersifat ekuitas melalui layanan urun dana dapat berupa perorangan maupun badan hukum wajib memiliki rekening efek pada bank kustodian yang fungsinya untuk menyimpan efek. Dipastikan pemodal masuk kriteria dan mampu melakukan pembelian efek yang diterbitkan penerbit. Jika pemodal berpenghasilan sampai dengan 500 juta, maksimum investasinya sebanyak 5% dari penghasilan per tahun. Sedangkan, apabila penghasilannya lebih dari 500 juta, pemodal dapat melakukan investasi maksimum 10% dari penghasilan per tahun. Namun, jika pemodal merupakan badan hukum yang telah memiliki pengalaman investasi di pasar modal, dan efek yang akan dibeli bersifat utang atau *sukuk* yang dijamin atau ditanggung dengan nilai penjaminan sedikitnya 125% dari nilai dana yang dihimpun, maka jumlah investasi pemodal tidak dibatasi. Ketentuan pemodal dalam POJK tidak membatasi hanya pemodal domestik saja, tetapi juga memberi kesempatan pada kepemilikan saham oleh warga dan badan hukum asing dengan ketentuan yang telah diatur. Artinya, asing diberi kesempatan untuk menjadi pemegang saham dalam penyelenggaraan *equity crowdfunding* (Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020). Menurut Hartanto (2020), hal ini berbeda dengan POJK No. 77/POJK.01/2016 tentang Layanan Pinjam Meminjam Berbasis Teknologi Informasi, yang membatasi penerima pinjaman *peer to peer lending* harus berasal dan berdomisili di wilayah Negara Kesatuan Republik Indonesia (NKRI).

Praktik *equity crowdfunding* ini mempermudah pelaku usaha untuk memperoleh dana sejalan dengan semangat pemerintah dalam mewujudkan inklusi keuangan yang menjadi targetnya (Hartanto, 2020). Melalui layanan urun dana penerbit dapat menjual saham miliknya kepada masyarakat sehingga penerbit akan memperoleh tambahan dana bagi operasional usahanya dan pemodal akan memperoleh saham atas dana yang disetorkan kepada penerbit melalui penyelenggara. Jika diringkas penyelenggara *equity crowdfunding* sebagai penghubung penerbit dengan

pemodal untuk membantu mencari pendanaan menggunakan sistem elektronik. Penerbit yang memiliki proyek dan membutuhkan modal untuk pengembangan usaha harus mengajukan proposal permintaan pendanaan kepada pemodal melalui *equity crowdfunding platform*. Pemodal sebagai pihak yang mempunyai kecukupan dana akan membaca peluang investasi atas tawaran yang diajukan penerbit melalui platform. Jika sepakat pemodal akan memberikan komitmennya untuk investasi pada proyek tersebut dan pemodal berhak memperoleh ekuitas (Ong, 2020).

Indonesia belum memiliki pengaturan khusus tentang *equity crowdfunding* syariah. Namun, ada beberapa fatwa Dewan Syariah Nasional (DSN) Majelis Ulama Indonesia (MUI) yang dipandang relevan untuk menilai kesesuaian syariah terhadap penyelenggaraan layanan urun dana apakah sesuai syariah atau tidak. Meskipun posisi fatwa DSN-MUI tidak ditemukan dalam hierarki peraturan perundang-undangan di Indonesia, tetapi fatwa DSN-MUI dapat dijadikan pedoman dalam menjalankan kepatuhan *shariah compliance* pada setiap lembaga dengan prinsip syariah (Kurrohman, 2017). Wahid (2019) mengungkapkan bahwa fatwa DSN-MUI sekarang ini bukan sekedar jawaban atas pertanyaan seseorang, melainkan respons aktif DSN-MUI terhadap perkembangan ekonomi syariah yang semakin cepat, bahkan memiliki kekuatan hukum yang mengikat berdasarkan Undang-Undang.

Fatwa DSN-MUI yang dapat dipedomani dalam pelaksanaan layanan urun dana di antaranya, Fatwa DSN-MUI Nomor 80/DSN-MUI/III/2011 Tentang Penerapan Prinsip Syariah dalam Mekanisme Perdagangan Efek Bersifat Ekuitas di Pasar Reguler Bursa Efek. Fatwa ini dalam ketentuan hukumnya menyatakan mekanisme perdagangan efek bersifat ekuitas di pasar regular bursa efek boleh dilakukan selama berpedoman pada ketentuan khusus yang ditetapkan dalam fatwa ini. Ketentuan khusus tersebut seperti perdagangan efek harus menggunakan akad jual-beli *(bai')*. Jual-beli efek dipandang sah saat terjadi kesepakatan harga dan objek perdagangan antara penjual dan pembeli. Efek yang diperdagangkan harus sesuai prinsip syariah. Selama menjalankan perdagangan efek (ekuitas) wajib dilakukan menurut prinsip syariah yang mengutamakan kehati-hatian serta dilarang melakukan tindakan yang mengandung unsur *maisir, gharar, haram, riba, riswah, dzulm dharar, taghrir,*

ghisysy, najsy, ihtikar, bai' al-ma'dum, talaqqi al-rukban, ghabn, tadlis, dan maksiat.

Fatwa DSN-MUI Nomor: 117/DSN-MUI/II/2018 Tentang Layanan Pembiayaan Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah merupakan dasar dari praktik layanan pembiayaan berbasis teknologi informasi dibolehkan dengan syarat sesuai ketentuan syariah. Pelaksanaannya dilarang mengandung unsur *riba, maisir, gharar, tadlis, dharar, zhulm,* dan haram. Akad yang digunakan subjek hukum yaitu penyelenggara, penerima pembiayaan, dan pemberi pembiayaan, antara lain akad *al-bai', ijarah, mudharabah, musyarakah, wakalah bil ujrah,* dan *qardh.* Apabila penyelenggara memberlakukan akad baku dalam mekanisme pelaksanaan pembiayaan berbasis teknologi informasi wajib mengedepankan prinsip keadilan, keseimbangan, dan kewajaran dengan berpedoman pada ketetapan syariah dan undang-undang. Kesepakataan subjek hukum dalam pelaksanaan pembiayaan ini salah satunya ditandai tanda tangan secara elektronik wajib menjamin validitas dan autentikasinya sebagaimana aturan hukum yang berlaku. Penyelenggara juga dibolehkan mengenakan biaya secara wajar atas penyediaan sistem dan sarana pembiayaan menggunakan teknologi informasi antara lain dalam kegiatan pembiayaan anjak piutang *(factoring),* pembiayaan pengadaan barang pesanan pihak ketiga *(purchase order),* pembiayaan pengadaan barang untuk pelaku usaha yang berjualan secara *online (online seller),* pembiayaan pengadaan barang untuk pelaku usaha yang berjualan *online* dengan pembayaran melalui penyelenggara *payment gateway,* pembiayaan untuk pegawai *(employee),* dan pembiayaan berbasis komunitas *(community based).*

Fatwa DSN-MUI Nomor 135/DSN-MUI/V/2020 Tentang Saham menjelaskan bahwa akad yang digunakan dalam transaksi saham syariah pada pasar perdana sama adalah akad *syirkah musahamah* jika saham tersebut berasal dari saham portepel, sedangkan akad *bai'* digunakan jika saham yang ditawarkan berasal dari saham syariah yang dimiliki oleh pemegang saham sebelumnya. Pengalihan kepemilikan saham syariah selain dapat dilakukan melalui jual-beli juga boleh melalui hibah, wakaf, infak, dan hadiah. Menurut fatwa ini, penerbitan dan pengalihan saham *syirkah musahamah* boleh dilakukan.

Subjek hukum dalam pelaksanaan pembiayaan berbasis teknologi informasi jika dianalogikan dalam kegiatan *equity crowdfunding* memiliki kesamaan peran dan fungsi dengan penyelenggara, penerbit, dan pemodal. Pelaku usaha yang membutuhkan dana untuk mengembangkan bisnis dapat menggunakan layanan *crowdfunding* sebagai alternatif untuk memperoleh dana dari masyarakat dengan cara menerbitkan saham. Disebut penerbit saham karena sebagai pihak yang punya ide untuk mengajukan pendanaan dengan cara menerbitkan saham melalui *equity crowdfunding platform* untuk ditawarkan kepada pemodal. Pemodal yang memberikan komitmen mendanai proyek yang dikerjakan penerbit akan memperoleh *return* atas investasi tersebut, sedangkan penyelenggara *equity crowdfunding* yang berperan sebagai perantara untuk mempertemukan antara pemodal dengan penerbit berhak mengenakan biaya secara wajar kepada pengguna.

Ketentuan syariah pada POJK No.57/POJK/04/2020 pengaturannya lebih komprehensif dibandingkan POJK No.37/POJK.04/2018, mulai dari bentuk efek yang ditawarkan bersifat ekuitas, utang, dan *sukuk* hingga pengaturan mengenai Dewan Pengawas Syariah (DPS) pada penerbit dan penyelenggara. Kewajiban memenuhi prinsip syariah harus dipatuhi bagi penerbit yang menjual saham syariah maupun *sukuk*. Bahkan penyelenggara yang menjalankan kegiatan usaha berdasarkan ketentuan syariah, seperti melayani penawaran saham syariah, harus dibuktikan adanya pernyataan kesesuaian syariah dari dewan pengawas syariah. Jika efek yang diterbitkan adalah *sukuk,* penyelenggara harus memastikan *sukuk* tersebut telah memperoleh pernyataan kesesuaian syariah dari tim ahli syariah yang memiliki izin ahli syariah pasar modal. Pengaturan ini sebagai upaya untuk memastikan kepatuhan platform terhadap nilai-nilai syariah. Selama ini aspek syariah pada POJK lama hanya mengakomodasi emiten aktif syariah yang mengharuskan penerbit memiliki DPS, sedangkan dengan adanya DPS pada platform (emiten aktif dan pasif) POJK baru merupakan langkah maju yang semakin mengokohkan kedudukan *equity crowdfunding* syariah di Indonesia. Modal sosial dan dukungan regulasi yang cukup diharapkan mampu menjadikan *equity crowdfunding* syari'ah di Indonesia semakin berkembang pesat dan dimanfaatkan sebagai sarana pengumpulan dana investasi bagi masyarakat dengan berpegang pada prinsip-prinsip syariah.

B. *Equity Crowdfunding* sebagai Kegiatan Muamalah

Crowdfunding merupakan platform yang difungsikan sebagai media untuk menarik dana dari pemodal atas proyek yang dikelola oleh penerbit (Febrina Nur Ramadhani, 2019). Kehadiran *equity crowdfunding* termasuk kegiatan yang memadukan jasa keuangan dengan kemajuan teknologi, sehingga mengubah model bisnis dari konvesional menjadi semakin canggih dan modern karena fasilitas teknologi. Aktivitas layanan urun dana bersifat ekuitas dalam studi Islam termasuk kegiatan muamalah karena kegiatannya membahas mengenai harta benda dan macam-macamnya, hubungan manusia dengan benda, hubungan manusia dengan benda yang menyangkut hak milik, pencabutan hak milik perikatan-perikatan tertentu (Djamil, 2015). Setiap aktivitas ekonomi dalam Islam diupayakan diatur supaya tertib dalam muamalah sehingga terwujud maslahat. Oleh karena itu, setiap kegiatan *equity crowdfunding* dapat mendatangkan kemanfaatan dan dinyatakan sesuai syariah apabila tidak bertentangan dengan prinsip syariah.

Prinsip dasar dalam muamalah adalah setiap Muslim diberikan kebebasan untuk melakukan apa saja yang dikehendaki selama tidak dilarang oleh Allah sesuai ketentuan Al-Qur'an dan Al-Hadist. Hal ini sebagaimana yang dinyatakan dalam kaidah fikih (hukum Islam) "Pada dasarnya segala bentuk muamalah adalah boleh kecuali ada dalil yang mengharam-kannya," (Djazuli, 2006). Dalam pengertian lain bahwa semua bentuk muamalah hukum dasarnya boleh sampai ditemukan dalil yang melarangnya. Artinya, hukum Islam memberi kesempatan yang luas bagi perkembangan bentuk dan macam muamalah baru sesuai dengan perkembangan kebutuhan hidup masyarakat. Setiap Muslim bebas melakukan hal yang dikehendaki selama tidak dilarang syariah. Berarti kebebasan muamalah menurut Islam harus dalam batas yang tidak dilarang oleh Allah swt. Sehingga untuk menentukan boleh atau tidaknya melakukan aktivitas muamalah yang dilakukan adalah mencari dalil yang mengharamkan karena hukum asal melakukan muamalah adalah boleh bukan haram (Djamil, 2015).

Equity crowdfunding merupakan kegiatan jual-beli saham antara penerbit dengan pemodal melalui perantara platform layanan urun dana. Menurut

Wahbah (1986), sebagaimana dikutip Fatwa DSN-MUI Nomor 135/DSN-MUI/V/2020, bahwa "Bermuamalah dengan melakukan transaksi atas suatu saham hukumnya boleh, karena pemilik saham adalah mitra (kongsi) dalam perseroan (perusahaan) sesuai saham yang dimilikinya." Untuk menjaga kebolehan ini, layanan urun dana syariah harus mempertimbangkan aspek maslahat, yaitu meraih manfaat dan menghindarkan kerusakan. Karena hakikat kemaslahatan dalam Islam adalah segala bentuk kebaikan berdimensi intergral dunia dan akhirat, material dan spiritual, individu dan sosial. Menurut Islam, sesuatu dipandang mengandung kemaslahatan jika memenuhi dua unsur yaitu kepatuhan terhadap syariah (*halal*) dan membawa kebaikan (*tayib*) bagi semua aspek kehidupan dan tidak menimbulkan kerusakan (*mudarat*) (Muzlifah, 2013). Kemaslahatan tersebut ditujukan pada pemenuhan visi kemaslahatan yang tercakup dalam *maqashid syariah* (tujuan syariah), yaitu melindungi agama *(al-dien),* jiwa (*al-nafs),* akal *(al-aql),* keturunan *(al-nasl),* dan harta *(al-maal).* Suatu kegiatan ekonomi dinilai mendatangkan manfaat jika menyejahterakan, membahagiakan, menguntungkan, memudahkan, dan meringankan. Sedangkan, yang mengandung mudarat adalah jika kegiatannya menyengsarakan, menyusahkan, merugikan, menyulitkan, dan memberatkan (Wibowo, 2011).

Prinsip keadilan dan menghindarkan unsur-unsur kedzaliman harus dipenuhi oleh penyelenggaraan urun dana ekuitas. Segala bentuk aktivitas ekonomi yang mengandung penindasan dan ketidakadilan tidak dibenarkan. Implementasi keadilan dalam *equity crowdfunding* dapat dilakukan dengan menghindarkan kegiatan yang diharamkan untuk dikerjakan. Ini sejalan dengan kaidah fikih (Djazuli, 2006), "Apa saja yang menjadi perantara (media) terhadap perbuatan haram, maka haram juga hukumnya". Ini dapat dipahami bahwa penyelenggara layanan urun dana dengan prinsip syariah dilarang memfasilitasi pertemuan secara elektronik antara pemodal dan penerbit atas pengerjaan suatu proyek haram. Ketika proyek yang dikerjakan penerbit haram, dan penerbit tetap menawarkan sahamnya kepada publik (calon pemodal) melalui *equity crowdfunding platform,* penyelenggara wajib melakukan telaah secara mendalam menurut syariah terhadap saham yang ditawarkan tersebut. Penyelenggara yang mendasarkan pada prinsip syariah memiliki hak menolak usulan proyek yang akan dipromosikan melalui sistem

elektronik milik penyelenggara jika ternyata proyek itu mengarah kepada hal-hal yang dilarang oleh hukum negara dan hukum agama. Di sisi lain, prinsip keadilan ini juga menuntut para pihak yang terlibat harus berlaku jujur dalam mengungkapkan kehendak dan keadaan selama berlangsungnya perjanjian layanan urun dana.

Secara khusus, prinsip dalam *muamalah* dapat diklasifikasikan menjadi dua, yaitu hal-hal yang diperintahkan untuk dilakukan dan hal-hal yang dilarang untuk dikerjakan. Transaksi *muamalah* harus dihindarkan dari *maisir, gharar, haram,* dan *riba.* Berkaitan dengan yang diperintahkan dalam *muamalah* antara lain objek transaksi harus halal dan *thayyib,* pengelolaan objek transaksi harus amanah, dan didasarkan pada kerelaan. Prinsip Islam bahwa *muamalah* harus halal bukan kepada hal-hal yang diharamkan. Preferensi Muslim bukan sekedar ditentukan oleh *unility* semata, melainkan harus memenuhi *mashlahat.*

Menurut ide dan spirit dasar *crowdfunding* adalah *at-ta'awun* (gotong-royong). Umat Islam Indonesia dapat didorong untuk mengimplementasikan nilai-nilai gotong-royong sebagai pijakan menggerakkan masyarakat untuk memanfaatkan instrumen *equity crowdfunding* dalam aktivitas ekonomi (Tripalupi, 2019). *Equity Crowdfunding* atau yang sering disebut bisnis patungan, konsepnya sama dengan saham. Dimaknai bisnis patungan karena sumber dana berasal dari masyarakat dalam jumlah banyak, sehingga diperkirakan terkumpul dana yang signifikan, meskipun masing-masing pemodal menyerahkan dana dalam jumlah sedikit. Uang yang diserahkan pemodal kepada penerbit menjadi modal, sehingga pemodal berhak atas kepemilikan sebagian perusahaan dan berharap memperoleh ekuitas dari hasil proyek penggalangan dana tersebut. Islam senantiasa menganjurkan umatnya supaya saling bergotong-royong dalam kebaikan. Berkaitan dengan investasi dalam *equity crowdfunding* harus dilakukan pada perusahaan-perusahaan yang sesuai dengan prinsip syariah, bukan pada perusahaan yang mencampur harta benda yang halal dengan barang haram yang tidak dibenarkan Islam. Investasi pada perusahaan yang tidak halal berarti melakukan tolong-menolong dalam keburukan. Hal ini bertentangan dengan firman Allah *swt* dalam surat Al-Maidah (5) ayat 2.

....وَتَعَاوَنُواْ عَلَى ٱلۡبِرِّ وَٱلتَّقۡوَىٰۖ وَلَا تَعَاوَنُواْ عَلَى ٱلۡإِثۡمِ وَٱلۡعُدۡوَٰنِۚ وَٱتَّقُواْ ٱللَّهَۖ إِنَّ ٱللَّهَ شَدِيدُ ٱلۡعِقَابِ

Artinya: "…Dan tolong-menolonglah kamu dalam (mengerjakan) kebajikan dan takwa, dan jangan tolong-menolong dalam berbuat dosa dan pelanggaran. Dan bertakwalah kamu kepada Allah, sesungguhnya Allah amat berat siksa-Nya" (Qs. Al-Maidah (5): 2*).*

Amanah dalam mengelola harta benda dalam bermuamalah merupakan ajaran Islam. Dana yang dipercayakan oleh investor (pemodal) kepada penerbit harus dikelola dengan rasa tanggung jawab dan penuh hati-hati, sehingga hasil dari pengelolaan dana tersebut dapat dibagikan kepada pemiliknya sesuai dengan akad yang disepakati. Oleh sebab itu, penerbit yang berkedudukan menawarkan saham melalui penyelenggara *equity crowdfunding,* secara elektronik harus memiliki kemampuan dan kecerdasan dalam mengelola dana, sehingga mampu memberikan *equity* yang sesuai tanpa mengesampingkan prinsip-prinsip syariah. Amanah yang diberikan pemodal kepada penerbit harus dijaga dengan baik dan tercapai kepuasan, sehingga mendorong pemodal untuk terus melakukan pembelian saham yang diterbitkan oleh penerbit.

Prinsip lain yang harus diperhatikan dalam *muamalah* adalah saling rela di antara para pihak *('an taradhin minkum).* Segala transaksi yang dilakukan para pihak harus berlandaskan kerelaan masing-masing pihak. Kerelaan antara para pihak yang melakukan transaksi (akad) dianggap sebagai prasyarat bagi terwujudnya semua transaksi. Kegiatan *equity crowdfunding* tidak dapat dikatakan telah terwujud dan saling rela selama transaksinya ada tekanan, paksaan, dan penipuan. Jika ditemukan praktik penipuan dan paksaan dalam *muamalah*, maka transaksi tersebut dapat dibatalkan. Saling rela merupakan unsur yang menunjukkan keikhlasan dan itikad baik para pihak dalam melakukan transaksi. Kerelaan dalam *equity crowdfunding* diimplementasikan dalam perjanjian yang dilakukan di antara para pihak dengan didasarkan atas kesepakatan dalam bentuk akad yang di dalamnya ada *ijab* dan *qabul,* serta adanya hak pilih atau opsi *(khiyar).*

C. Akad Equity Crowdfunding Syariah

Menurut Hartanto (2020), perseroan terbatas sebagai penerbit saham melalui *equity crowdfunding platform* dapat menjual saham yang dimiliki kepada masyarakat, sehingga penerbit akan memperoleh tambahan dana bagi operasional perusahaan, sementara pemodal berhak atas sebagian saham perusahaan tersebut. Oleh karena itu, layanan urun dana memiliki hubungan hukum antara tiga pihak *(triangular relationship)*, yakni penerbit, penyelenggara, dan pemodal.

Aktivitas layanan urun dana menggunakan beberapa perjanjian, yang dilakukan antara penyelenggara dengan penerbit, penyelenggara dengan pemodal, dan penerbit dengan pemodal. Salah satu aspek kepatuhan syariah pada lembaga keuangan syariah adalah diimplementasikannya standar akad (Misbach, 2015). Menurut Dewi, Wirdyaningsih dan Barlinti (2005), kedudukan perjanjian (akad) dalam Islam sangat menentukan keabsahan suatu perbuatan hukum. Sahnya suatu akad memberikan ikatan secara hukum kepada para pihak manakala akad tersebut telah memenuhi rukun dan syarat sesuai ketentuan syariah. Akad adalah pertalian antara *ijab* dan *qabul* yang dibenarkan syariah dan menimbulkan akibat hukum terhadap objeknya. Menurut Dewi dkk (2013), terdapat tiga unsur penting yang terkandung dalam akad: (1) pertalian antara *ijab* (pernyataan kehendak oleh pihak satu untuk melakukan sesuatu) dan *qabul* (pernyataan menerima atau menyetujui kehendak pihak satu oleh pihak kedua), (2) akad dibenarkan oleh syariah, tidak boleh bertentangan dengan hal-hal yang dilarang Allah *swt* dalam Al-Qur'an maupun Al-Hadist. Pelaksanaan akad, tujuan akad dan objek akad memang dibenarkan syariah, tetapi ketika akad tersebut menyimpang dari syariah, maka mengakibatkan akad tersebut menjadi tidak sah, dan (3) mempunyai akibat hukum terhadap objek akad. Setiap akad yang disepakati para pihak menimbulkan akibat hukum terhadap objek akad yang diperjanjikan. Hal tersebut akan memberikan konsekuensi berupa hak dan kewajiban bagi para pihak yang melangsungkan akad.

Pelaksanaan akad dalam Islam harus memenuhi *rukun* dan *syarat*. Perbuatan hukum dipandang sah atau tidak menurut hukum tergantung rukun dan syarat. Keduanya merupakan suatu hal yang harus dipenuhi

dan diadakan. Menurut Anwar (2007), *rukun* merupakan unsur penting yang berada dalam hukum itu sendiri yang membentuk sesuatu, sehingga sesuatu itu terwujud karena adanya unsur-unsur yang membentuknya. Inti dari rukun adalah unsur yang membentuk substansi sesuatu. Masing-masing rukun (unsur) yang membentuk sesuatu tersebut memerlukan *syarat* supaya unsur itu dapat berfungsi sehingga membentuk suatu perbuatan hukum (akad). Sementara itu, Dewi, dkk (Dewi et al., 2005) mendefinisikan *syarat* sebagai sesuatu yang tergantung padanya keberadaan hukum syariah dan ia berada di luar hukum itu sendiri yang ketiadaannya menyebabkan hukum pun tidak ada.

Dengan demikian, rukun dapat dipahami sebagai hal-hal yang harus dipenuhi pada saat perbuatan hukum dilangsungkan, sedangkan syarat merupakan hal yang harus dipenuhi sebelum dan saat perbuatan tersebut dilakukan. Syarat berkaitan dengan rukun. Artinya, masing-masing rukun yang membentuk akad masih memerlukan syarat supaya rukun tersebut dapat difungsikan membentuk akad.

Rukun akad sebagaimana dijelaskan pada Bab III Pasal 22 Kompilasi Hukum Ekonomi Syariah (KHES) ialah (1) subjek akad *(al-aqidain),* (2) objek akad *(mahallul 'aqd),* (3) pernyataan kehendak para pihak *(shiqat 'aqd)*, dan (4) tujuan akad *(maudhu' 'aqd).* Subjek akad merupakan para pihak melakukan akad. *Equity crowdfunding* dalam menjalankan kegiatan melibatkan subjek hukum berupa perseorangan maupun badan hukum. Oleh karenanya, dalam pembahasan ini perlu dijelaskan terlebih dahulu mengenai subjek hukum dalam terminologi hukum Islam. Jika ditinjau dari aspek hukum, subjek hukum berkedudukan sebagai pihak yang memiliki kewenangan untuk melakukan tindakan hukum sekaligus mengemban hak dan kewajiban. Subjek hukum dalam kajian ilmu hukum terdiri dari dua macam, yaitu manusia dan badan hukum (Prananingrum, 2014). Manusia sebagai subjek hukum perikatan dalam terminologi fikih ketika sudah *mukallaf,* yaitu saat seseorang telah mampu melakukan perbuatan hukum. Syarat yang harus dipenuhi untuk seorang *mukallaf* adalah *baligh,* berbilang pihak, dan berakal sehat (Anwar, 2007). Menurut beberapa ahli hukum (Marwa, 2020), badan hukum merupakan hasil rekayasa manusia untuk membentuk suatu badan yang dapat melakukan perbuatan hukum dengan pihak lain secara mandiri serta memiliki hak

dan kewajiban di mana status dan kedudukan di hadapan hukum dipersamakan seperti manusia.

Badan hukum dalam Islam tidak dijelaskan secara tegas, tetapi dalam surat Al-Nisa' (4): 12 dan surat Shaad (38): 24 terdapat istilah *syirkah* yang berarti berserikat atau bersekutu yang dapat dijadikan rujukan mengenai adanya badan hukum. Adanya kerja sama antara beberapa pihak dapat menimbulkan kepentingan-kepentingan dari *syirkah* tersebut terhadap pihak ketiga. Mengenai hubungan dengan pihak ketiga itu kemudian timbul bentuk baru dari subjek hukum yang disebut badan hukum (Dewi et al., 2005). Menurut Prananingrum (2014), badan hukum dapat melakukan perbuatan hukum layaknya manusia sebagai subjek hukum setelah melalui tahap pendaftaran dan memperoleh pengesahan oleh institusi yang berwenang dengan memenuhi unsur-unsur badan hokum, yaitu mempunyai harta kekayaan terpisah, memiliki tujuan tertentu, mempunyai kepentingan sendiri, dan adanya organisasi yang teratur.

Objek akad *(mahallul 'aqd)* adalah sesuatu yang dijadikan objek akad baik berupa benda berwujud maupun benda tidak berwujud seperti manfaat. Syarat yang harus dipenuhi oleh objek akad, yaitu telah ada ketika akad dilangsungkan, dibenarkan oleh syariat, harus jelas dan dikenali, dan dapat ditransaksikan (Anwar, 2007). Supaya tujuan akad *(maudhu 'aqd)* dipandang sah dan mempunyai akibat hokum, maka tujuan akad harus dipastikan dibenarkan syariah dan tujuan harus berlangsung hingga berakhirnya pelaksanaan akad (Pandoman, 2017). Salah satu hal penting yang menjadi ciri kegiatan berdasarkan syariah adalah objek yang ditransaksikan harus halal. Objek akad inilah yang harus diperhatikan jika akan melakukan aktivitas *equity crowdfunding* syariah. Penerbit harus memastikan saham yang diterbitkan dan kegiatan usahanya tidak bertentangan dengan syariah. Dalam pengertian lain, saham yang ditawarkan penerbit ke publik wajib memenuhi kriteria halal dan sesuai dengan fatwa DSN-MUI.

Pernyataan kehendak para pihak dalam akad meliputi *ijab* dan *qabul*. *Ijab* merupakan suatu pernyataan janji dari pihak pertama untuk melakukan atau tidak melakukan sesuatu, sementara *qabul* suatu pernyataan penerimaan dari pihak kedua atas penawaran yang dilakukan oleh pihak pertama. Masih menurut Dewi dkk (2013), supaya *ijab* dan

qabul memiliki akibat hukum, harus (1) memiliki kesesuaian antara *ijab* dan *qabul,* (2) tujuan yang terkandung dalam pernyataan harus jelas, sehingga dapat dipahami jenis akad yang dikehendaki, (3) antara *ijab* dan *qabul* harus menunjukkan kehendak para pihak secara pasti, tidak ragu, dan tidak terpaksa, dan (4) kesatuan majelis. Berlangsungnya *ijab* dan *qabul* dalam *equity crowdfunding* dibuktikan adanya perjanjian penyelenggaraan layanan urun dana antara tiga pihak *(triangular relationship)*, yaitu penyelenggara, penerbit, dan pemodal. Para pihak memiliki kewenangan serta hak dan kewajiban sendiri-sendiri yang harus diperhatikan selama berlangsungnya penyelenggaraan layanan urun dana. Meskipun para pihak memiliki hubungan hukum yang berbeda, tetapi saling berkaitan satu dengan yang lain.

Penyelenggara layanan urun dana dan penerbit saham berkedudukan sebagai subjek hukum dalam *equity crowdfunding* yang berstatus sebagai badan hukum, sedangkan pemodal sebagai subjek hukum (dapat berupa perorangan maupun badan hukum) yang membeli saham dari penerbit melalui perantara layanan urun dana. Maka terdapat tiga subjek hukum yang terlibat dalam aktivitas urun dana ekuitas konvensional, yaitu penyelenggara layanan urun dana *(equity crowdfunding platform)*, penerbit *(startup),* dan pemodal *(investor). Equity crowdfunding* yang dijalankan secara prinsip syariah diharuskan memiliki Dewan Pengawas Syariah (DPS) yang berfungsi mengawasi kegiatan urun dana supaya sesuai dengan prinsip-prinsip syariah sebagaimana yang telah ditetapkan dalam fatwa DSN-MUI. Penerbit dan pemodal berkedudukan sebagai pihak yang menggunakan layanan urun dana. *Equity crowdfunding platform* sebagai penghubung antara penerbit dengan pemodal menggunakan sistem elektronik secara *online*. Penerbit berkepentingan menawarkan saham kepada pemodal melalui *website* yang disediakan platform, sedangkan kepentingan pemodal membeli saham dengan harapan memperoleh *equity*. Berdasarkan penjelasan tersebut, perjanjian atau akad *triangular relationship* dalam layanan urun dana tidak dilakukan dengan tatap muka langsung. Para pihak saat melangsungkan akad tidak dilangsungkan dalam satu majelis.

Mengenai akad tidak satu majelis (tempat), Wahbah (1986) berpendapat, sebagaimana dikutip Fatwa DSN-MUI No: 117/DSN-

MUI/II/2018, bahwa selama waktu tersambungnya komunikasi kedua belah pihak masih membicarakan soal akad yang ditransaksikan, dan tidak beralih ke pembahasan lain, maka akad tersebut masih disebut dalam majelis akad meskipun dilakukan melalui telepon, radiogram, dan surat.

Akad dalam kajian fikih *muamalah* yang dapat disesuaikan dengan mekanisme *equity crowdfunding* antara lain akad *bai', mudharabah*, dan *musyarakah* untuk digunakan antara penerbit dengan pemodal, akad *wakalah bil ujrah* dipakai menghubungkan antara pemodal dengan penyelenggara *equity crowdfunding,* sedangkan antara penerbit dengan penyelenggara layanan urun dana menggunakan akad *ijarah*. Untuk lebih detail mengenai akad-akad yang digunakan para pihak dalam layanan urun dana dapat dijelaskan sebagai berikut.

1. Akad Penerbit dengan Pemodal

Rasyid, Setyowati dan Islamiyati (2017) berpendapat bahwa pengguna *(user)* terhadap penyelenggaraan layanan urun dana bersifat ekuitas adalah penerbit dan pemodal. Telah dijelaskan sebelumnya mengenai syarat-syarat operasional yang harus dipenuhi oleh pengguna. Pengguna diwajibkan memberikan kebenaran identitasnya sebagai bentuk preventif kemungkinan terjadinya kejahatan yang tidak diinginkan dalam pelaksanaan *equity crowdfunding*. Menurut DSN-MUI (2020), kejelasan profil subjek hukum layanan urun dana juga memengaruhi keabsahan akad para pihak. Akad antara penerbit dengan pemilik dana setidaknya dapat menggunakan 3 (tiga) akad, yaitu akad *bai'* (jual-beli)*, mudharabah*, dan *musyarakah* (kerja sama atau *syirkah)*. Akad *syirkah* merupakan akad kerja sama antara dua pihak atau lebih atas suatu usaha di mana masing-masing pihak memberi kontribusi harta/modal usaha dengan ketentuan setiap keuntungan dibagi sesuai *nisbah* yang disepakati, sedangkan kerugian ditanggung oleh para pihak secara proporsional terhadap modal usaha. Ketentuan ini sejalan dengan kaidah fikih, "Keuntungan dibagi sesuai kesepakatan para pihak dan kerugian dibagi sesuai porsi modal masing-masing".

Syirkah memiliki peran penting dalam menyelesaikan problem ekonomi masyarakat terutama yang terkendala soal modal dan

kemampuan mengelola modal. Model yang dikerjakan dalam *syirkah* adalah kerja sama antara pemilik modal dengan pemilik usaha. Jika selama ini pemilik modal tidak memiliki kemampuan untuk memanfaatkan modal yang dimiliki, sebaliknya pengelola usaha yang punya kemampuan mengelola modal, tetapi tidak mempunyai modal, maka kerja sama atau *syirkah* adalah salah satu solusinya.

Rumusan hubungan hukum antara penerbit dengan pemodal tertuang pada POJK Nomor 57/POJK.04/2020 yang mendefinisikan pemodal sebagai pihak yang melakukan pembelian efek dari penerbit melalui platform layanan urun dana. Artinya, hubungan hukum antara penerbit dengan pemodal merupakan perjanjian jual-beli saham secara *online*. Namun, pembahasan ini akan dimulai dengan menjelaskan akad *syirkah* terlebih dahulu baru berlanjut akad *bai'*.

a) *Mudharabah* adalah akad kerja sama suatu usaha atau proyek antara dua pihak antara pihak pertama *(shahibul maal)* yang menyediakan dana, sedangkan pihak kedua *(mudharib)* yang bertindak sebagai pengelola dana di mana keuntungan usaha dibagi di antara merek sesuai kesepakatan yang dituangkan dalam kontrak, jika mengalami kerugian maka ditanggung oleh pemodal (Umam, 2016). Menurut Karim (2007), rukun atau faktor-faktor yang harus ada dalam akad *mudharabah* yaitu:

1) Pelaku akad (pemilik modal dan pelaksana usaha)

   Penyedia dana *(shahibul maal)* dan pengelola dana *(mudharib* atau *amil)* merupakan pelaku dalam akad *mudharabah*. Tanpa dua pelaku ini, maka akad *mudharabah* tidak pernah ada. Adapun syarat yang harus dipenuhi oleh pelaku akad adalah memilik kecakapan hukum.

2) Objek akad (modal dan kerja)

   Pemilik modal yang menyerahkan modalnya sebagai objek akad, sedangkan pelaksana usaha menyerahkan kemampuannya atau kerjanya sebagai objek *mudaharabah*. Tanpa dua objek tersebut akad *mudharabah* tidak akan ada. Modal adalah sejumlah uang dan/atau aset yang diberikan oleh penyedia kepada pengelola dana *(mudharib)* untuk tujuan tertentu. Syarat yang

harus dipenuhi mengenai modal, yaitu (a) modal harus diketahui jumlah dan jenisnya, (b) modal dapat berbentuk uang atau barang yang dapat dinilai pada waktu akad, dan (c) modal tidak dapat berbentuk piutang dan harus dibayarkan kepada *mudharib* baik secara bertahap maupun tidak sesuai dengan kesepakatan. Kalangan ulama berbeda pendapat mengenai modal yang berupa barang karena barang dianggap tidak dapat dipastikan taksiran harganya dan mengakibatkan ketidakpastian besaran modal yang disetor. Namun, ulama mazhab Hanafi membolehkan modal dalam bentuk barang selama nilai barang yang dijadikan setoran modal harus disepakati pada saat akad antara pemodal dan pengelola usaha. Yang menjadi kesepakatan para ulama mengenai modal adalah dilarangnya melakukan praktik *mudharabah* dengan hutang (Karim, 2007).

Sedangkan, kegiatan usaha yang dikelola oleh *mudharib* sebagai perimbangan modal yang disediakan oleh pemodal atau penyedia dana. Berkaitan dengan *amal* atau kegiatan yang dikerjakan oleh pengelola harus (a) kegiatan usaha merupakan hak eksklusif *mudharib,* penyedia dana tidak berhak melakukan intervensi, tetapi pemodal memiliki hak untuk melakukan pengawasan terhadap usaha yang dikerjakan oleh *mudharib,* (b) Penyedia dana tidak dibolehkan mempersempit tindakan pengelola yang dapat menghalangi tercapainya tujuan *mudharib* untuk memperoleh keuntungan, dan (c) Pengelola tidak boleh menyalahi hukum syariah Islam dalam melakukan tindakan yang berhubungan dengan *mudharabah* dan harus mematuhi kebijaksanaan yang berlaku dalam aktivitas tersebut (Umam, 2016).

3) Persetujuan para pihak (*ijab-qabul)*

Pernyataan *ijab* dan *qabul* dalam akad *mudharabah* harus dinyatakan oleh para pihak untuk menyatakan kehendaknya saat mengadakan kontrak antara keduanya. Persetujuan para pihak

merupakan konsekuensi dari prinsip saling rela. Kedua belah pihak pelaku akad harus menunjukkan kerelaan menyatakan sepakat untuk mengikatkan diri dalam akad *mudharabah*. Pemodal menyatakan setuju menyediakan dana, sementara pelaksana usaha setuju untuk megerjakan usaha dengan kemampuan yang dimiliki. Dalam pelaksanaan akad antara penawaran dan penerimaan harus secara eksplisit yang menunjukkan tujuan akad. Penerimaan dari penawaran dilakukan pada saat kontrak dan akad dituangkan secara tertulis.

4) *Nisbah* keuntungan

Keuntungan merupakan jumlah yang diperoleh sebagai kelebihan dari modal. *Nisbah* keuntungan merupakan rukun yang khas dalam akad *mudharabah*. Adanya *nisbah* ini mencerminkan imbalan yang berhak diterima oleh kedua pihak yang melakukan akad *mudharabah*. Pengelola usaha memperoleh imbalan atas kerja yang dilakukan, sedangkan pemodal memperoleh imbalan atas modal yang telah diserahkan. Dalam hal mengalami kerugian, maka penyedia dana menanggung semua kerugian atas usaha yang dikelola oleh *mudharib,* dan pengelola tidak boleh menanggung kerugian apa pun. Kecuali jika kerugian tersebut diakibatkan oleh kesalahan berupa kesengajaan, kelalaian, atau pelanggaran kesepakatan. Inilah yang disebut metode penghitungan bagi hasil dengan menggunakan cara *profit sharing* (Umam, 2016).

Sebagaimana ditegaskan Salam (2020), hubungan hukum atau perjanjian antara pemodal dengan penerbit dapat diibaratkan menggunakan akad *mudharabah*. Oleh karena itu, untuk memastikan kesesuaian syariah terhadap praktik *equity crowdfunding,* rukun dan syarat akad *mudharabah* harus dipastikan terpenuhi. Melakukan investasi menggunakan *equity crowdfunding* dengan menggunakan akad *mudharabah* memiliki keuntungan: (1) dengan sistem bagi hasil maka risiko ditanggung bersama, (2) mengurangi kesenjangan pendanaan karena akses modal disediakan dari berbagai pemodal, (3) menjadi peluang investasi baru bagi investor kecil dan menengah, (4) mendorong inovasi, dan (5) menciptakan dan meningkatkan peluang

kerja dengan pendirian *starup* (Abdullah & Oseni, 2017). Menurut Salam (2020), *equity crowdfunding* secara spesifik dapat disesuaikan *mudharabah mutlaqah*, hal ini dapat dimengerti karena bentuk kerja sama proyek antara pemodal dengan penerbit dalam transaksi *equity crowdfunding* tidak ditentukan dan tidak dibatasi oleh pemodal. Sedangkan, hasil atau keuntungan dari usaha tersebut dibagi sesuai dengan kesepakatan di awal yang tertuang dalam akta perjanjian para pihak.

Bentuk akad kerja sama dalam *equity crowdfunding* terjadi antara pemilik modal (pemodal) dengan pengelola modal (penerbit). Pemodal dalam perjalanannya akan berkedudukan sebagai pemilik saham setelah membeli saham yang ditawarkan oleh penerbit dengan menyerahkan sejumlah dana, sementara penerbit yang telah memperoleh suntikan modal akan mengelola dan mengembangkan proyeknya. Para pihak dalam kegiatan urun dana bersifat ekuitas harus orang yang cakap dalam melakukan tindakan hukum. Harus dipastikan memiliki kemampuan untuk diangkat sebagai wakil, karena satu pihak berkedudukan sebagai pengelola saham adalah wakil dari pemilik saham. Aktivitas *equity crowdfunding* terdapat pihak penerbit saham dan pemodal. Jika dianalogikan dengan para pihak atau *'aqidain* sebagaimana dalam akad *mudharabah*, pemodal berkedudukan sebagai *shahibul maal,* sedangkan penerbit saham sebagai *mudharib*. Sementara penyelenggara *equity crowdfunding* sebagai perantara (wakil) untuk menjembatani kepentingan penerbit dan pemodal (Salam, 2020).

Dengan demikian, penerbit saham akan dikenakan biaya atas pemanfaatan platform. Pemodal yang telah menyerahkan uang secara *online* melalui platform kepada penerbit akan memperoleh *equity* sesuai akad *mudharabah*. Hal penting yang harus diperhatikan dalam melakukan investasi melalui layanan urun dana melalui transaksi elektronik adalah platform harus mencantumkan secara tegas dan jelas ketentuan bagi hasil yang akan diterima para pihak sehingga tidak ada yang merasa dirugikan. Prinsip bagi hasil merupakan salah satu utama dan ditekankan dalam aktivitas kerja sama atau gotong-royong sebagaimana yang diajarkan dalam ekonomi Islam.

Menurut Pasal 37 POJK Nomor 57 Tahun 2020, pembelian efek baik yang bersifat ekuitas, utang, maupun *sukuk,* yang dilakukan pemodal melalui penyelenggara wajib menggunakan *escrow account* pada bank yang digunakan untuk menerima dana hasil penawaran efek melalui layanan urun dana. Pemodal menyetorkan sejumlah dana pada *escrow account* sesuai perjanjian layanan urun dana. Seluruh dana yang disetor merupakan dana tampungan hasil penawaran efek menjadi milik penerbit dan dianggap sudah diterima oleh penerbit, kecuali penawaran efek batal demi hukum atau dibatalkan oleh penerbit. Dalam hal efek yang ditawarkan berupa *sukuk*, maka *escrow account* wajib menggunakan bank syariah. Begitu juga setiap transaksi dalam *equity crowdfunding* yang melibatkan pihak perbankan idealnya memakai bank syariah bukan lembaga keuangan konvensional yang masih menerapkan *ribawi.* Ini konsekuensi penerapan prinsip syariah pada penyelenggaraan layanan urun dana di Indonesia yang menghendaki setiap aktivitasnya harus sesuai dengan prinsip syariah.

Ketentuan dasar dalam Islam mengenai *maal* (modal) bahwa dana yang diserahkan pemodal harus jelas dan diketahui sumbernya dengan dipastikan sesuai prinsip syariah. Artinya, dalam perspektif syariah, hal yang dapat digunakan untuk mencari keuntungan melalui usaha yang halal disebut modal. Jika modal tersebut berupa barang, maka akan menghasilkan sewa (jika disewakan) atau keuntungan (jika dijual). Modal berbentuk uang, maka harus menghasilkan barang terlebih dahulu, seperti dalam kontrak yang menghasilkan keuntungan tetap seperti dalam akad *salam, murabahah,* dan *istisna'*. Namun, jika modal tersebut berupa uang untuk kegiatan usaha yang tidak dapat dipastikan sebelumnya, seperti dalam kontrak yang menghasilkan keuntungan tidak tetap, maka hanya dapat ditetapkan menggunakan *nisbah* keuntungan yang telah disepakati di awal.

Pasal 56 POJK Nomor 57 Tahun 2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, pemodal yang akan membeli efek menggunakan layanan urun dana harus memiliki rekening efek pada Bank Kustodian untuk menyimpan efek dan memiliki kemampuan membeli efek kepada penerbit. Pemodal dapat membeli paling banyak 5% (lima persen) lewat layanan urun

dana jika penghasilan sampai Rp. 500.000.000,- (lima ratus juta rupiah) per tahun. Sedangkan, pemodal dengan penghasilan lebih dari Rp. 500.000.000,- (lima ratus juta rupiah) per tahun, dapat membeli efek sampai 10% (sepuluh persen) melalui platform urun dana ekuitas per tahun. Apabila pemodal merupakan badan hukum dan pihak yang memiliki pengalaman investasi di pasar modal yang dibuktikan dengan kepemilikan rekening efek paling sedikit dua tahun sebelum dilakukan penawaran saham, maka kriteria di atas tidak berlaku. Yang harus dicermati dan dipatikan dalam penyelenggaraan *equity crowdfunding* syariah adalah kewajiban memastikan sumber dana (modal) halal dan memenuhi kepatuhan syari'ah serta menghindari unsur perjudian *(maisir),* penipuan *(gharar),* haram, dan bunga *(riba).*

Secara tidak langsung kriteria yang ditetapkan dalam peraturan tersebut dapat dianalogikan dengan syarat modal dalam ketentuan fikih *muamalah,* meskipun POJK Nomor 57 Tahun 2020 belum menjelaskan secara tegas dan detail mengenai sumber dana tersebut berasal dari sumber yang halal atau tidak. Oleh karena itu, pemodal sebelum memutuskan akan membeli saham yang ditawarkan penerbit lewat platform yang dimiliki penyelenggara secara *online* idealnya harus mengisi semacam surat penyataan bahwa dana yang digunakan untuk pembelian saham itu adalah halal. Pernyataan halal atas dana yang diterima penerbit akan semakin memantapkan keyakinannya bahwa modal yang digunakan untuk mengembangkan proyek atau usahanya adalah bersih dari hal-hal yang dilarang Islam. Jadi intinya, dalam perjanjian penyelenggaraan layanan urun dana pemodal harus transparan menyampaikan perihal sumber dana yang disetorkan pemodal melalui platform harus halal. Para ulama sepakat bahwa pendapatan nonhalal hukumnya haram dan dilarang dimanfaatkan oleh pemiliknya untuk kebutuhan apa pun baik secara terbuka maupun dengan cara *hilah* seperti digunakan untuk membayar pajak. Yang dimaksud pendapatan nonhalal adalah setiap pendapatan yang ber-sumber dari usaha yang tidak halal. Ini sesuai kaidah fikih, "setiap pendapatan yang tidak dapat dimiliki, maka pendapatan tersebut tidak dapat diberikan kepada orang lain," (Djazuli, 2006). Konsep Islam menjelaskan bahwa sesuatu yang haram itu tidak boleh dimiliki oleh seseorang. Ditinjau dari aspek *maqashid syariah,* setiap pendapatan yang

dihasilkan dengan cara yang tidak halal tidak dapat dimiliki oleh pelaku usaha tidak halal tersebut. Dalam pengertian lain, usaha nonhalal tidak melarikan kepemilikan sebagai sanksi atas keterlibatannya dalam usaha yang tidak halal.

Mengenai status hubungan pemodal terhadap modal yang dimiliki dalam akad *mudharabah* perlu disampaikan pendapat Al-Kasani dalam Fatwa Nomor 135/DSN-MUI/V/2020:

> "Dan menurut kami (madzhab Hanafi), bahwa status hubungan pemilik modal terhadap harta *mudharabah* adalah *milk raqabah* (kepemilikan atas zat atau fisik harta), bukan *milk tasharruf* (kepemilikan untuk mengelola). Sehingga status kepemiliknnnya dalam *haqq al-tasharruf* (hak untuk mengelola) adalah sama dengan status kepemilikn pihak lain. Sedangkan pengelola harta *mudharabah* memiliki *haqq al-tasharruf* bukan *milk al-raqabah* (hak milik atas zat harta itu sendiri); karenanya, hubungan kepemilikan pengelola atas zat harta itu seperti hubungan kepemilikan pihak lain; dengan demikian pemilik modal tidak memiliki hak melarang pengelola untuk mengelola atas harta atau modal *syirkah*. Atas dasar itu, status harta *syirkah mudharabah* bagi masing-masing pihak adalah seperti harta milik pihak lain; oleh karena itu, boleh dilakukan jual-beli antara kedua belah pihak tersebut."

Jenis kegiatan usaha yang dianggap bertentangan dengan prinsip syariah tidak dibolehkan untuk dikerjakan dalam kegiatan usaha investasi saham pada perusahaan yang melakukan usaha tidak halal (Fatwa Nomor 117/DSN-MUI/II/2018/ Tentang Layanan Pembiayaan Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah., 2018), yaitu (1) usaha lembaga keuangan konvensional seperti perbankan dan asuransi konvensional, (2) melakukan investasi pada emiten (perusahaan) yang pada saat transaksi tingkat keuntungan perusahaan kepada lembaga ribawi lebih dominan dibandingkan modalnya, (3) perjudian dan permainan yang tergolong judi atau perdagangan yang terlarang karena termasuk *maisir* atau judi yang dilarang dalam Islam, (4) produsen, distributor, serta pedagang makanan dan minuman yang haram, dan (5) produsen, distributor dan/atau penyedia barang-barang atau jasa yang merusak moral karena mengandung *madharat*. Meskipun lima unsur tersebut umumnya terjadi di bursa efek, tetapi masih banyak lagi transaksi yang

dilarang karena mengandung *riba,* spekulasi, penipuan, suap, jual-beli narkotika, minuman yang memabukkan, dan lain sebagainya. Dilihat dari aspek *maqashid,* unsur-unsur yang dilarang untuk ditransaksikan dalam *muamalah* karena dalam rangka untuk melindungi harta *(hifz maal).* Salah satu aspek yang harus dilindungi oleh setiap manusia dalam konsep Islam.

Setelah penerbit menyampaikan kelengkapan dokumen penawaran saham kepada penyelenggara, maka penyelenggara atau platform wajib melakukan *review* terhadap dokumen penerbit (pemilik usaha) seperti pemeriksaan terhadap akta pendirian badan hukum, anggaran dasar, jumlah yang yang dibutuhkan, risiko yang kemungkinan akan dihadapi, *bussiness plan* penerbit, izin usaha, kebijakan deviden, dan laporan keungan penerbit (Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020). Penerbit harus menyampaikan informasi dan dokumen yang menentukan kepada penyelenggara secara akurat dan transparan, sehingga ketika dilakukan telaah dokumen penyelenggara dapat mengambil keputusan atas penawaran saham kepada publik melalui platform. Jika dokumen yang menjadi syarat penawaran umum saham dinyatakan lengkap dan tidak bermasalah, penyelenggara akan menampilkan penawaran saham penerbit di *website* miliknya. Meskipun sudah dinyatakan dalam POJK bahwa penerbit yang menawarkan efek syariah harus memiliki Dewan Pengawas Syariah, penyelenggara yang melayani penawaran saham syariah tetap harus memastikan bahwa proyek yang dikerjakan penerbit sesuai prinsip syariah dan penggalangan dana penerbut bukan untuk kegiatan terorisme dan pencucian uang. Terlebih jika penyelenggara juga menerima penawaran efek bersifat *sukuk,* harus memiliki tim ahli syariah untuk mengkaji penawaran saham oleh penerbit. Hal ini semata-mata untuk menjamin prinsip syariah pada penyelenggaraan layanan urun dana.

Mengenai *sighat* akad yaitu *ijab* dan *qabul* dalam transaksi *equity crowdfunding* memuat perjanjian kerja sama antara pemodal atau penerbit dengan menggunakan penyedia tenaga perdagangan secara

elektronik dengan sistem bagi hasil. Perjanjian kontrak pemodal dan penerbit dituangkan dalam akta notaris (akta autentik). Ini merupakan wujud dari implementasi kesepakatan *(sighat)* sebagaimana dalam ketentuan hukum perjanjian Islam. Mekanisme serah terima antara penerbit, pemodal maupun platform dilakukan secara *online* menggunakan transfer dana (Salam, 2020). Pemodal yang akan membeli saham dari penerbit akan transfer dana sesuai jumlah saham yang dibeli melalui *account platform* layanan urun dana, kemudian penerbit akan menyerahkan saham kepada pemodal melalui perantara penyelenggara. Setelah diserahkan, penerbit wajib mencatatkan kepemilikan saham pemodal dalam daftar pemegang saham penerbit atas nama pemodal. Mekanisme pencatatan nama-nama pemilik saham (pemodal) disediakan pada *website* penyelenggara *equity crowdfunding*.

b) Menurut Umam (2016), akad *musyarakah* merupakan akad yang dilakukan oleh orang yang mengikatkan diri untuk bekerja sama, di mana masing-masing pihak memberikan kontribusi dana dengan ketentuan bahwa keuntungan dan risiko ditanggung bersama sesuai dengan kesepakatan. Akad semacam ini termasuk model *syirkah* yang dapat digunakan oleh seseorang yang mengalami kendala permodalan. Segala sesuatu yang dimanfaatkan oleh orang orang lain berhak memperoleh kompensasi yang saling menguntungkan baik terhadap modal atau tenaga. Kerja sama dalam *equity crowdfunding* dapat juga menggunakan akad *musyarakah* dengan catatan harus memenuhi rukun dan syarat supaya kerja sama tersebut dinyatakan sah menurut ketentuan syariah (Fatwa Dewan Syariah Nasional Nomor 08/DSN-MUI/IV/2000 Tentang Pembiayaan Musyarakah, 2000).

   1) Para pihak yang berkontrak *('aqidain)* harus cakap melakukan tindakan hukum dengan ketentuan: (a) kompeten dalam memberikan atau diberikan kekuasaan perwakilan, (b) setiap mitra harus menyediakan dana dan pekerjaan, dan setiap mitra melaksanakan kerja sebagai wakil, (c) setiap mitra harus memiliki hak mengatur aset *musyarakah* dalam proyek, (d) setiap

mitra memberi wewenang kepada mitra yang lain untuk mengelola aset dan masing-masing dianggap telah diberi wewenang melakukan aktivitas *musyarakah* dengan memperhatikan kepentingan mitra, tanpa melakukan kelalaian dan kesalahan yang disengaja, dan (e) seorang mitra tidak diizinkan mencairkan atau investasi dana tersebut demi kepentingan sendiri.

2) Objek akad *(ma'qud alaih)* yang terdiri dari modal, kerja atau *amal,* keuntungan, dan kerugian. Berkaitan dengan modal, maka, (a) modal yang diberikan harus berupa uang tunai atau emas dan perak yang dapat dinominalkan sehingga nilainya sama, sehingga modal harus diketahui jumlah dan jenisnya. Jika modal berupa aset, maka para pihak harus bersepakat mengenai aset tersebut untuk dinilai dengan tunai, (b) para pihak tidak boleh meminjamkan, menyumbangkan, menghadiahkan modal *musyarakah* kepada pihak lain, kecuali atas dasar kesepakatan. Mengenai kerja atau *amal* yang dikerjakan oleh para pihak harus: (a) partisipasi para mitra dalam pekerjaan merupakan dasar pelaksanaan *musyarakah,* tetapi kesamaan porsi kerja bukan merupakan syarat seorang mitra boleh melaksanakan kerja lebih banyak dari yang lainnya dan dalam hal ini ia boleh menuntut bagian keuntungan tambahan untuk dirinya, (b) setiap mitra melaksanakan kerja dalam *musyarakah* atas nama pribadi dan wakil mitranya di mana kedudukan masing-masing dalam organisasi kerja harus dijelaskan dalam bentuk akad per-janjian atau kontrak (Umam, 2016). Ketentuan keuntungan atau kerugian dalam akad *musyarakah* di antaranya (a) setiap pembagian keuntungan harus dituangkan di awal akad secara jelas untuk menghindari sengketa di kemudian hari, (b) setiap keuntungan mitra harus dibagikan secara proporsional atas dasar seluruh keuntungan dan tida ada jumlah yang ditentukan di awal yang ditetapkan bagi seorang mitra, (c) seorang mitra boleh mengusulkan bahwa jika keuntungan melebihi jumlah tertentu, kelebihan atau persentase tersebut diberikan kepadanya, (d) kerugian harus dibagi di antara para mitra secara proporsional menurut saham masing-masing dalam modal yang

diserahkan, (e) biaya operasional dari *musyarakah* ditanggung secara bersama sesuai kesepakatan. Penghitungan bagi hasil dalam akad *musyarakah* menggunakan metode *profit and loss sharing,* yaitu para pihak akan memperoleh bagian hasil sebesar *nisbah* yang telah disepakati dikalikan besarnya keuntungan yang diperoleh oleh *mudharib,* sedangkan jika terjadi kerugian maka ditanggung bersama sebanding dengan kontribusi masing-masing (Umam, 2016).

3) Kesepakatan akad *(sighat)* yang berupa *ijab* dan *qabul* antara para pihak harus dinyatakan oleh para pihak untuk menunjukkan kehendaknya ketika mengadakan akad dengan ketentuan: (a) penawaran dan penerimaan harus dinyatakan secara eksplisit menunjukkan tujuan akad, (b) penerimaan dari penawaran dilakukan pada saat kontrak, dan (c) akad dituangkan secara tertulis yang sah dan legal.

Manakala rukun dan syarat *musyarakah* di atas dikaitkan dengan penyelenggaraan *equity crowdfunding,* maka pihak penerbit dan pemodal berkedudukan sebagai *'aqidain* atau para pihak dalam akad. Kemudian *ma'qud alaih* (objek akad) adalah proyek yang dikampanyekan penerbit dengan harapan pemodal bersedia untuk memberikan tambahan dana lalu proyek tersebut akan dikerjakan oleh penerbit. Modal yang disetor pemodal dalam *equity crowdfunding* berupa sejumlah dana yang telah ditentukan oleh POJK, bukan modal dalam bentuk yang lain. Pernyataan kehendak para pihak atau *syighat* dalam akad *musyarakah* adalah rangkaian tahapan dalam mekanisme penjanjian para pihak penyelenggaraan layanan urun dana. Dalam mekanisme layanan urun dana para pihak memiliki kedudukan dan tugas sendiri-sendiri, di mana pemodal dan penyelenggara tidak terlibat langsung dalam pengelolaan proyek atau usaha yang dikerjakan oleh penerbit saham (Salam, 2020). Jika konsep *musyarakah* akan diterapkan dalam *equity crowdfunding,* maka pemodal dan penerbit bersama-sama dalam mengerjakan proyek. Esensi akad *musyarakah* adalah kerja sama *maal* (modal) dan *amal* (usaha). Inilah salah satu yang membedakan *musyarakah* dengan *mudharabah.* Pelaksanaan kerja sama pemodal dalam *amal* yang memungkinkan dikerjakan adalah melakukan

pemantauan terhadap perkembangan pengelolaan proyek, baik secara langsung maupun tidak langsung.

DSN-MUI (2020) menyatakan secara spesifik, jika dilihat dari konstruksi hubungan para pihak dalam *equity crowdfunding*, maka dapat disamakan dengan akad *syirkah musahamah*, yaitu akad *syirkah* yang kepemilikan porsi modal para mitra atau pemodal didasarkan pada modal disetor yang dibuktikan dengan saham. Akad ini merupakan pengembangan *syirkah inan* yang memiliki tanggung jawab terbatas. Modal yang disetorkan pemodal atau pemegang saham menjadi milik penerbit (perusahaan), sehingga perusahaan tersebut menjadi milik para pemegang saham yang sedang menjalankan *syirkah*. Hak masing-masing pemegang saham ditentukan dan diwakilkan kepada pengurus perusahaan dengan musyawarah atau Rapat Umum Pemegang Saham di mana hak suaranya didasarkan jumlah kepemilikam saham para pemodal. Sedangkan, menurut Salam (2020), akad pada layanan urun dana dapat dianalogikan dengan *syirkah amla'* yaitu persekutuan antara dua orang atau lebih untuk memiliki suatu benda (Salam, 2020). Artinya, kepemilikan saham secara bersama dan keberadaannya muncul apabila dua atau lebih orang secara kebetulan memperoleh kepemilikan bersama atas suatu kekayaan.

Pembagian keuntungan, sebagaimana dalam akad *mudharabah* dan *musyarakah*, harus dalam bentuk persentase sebagaimana yang dituangkan dalam kesepakatan atau perjanjian di awal yang tidak boleh dinyatakan dalam bentuk nominal rupiah tertentu. Perlu digarisbawahi bahwa pembagian keuntungan antara penerbit saham dan pemodal tidak boleh didasarkan pada hal-hal yang dilarang syariah. Keuntungan tersebut harus halal serta bersih dari *subhat* dan haram. Jika mengalami kerugian, ditanggung oleh pemodal sebatas modal yang disetor, kecuali terdapat kelalaian yang dilakukan oleh pengelola, maka kerugian ditanggung bersama. Pihak pengelola dana (penerbit) tidak memperoleh keuntungan dari hasil kerjanya selain telah kehilangan tenaga. Penerbit tidak memperoleh apa pun jika dana yang dikelolanya tidak menghasilkan keuntungan.

c) *Bai'* atau jual-beli merupakan akad pertukaran harta yang bertujuan memindahkan kepemilikan harta tersebut (Fatwa Dewan Syariah Nasional Nomor 80/DSN-MUI/III/2011 Tentang Penerapan Prinsip Syariah Dalam Mekanisme Perdagangan Efek Bersifat Ekuitas Di Pasar Reguler Bursa Efek, 2011). Dalam pengertian lain, jual-beli dapat dipahami pertukaran harta atas dasar saling rela untuk memindahkan hak milik dengan alat tukar yang sah dan dibenarkan. Hal ini menegaskan sebagai perbuatan hukum akad jual-beli mempunyai konsekuensi, yaitu beralihnya hak atas suatu barang dari penjual kepada pembeli.

Keabsahan perjanjian jual-beli harus memenuhi rukun dan syarat, yaitu (1) subjek akad atau para pihak yang berakad, yaitu penjual dan pembeli, (2) objek akad atau barang yang ditransaksikan, dan (3) *sighat* akad atau kesepakatan subjek akad atas objek akad yang dibuktikan adanya *ijab* dan *qabul* (Umam, 2016). Para pihak yang berakad harus memiliki kecakapan hukum dan tidak dalam keadaan terpaksa ketika melakukan perbuatan hukum. Terhadap objek yang diperjualbelikan harus suci dan halal, tidak termasuk barang yang dilarang, dan mengandung manfaat. Tatkala berlangsung transaksi jual-beli objek akad dapat diserahkan oleh penjual kepada pembeli, begitu juga pembeli akan memberikan uang kepada penjual. Tidak sah menjual suatu barang yang tidak dapat diserahkan kepada pembeli. Sedangkan, *sighat* akad harus ada kejelasan dan kesesuaian antara *ijab* dan *qabul* terhadap spesifikasi barang maupun harga yang disepakati. Klausul *sighat* akad harus jelas tidak boleh mengandung klausul menggantungkan atas keabsahan transaksi jual-beli pada kejadian yang akan datang. Menurut Dewi, Wirdyaningsih dan Barlinti, 2005 (via Gemala Dewi, dkk, 2013), *sighat* akad tidak boleh berwaktu karena jual-beli berwaktu tidak sah.

Kegiatan *equity crowdfunding* syariah yang diperjualbelikan adalah saham atau kepemilikan atas modal yang telah ditanam dalam usaha bersama yang dijalankan berdasarkan prinsip syariah, tidak dalam bentuk uang maupun utang. Sehingga, efek yang dapat dijadikan objek perdagangan adalah efek bersifat ekuitas yang sesuai prinsip syariah dan masuk Daftar Efek Syariah (DES) yang disusun dan diterbitkan

oleh Bapepam-LK (sekarang OJK) dengan melibatkan Dewan Syariah Nasional Majelis Ulama Indonesia. Saham syariah yang merupakan bukti kepemilikan atas suatu perusahaan yang tidak bertentangan dengan prinsip syariah dan tidak termasuk saham yang memiliki hak-hak istimewa. Saham yang diperjualbelikan di bursa telah memperoleh ketentuan khusus oleh PT Bursa Efek Jakarta maupun *Jakarta Islamic Index (JII)*. JII semacam indeks yang terdiri dari sekitar 30 saham yang mengakomodasi investasi syariah. Dengan kata lain penerbitan JII digunakan sebagai tolok ukur kinerja suatu investasi saham berdasarkan prinsip syariah.

Akad jual-beli ekuitas dinilai sah ketika terjadi kesepakatan harga, jenis, dan volume antara penawaran jual dan penawaran beli (Fatwa Dewan Syariah Nasional Nomor 80/DSN-MUI/III/2011 Tentang Penerapan Prinsip Syariah Dalam Mekanisme Perdagangan Efek Bersifat Ekuitas Di Pasar Reguler Bursa Efek, 2011). Pemodal yang membeli saham milik penerbit melalui penyelenggara layanan urun dana akan setor dana pada *escrow account* sebagai penampung dana hasil penawaran saham penerbit yang dilakukan secara *online*. Penerbit dalam aktivitas *equity crowdfunding* harus menginformasikan kondisi nyata perusahaan yang dikelola secara akurat, transparan, dan terpercaya. Ini sebagai wujud penerapan prinsip transparansi dan meningkatkan kepercayaan publik pada layanan urun dana, sehingga tidak ada pihak yang dirugikan dalam kegiatan bisnis ini. Merugikan pihak lain dengan cara yang bertentangan prinsip syariah berarti melanggar prinsip keadilan yang dijunjung tinggi dalam Islam.

Prinsip jual-beli saham syariah wajib memastikan proyek yang dikerjakan penerbit memenuhi ketentuan syariah. Seperti yang telah dijelaskan sebelumnya, adanya daftar saham syariah bagian dari upaya untuk memberikan kepastian dan tranparansi bagi investor, sedangkan pemenuhan terhadap ketentuan syariah merupakan hasil peran Dewan Syariah Nasional (DSN) yang mengeluarkan fatwa syariah di bidang ekonomi. Fatwa Dewan Syariah Nasional Nomor 80/DSN-MUI/III/2011 melarang perdagangan efek bersifat ekuitas mengandung unsur-unsur terlarang. Transaksi jual-beli saham dilarang melakukan tindakan *tadlis* di antaranya *front running* yaitu tindakan

anggota bursa efek yang melakukan transaksi lebih dahulu atas efek tertentu karena adanya informasi bahwa nasabahnya melakukan transaksi dalam jumlah besar sehingga dapat memengaruhi harga pasar dengan tujuan memperoleh keuntungan besar. Tindakan lainnya yaitu memberikan pernyataan yang secara materiil menyesatkan publik *(misleading information)* padahal informasi tersebut dapat memengaruhi harga efek. Perdagangan saham yang mengandung unsur *tadlis* ini mengakibatkan keuntungan yang berlebih pada segelintir orang saja, tetapi merugikan banyak pihak.

Tindakan yang masuk kategori *taghrir* yakni perdagangan semu yang tidak mengubah kepemilikan *(wash sale)* yang bertujuan membentuk suatu harga seolah-olah harga tersebut terbentuk melalui transaksi yang wajar, padahal itu rekayasa yang bersifat semu. Perdagangan semacam ini sebagai upaya untuk mengelabuhi pihak lain. Kemudian, *pre arrange trade* atau transaksi melalui pemasangan order beli dan jual pada waktu tertentu yang hampir bersamaan karena adanya perjanjian sebelumnya antara penjual dan pembeli yang bertujuan membentuk suatu harga yang tidak semestinya (Fatwa Dewan Syariah Nasional Nomor 80/DSN-MUI/III/2011 Tentang Penerapan Prinsip Syariah Dalam Mekanisme Perdagangan Efek Bersifat Ekuitas Di Pasar Reguler Bursa Efek, 2011).

Kategori *najsy* dalam perdagangan efek yaitu *pump and dump* atau transaksi yang diciptakan untuk menaikkan harga efek sampai level tertinggi kemudian pihak yang berkepentingan melakukan transaksi menjual dengan jumlah yang sangat signifikan untuk mewujudkan penurunan harga. Transaksi ini tujuannya menciptakan iklim perdagangan untuk menjual dengan harga tinggi demi untung tidak wajar. Inisiator beli bermaksud menaikkan harga yang tinggi dengan melakukan transaksi yang diawali penciptaan harga *uptrend* disertai dengan informasi berlebihan dan menyesatkan. Jika harga sudah mencapai harga level tertinggi, para pihak berkepentingan akan melakukan rekayasa transaksi inisiator jual untuk mendorong harga turun. Inilah tindakan *hype and dump* yang memiliki kemiripan dengan *pump and dump*. Melakukan tindakan pemasangan order permintaan atau penawaran palsu *(creating fake demand/supplay)* juga dilarang dalam

Islam. Praktik ini terjadi dengan memasang penawaran/penjualan dengan harga terbaik, jika order yang telah ditentukan terpenuhi kemudian orderan tersebut akan dihapus. Tindakan ini untuk menciptakan kesan positif kepada publik supaya seolah-olah perdagangannya berjalan dinamis, sehingga publik terpengaruh untuk melakukan penjualan atau pembelian (Fatwa Dewan Syariah Nasional Nomor 80/DSN-MUI/III/2011 Tentang Penerapan Prinsip Syariah Dalam Mekanisme Perdagangan Efek Bersifat Ekuitas Di Pasar Reguler Bursa Efek, 2011). Larangan melakukan penawaran palsu *(najsy)* ditegaskan dalam hadist Muhammad *saw* berbunyi, "Dari Ibnu Umar, R.A, bahwa Rasulullah *saw* melarang melakukan penawaran palsu *(najsy),"* (H.R. Bukhari) (Abu 'Abdillah Muhammad Ibn Ismail Bukhari, tt).

Larangan melakukan tindakan *ikhtikar* dijelaskan dalam Hadist Nabi Muhammad *saw*, "Dari Ma'mar bin Abdullah bahwa Rasulullah *saw* bersabda: Tidaklah melakukan *ihtikar* (penimbunan) kecuali orang yang bersalah," (H.R. Muslim) (Muslim, tt). Di antara praktik *ihtikar* dalam perdangan saham, yaitu *polling interest.* Bahwa pergerakan harga efek yang diciptakan dan diramaikan oleh kelompok tertentu agar seolah-olah aktivitas transaksi perdagangan efek berjalan drastis, padahal itu palsu dan tidak sesuai realita yang ada. Upaya mewujudkan transaksi jual-beli saham dari pemegang saham mayoritas untuk menciptakan *supply* semu yang menyebabkan harga menurun pada pagi hari itu dan menyebabkan investor publik melakukan *short selling.* Tindakan ini dinamakan *cornering.* Kemudian, tindakan yang termasuk kategori *ghisysy* adalah *marking at the close* (pembentukan harga di penghujung hari penutupan perdagangan sesuai yang diinginkan), dan *alternate trade*, yaitu perdagangan oleh kelompok tertentu di mana para pihak tersebut bergantian peran sebagai penjual dan pembeli supaya terkesan wajar dan dinamis (Fatwa Dewan Syariah Nasional Nomor 80/DSN-MUI/III/2011 Tentang Penerapan Prinsip Syariah Dalam Mekanisme Perdagangan Efek Bersifat Ekuitas Di Pasar Reguler Bursa Efek, 2011).

Bai'al-ma'dum merupakan jual-beli yang objeknya tidak ada pada saat akad, atau jual-beli atas suatu barang padahal penjual tidak

memiliki efek (ekuitas) yang dijualnya. Penjualan saham yang belum dimiliki dengan harga tinggi sering disebut *short selling* atau jual kosong. Adapun *talaqqi al-rukban* adalah jual-beli atas suatu barang dengan harga jauh di bawah harga pasar karena penjual tidak mengetahui harga tersebut. Tindakan ilegal lain yang dilarang adalah perdagangan orang dalam atau *insider trading* dengan memanfaatkan informasi dari orang dalam pasar finansial yang bersifat rahasia dan belum terbuka informasi tersebut dengan tujuan memperolah keuntungan melalui jalan pintas. *Insider trading* semacam ini termasuk *ghabn fahisy* yang dilarang dalam hukum pasar modal maupun dalam hukum ekonomi Islam, sedangkan perdagangan efek yang mengandung *riba* dan nyata-nyata dilarang dalam fikih *muamalah,* misalnya *margin trading* (transaksi dengan pembiayaan), yaitu para pihak melakukan transaksi dengan fasilitas pinjaman yang disertai bunga (Fatwa Dewan Syariah Nasional Nomor 80/DSN-MUI/III/2011 Tentang Penerapan Prinsip Syariah Dalam Mekanisme Perdagangan Efek Bersifat Ekuitas Di Pasar Reguler Bursa Efek, 2011).

Penyampaian informasi kepada publik sehingga mendorong seseorang melakukan perbuatan hukum harus dilakukan berdasarkan prinsip halal dan menghindari tindakan yang mengandung unsur yang dilarang. Informasi yang bersifat akurat dan menentukan harus disampaikan secara transparan karena akan memengaruhi keputusan investasi oleh pemodal untuk membeli saham kepada penerbit. Industri penerbit saham dalam *equity crowdfunding* sepatutnya mempunyai saham portepel *(portofolio shares)* dan memiliki rencana menambah saham baru *(issuing new shares)* lewat Rapat Umum Pemegang Saham (RUPS) dengan diawali penawaran umum saham baru kepada publik sebelum penerbit bekerja sama dengan platform layanan urun dana. Jika saat ditandatangani kerja sama dengan penyelenggara *equity crowdfunding* penerbit belum mempunyai dan melakukan aktivitas tersebut, maka itikad baik penerbit harus ditinjau kembali, karena saham sebagai objek perjanjian merupakan unsur penting dalam jual-beli saham (Hartanto, 2020). Menurut Fatwa DSN-MUI Nomor 135/DSN-MUI/V/2020, saham portepel yang belum disetor merupakan bagian dari struktur modal dasar perusahaan di mana belum boleh diakui sebagai saham syariah, sehingga tidak

memiliki hak melekat pada saham syariah. Rencana penambahan saham syariah baru dapat dilakukan selama berpedoman pada nilai wajar saham dan pemegang saham lama mempunyai hak membeli saham syariah baru tersebut terlebih dahulu.

Perusahaan yang benar-benar tidak mampu mewujudkan prinsip syariah pada transaksi jual-beli saham, maka harus memenuhi beberapa syarat: (1) kegiatan usaha perusahaan (penerbit) tidak bertentangan dengan prinsip syariah, (2) perbandingan utang berbasis bunga dengan aset tidak lebih 45%, (3) pendapatan tidak halal dengan pendapatan usaha halal tidak lebih dari 10%, dan (4) pemegang saham yang menerapkan prinsip syariah wajib melakukan pembersihan kekayaannya dari unsur-unsur yang bertentangan dengan prinsip syariah (Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Nomor 135/DSN-MUI/V/2020 Tentang Saham, 2020).

Penerbit dalam *equity crowdfunding* yang berstatus sebagai badan usaha Indonesia baik berbentuk badan hukum atau badan usaha lainnya yang berperan sebagai penjual saham miliknya kepada pemodal. Sebagaimana konsep dalam perjanjian jual-beli, masing-masing ini pihak memiliki hak dan kewajiban yang harus dilaksanakan. Penerbit memiliki usaha atau proyek berkedudukan sebagai penjual berkewajiban menerbitkan dan menyerahkan saham tersebut kepada pemodal selaku pembeli. Pemodal juga berkewajiban menyerahkan uang kepada penerbit untuk membayar atas saham yang dibeli.

2. Akad Pemodal dengan Penyelenggara *Equity Crowdfunding*

Penyelenggara *equity crowdfunding* adalah badan hukum Indonesia berbentuk Perseroan Terbatas (PT) atau Koperasi yang telah memenuhi syarat: (1) memiliki izin usaha dari Otoritas Jasa Keuangan kepada Kepala Eksekutif Pengawas Pasar Modal, (2) terdaftar sebagai penyelenggara sistem elektronik pada Kementerian Komunikasi dan Informatika, (3) penyelenggara harus memiliki modal minimal 2,5 Miliar saat mengajukan permohonan izin kepada Otoritas Jasa Keuangan; (4) Penyelenggara wajib memiliki sumber daya manusia (SDM) yang memiliki keahlian dan/atau latar belakang di bidang Teknologi Informasi (TI) untuk mendukung pengembangan layanan *equity crowdfunding* (Peraturan Otoritas Jasa Keuangan Republik

Indonesia Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020).

Menurut Rahmawati, Tanjung dan El Badriati, (2018), Penyelenggara wajib menyediakan informasi kepada pengguna (pemodal dan penerbit) secara akurat, jujur, jelas, dan tidak menyesatkan. Mengingat pelaksanaan *equity crowdfunding* dilakukan menggunakan sistem elektronik secara *online* yaitu komunikasi antara platform dengan *user* tidak bertatap muka langsung, maka prinsip kejujuran, kepercayaan, dan amanah harus dijunjung tinggi oleh masing-masing pihak. Satria (2019) mengungkapkan, *equity crowdfunding* dapat dikatakan juga bisnis berbasis kepercayaan karena dilakukan menggunakan platform dengan memanfaatkan kecanggihan teknologi informasi, sehingga berbagai kemungkinan yang tidak diinginkan dapat terjadi. Oleh karena itu, penyelenggara wajib menjaga kepercayaan *user* dengan prinsip dasar memberikan perlindungan hukum bagi pemodal dan penerbit. Prinsip-prinsip *good coporate govennance* juga harus diterapkan dalam penyelenggaraan layanan urun dana.

Menurut Safera dan Atmadja (2018), perjanjian antara penyelenggara dengan pemodal idealnya mengatur hal-hal yang wajib dimuat supaya pemodal mengetahui gambaran umum substansi perjanjian yang dilakukan dengan penyelenggara. Perjanjian penyelenggaraan layanan urun dana antara penyelenggara dan pemodal sebagaimana Pasal 64 POJK Nomor 57 Tahun 2020, dapat dituangkan dalam bentuk perjanjian baku dengan tetap memenuhi prinsip keseimbangan, keadilan, dan kewajaran. Perjanjian baku pada layanan urun dana antara penyelenggara dengan pemodal mulai mengikat dua belah pihak saat pemodal menyatakan persetujuannya atas ini perjanjian secara elektronik. Perjanjian baku tersebut juga dimungkinkan mengatur mekanisme pelimpahan kuasa dari pemodal sebagai pemegang saham yang dikeluarkan penerbit kepada penyelenggara, seperti menandatangani akta dan dokumen saat Rapat Umum Pemegang Saham (RUPS) yang dilakukan penerbit (Hartanto, 2020). Pengaturan perjanjian baku ini memiliki kesamaan dengan konsep akad baku sebagaimana diatur Fatwa DSN MUI Nomor

117/DSN-MUI/II/2018 bahwa penyelenggara wajib memenuhi prinsip keseimbangan, keadilan, dan kewajaran sesuai syariah dan peraturan perundang-undangan yang berlaku jika akan memberlakukan perjanjian baku kepada pengguna. Perjanjian tersebut mengikat saat pemodal menyatakan persetujuan secara elektronik atas isi perjanjian baku tersebut. Pasal 78 POJK Nomor 57/POJK.04/2020 menyatakan perjanjian baku dilarang mengalihkan tanggung jawab atau kewajiban penyelenggara kepada pengguna. Selain itu, dalam perjanjian baku tidak dibolehkan menyatakan bahwa Pengguna tunduk pada peraturan baru, tambahan, lanjutan, dan/atau perubahan yang dibuat secara sepihak oleh penyelenggara dalam periode pemanfaatan layanan urun dana oleh pengguna.

Pemodal yang melakukan pembelian saham milik penerbit melalui penyelenggara layanan urun dana harus memiliki rekening efek pada kustodian yang digunakan untuk penyerahan sejumlah dana ke *escrow account,* rekening khusus yang digunakan untuk menampung dana masyarakat yang dipercayakan kepada pihak bank yang ditunjuk. *Escrow account* difungsikan untuk mencegah penyelenggara menghimpun dana melalui rekening penyelenggara. Saat penyelenggara menawarkan efek berupa saham, perjanjian tersebut memuat ketentuan mengenai pemberian kuasa kepada penyelenggara yang mewakili pemodal sebagai pemegang saham penerbit, termasuk menghadiri Rapat Umum Pemegang Saham penerbit dan penandatanganan akta serta dokumen terkait lainnya. Penawaran efek bersifat utang atau *sukuk*, perjanjiannya wajib memuat paling sedikit ketentuan mengenai pemberian kuasa kepada penyelenggara untuk mewakili kepentingan pemodal sebagai pemegang efek bersifat utang atau *sukuk* (Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020).

Hubungan antara pemodal dan penyelenggara *equity crowdfunding* dapat menggunakan akad *wakalah bil ujrah*, yaitu suatu perjanjian di mana pemberi kuasa memberikan kuasa kepada penerima kuasa untuk mengerjakan suatu perbuatan hukum yang disepakati atas nama pemberi kuasa terhadap hal-hal yang boleh diwakilkan secara syariah

dengan disertai pemberian imbalan berupa upah kepada penerima kuasa (Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia No: 117/DSN-MUI/II/2018 Tentang Layanan Pembiayaan Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah, 2018).

Hal penting yang harus diperhatikan dalam akad *wakalah*, yaitu pernyataan *ijab* dan *qabul* yang harus dinyatakan para pihak yang menunjukkan atas suatu kehendak untuk mengadakan akad. Menurut Umam (2016), yang menjadi rukun akad *wakalah* yaitu pernyataan *ijab* dan *qabul*. Untuk urusan yang bersifat sederhana dapat menggunakan *ijab* dan *qabul* secara lisan, sedangkan urusan yang bersifat kompleks (seperti layanan urun dana) sebaiknya dibuat secara tertulis, baik berupa akta autentik yang dibuat di hadapan pejabat yang berwenang maupun akta di bawah tangan yang dibuat para pihak secara mandiri. Adapun *wakalah* dengan konsep pemberian imbahan atau *fee* sifatnya mengikat para pihak, sehingga tidak dapat dibatalkan sepihak. Pemberi kuasa harus merupakan pemilik sah atas apa yang dikuasakan kepada orang lain. *Muwakkil* (yang mewakilkan) harus *mukallaf* atau orang yang telah memiliki kecakapan untuk melakukan tindakan hukum. Sedangkan, *wakil* (penerima kuasa) harus cakap hukum, mampu melaksanakan tugas yang dikuasakan kepadanya, dan amanah. Mengenai objek yang dikuasakan harus dapat diketahui dengan jelas oleh *wakil* dan tidak bertentangan dengan syariat Islam (DSN-MUI, 2000).

Penyelenggaraan layanan urun dana yang menjadi pemberi kuasa adalah pemodal, sedangkan penerima kuasa adalah platform urun dana. Penyelenggara bertindak sebagai penyedia sistem bagi pemodal dalam proses perdagangan saham yang dijual penerbit melalui layanan urun dana. Pemodal memberi kuasa kepada penyelenggara untuk menyerahkan modalnya sesuai proyek yang disepakati kepeda penerbit. Setelah penerbit menyerahkan dokumen bukti kepemilikan proyek (saham) kepada penerbit melalui perantara (wakil) penyelenggara, kewajiban penyelenggara adalah mendistribusikan saham penerbit kepada pemodal. Proses distribusi saham tersebut dilakukan secara elektronik menggunakan penitipan kolektif pada kustodian atau secara fisik melalui pengiriman sertifikat saham

(Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020). Sebelum melakukan pendaftaran efek pada penitipan kolektif, penerbit wajib melakukan perjanjian dengan Lembaga Penyimpanan dan Penyelesaian. Kustodian ini di antara tugasnya memberikan jasa penitipan efek, menyelesaikan transaksi efek, dan mewakili pemegang rekening yang menjadi nasabah. Ini menegaskan jika pembelian saham pada *equity crowdfunding* tidak wajib bersifat *scriptless* (Hartanto, 2020).

Penyelenggara yang melayani penawaran *sukuk* oleh penerbit melalui layanan urun dana yang dikelola wajib menunjukkan surat pernyataan akan menunjuk pihak yang bertanggung jawab melakukan pengawasan terhadap pemenuhan prinsip syariah. Di sini kedudukan penyelenggara selaku kuasa pemodal yang memiliki kewajiban: (1) memantau perkembangan pengelolaan proyek yang dikerjakan, (2) mengawasi dan memantau kinerja penerbit berdasarkan perjanjian penerbitan *sukuk*, (3) memastikan pembayaran kewajiban kepada pemegang efek bersifat *sukuk*, dan (4) memantau pembayaran yang dilakukan penerbit kepada pemegang efek *sukuk* (Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020). Prestasi yang telah dikerjakan platform padanya berhak memperoleh upah atau *fee*.

3. Akad Penerbit dengan Penyelenggara *Equity Crowdfunding*

Penyelenggara sebagai pihak yang dipakai jasanya oleh penerbit untuk menawarkan saham kepada masyarakat secara *online* harus memiliki konsep kampanye yang menarik, sehingga publik bersedia membeli saham yang ditawarkan. Pendidikan dan pelatihan harus senantiasa dilakukan penyelenggara untuk meningkatkan kualitas SDM, sehingga selama proses *review* terhadap dokumen perusahaan penerbit berjalan sesuai ketentuan yang berlaku. Dokumen penerbit yang harus dikaji penyelenggara saat penawaran saham melalui *equity crowdfunding*, seperti legalitas penerbit yang dibuktikan pengesahan badan hukum, izin usaha, mekanisme penambahan modal, struktur perusahaan, dan dokumen penting lain yang terkait. Begitu juga usaha

yang dikerjakan penerbit harus dapat mendorong minat pemodal untuk investasi pada sektor yang tidak dilarang oleh hukum. Mekanisme kampanye *equity crowdfunding* yang dilakukan secara kreatif dapat memengaruhi masyarakat turut serta dalam memberikan dukungan dan akhirnya membeli saham (Hornuf & Neuenkirch, 2017). Penyelenggara juga wajib mempunyai standar prosedur operasional mengenai penerapan program anti pencucian uang dan pencegahan pendanaan terorisme. Artinya, proyek yang dikerjakan dalam kegiatan *crowdfunding* bukan proyek yang dilarang oleh hukum negara dan hukum agama.

Pasal 62 POJK Nomor 57 Tahun 2020 menjelaskan perjanjian penyelenggaraan layanan urun dana antara penyelenggara dengan penerbit harus dituangkan dalam akta notaris yang dapat menggunakan dokumen elektronik. Setidaknya akta tersebut menyebutkan nomor perjanjian, mulai dan berakhirnya perjanjian, saham yang ditawarkan, identitas para pihak, hak dan kewajiban masing-masing pihak, nominal dana yang dihimpun, besarnya komisi dan biaya pelaksanaan urun dana ekuitas, dan mekanisme penyelesaian sengketa. Sementara itu, dalam hal penerbit menerbitkan efek bersifat utang atau *sukuk,* maka dalam perjanjian tersebut harus menjelaskan hak dan kewajiban penyelenggara selaku kuasa pemodal dan besaran *nisbah* bagi hasil. Ketika menerbitkan *sukuk* harus ada pernyataan jika ternyata terjadi kegagalan dalam memenuhi kewajiban terkait dengan aspek kesesuaian dengan prinsip-prinsip syariah. Perjanjian penerbitan efek bersifat utang atau *sukuk* antara penyelenggara sebagai kuasa pemodal dengan penerbit harus dituangkan dalam akta notaris wajib memuat ketentuan mengenai hak dan kewajiban para pihak, jenis dan skema akad syariah yang digunakan untuk transaksi syariah, hingga besaran *nisbah* bagi hasil, margin, atau imbal jasa. Perjanjian tersebut juga harus memuat surat pernyataan akan menunjuk pihak yang bertanggungjawab untuk mengawasi dan menjamin sesuai prinsip-prinsip syariah di pasar modal jika penyelenggara tidak memiliki Dewan Pengawas Syariah.

Menurut konsep *equity crowdfunding,* penerbit hanya boleh menawarkan saham kepada publik melalui penyelenggara. Oleh

karena itu, dalam perjanjian antara penyelenggara dengan penerbit harus memuat larangan bagi penerbit melakukan penawaran saham pada *equity crowdfunding platform* yang lain. Hal ini mengandung arti bahwa penawaran saham oleh penerbit hanya dapat dilakukan pada satu penyelenggara layanan urun dana dalam waktu yang bersamaan. Sedangkan, penawaran efek yang bersifat utang atau *sukuk* dapat dilakukan secara bertahap dengan menggunakan lebih dari satu proyek. Penerbit memberikan kuasa kepada penyelenggara untuk menawarkan saham yang dimiliki penerbit kepada publik secara *online* menggunakan platform layanan urun dana milik penyelenggara. Jika pemodal menyatakan sepakat membeli saham penerbit melalui penyelenggara, maka pemodal akan mentransfer uang kepada penyelenggara yang kemudian akan diteruskan kepada penerbit. Pemodal yang telah membeli saham berhak atas kepemilikan saham penerbit yang nantinya akan didistribusikan oleh penyelenggara kepada pemodal setelah penyerahan dana kepada penerbit (Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, 2020).

Berdasarkan penjelasan di atas, akad antara pemilik proyek (penjual saham) dengan penyelenggara layanan urun dana *equity crowdfunding* adalah akad pemberian kausa *(wakalah bil ujrah)* dari penerbit kepada penyelenggara untuk menawarkan saham milik penerbit kepada masyarakat melalui platform layanan urun dana. Namun, perjanjian antara penyelenggara dengan penerbit juga dapat menggunakan akad *ijarah* (Salam, 2020), yaitu akad pemindahan hak guna/manfaat atas suatu barang atau jasa tertentu melalui pembayaran sewa atau upah tanpa diikuti pemindahan kepemilikan barang itu sendiri (Fatwa Dewan Syari'ah Nasional No. 07/DSN-MUI/IV/2000, 2000). Menurut ulama Hanafi, *ijarah* adalah transaksi terhadap suatu manfaat dengan imbalan. Akad ini adalah perjanjian yang berkaitan dengan pemberian manfaat kepada pihak penyewa dengan kontraprestasi berupa biaya sewa (Umam, 2016). Dewi, Wirdyaningsih, dan Barlinti (2005) mengungkapkan, akad *ijarah* itu hanya ditujukan kepada adanya manafaat pada barang dan/atau jasa yang tidak boleh dibatasi oleh syarat. Singkatnya, *ijarah* dapat dimaknai sebagai akad sewa-menyewa.

Rukun dan syarat yang harus dipenuhi dalam akad *ijarah*, yaitu (1) adanya *sighat ijarah* berupa *ijab* dan *qabul* dari para pihak secara sukarela untuk melakukan akad baik secara lisan maupun tulisan, (2) para pihak yang berakad yaitu pemberi sewa dan penyewa harus berakal sehat memiliki kecakapan hokum, dan (3) objek akad berupa manfaat atas barang dan sewa atau manfaat jasa dan upah (Fatwa Dewan Syari'ah Nasional No. 07/DSN-MUI/IV/2000, 2000). Objek *ijarah* harus dipastikan dapat dinilai, disewakan dan dilaksanakan dalam kontrak dengan tidak melanggar ketentuan hukum yang berlaku.

Penerapan akad *ijarah* pada *equity crowdfunding* dilakukan antara penerbit yang mempromosikan proyeknya menggunakan jasa penyelenggara urun dana disebut sebagai *musta'jir* (penyewa), sedangkan penyelenggara (platform) yang jasanya disewa oleh penerbit sebagai *mu'jir* (pemberi sewa). Sedangkan, *fee* atau upah dalam akad *ijarah* harus jelas dan sesuatu yang bernilai. Menurut ulama Hanafi, upah itu tidak sejenis dengan manfaat yang disewa. Dimungkinkan sewa-menyewa pada barang yang sama, tetapi jika berbeda dalam nilai dan manfaat dibolehkan (Dewi et al., 2005). Artinya, praktik *ijarah* dapat dikenakan atas manfaat barang dan atau jasa yang dibutuhkan dapat diambilkan *fee*. Penyelenggara layanan urun dana yang telah menyediakan sistem perdagangan saham menggunakan sistem elektronik dapat mengenakan biaya kepada pengguna, yaitu penerbit dan pemodal. Penyelenggara sebagai pihak yang menyewakan jasa situs *equity crowdfunding platform* kepada penerbit dalam mencari modal, maka penerbit dapat dikenakan biaya administrasi berdasarkan prinsip *ijarah*.

D. Kedudukan Dewan Pengawas Syariah pada *Equity Crowdfunding* Syariah

Keberadaan pengawasan syariah merupakan ciri yang membedakan entitas bisnis syariah dengan bisnis konvensional. Jika dikontekstualisasikan dengan konsep *maqashid syariah,* adanya pengawasan merupakan implementasi ketentuan-ketentuan dalam hukum syariah yang diturunkan Allah *swt* dalam rangka mewujudkan kemaslahatan. Oleh karena semakin berkembangnya lembaga keuangan syariah modern, maka dibutuhkan pihak yang mampu memastikan

kepatuhan syariah dalam operasionalisasi industri keuangan, sehingga diciptakanlah Dewan Pengawas Syariah (DPS).

Dewan Pengawas Syariah merupakan organ yang terdiri dari kumpulan para ulama yang memiliki integritas, kompetensi, dan spesialisasi bidang *fiqih mu'amalah maliyah* yang direkomendasikan oleh Dewan Syariah Nasional (DSN) Majelis Ulama Indonesia (MUI). Dua organ tersebut memiliki keterkaitan, yaitu DPS harus bersifat independen meskipun terafiliasi kepada lembaga keuangan tersebut, tetapi merupakan rekomendasi dan sekaligus perpanjangan tangan DSN-MUI. Bahkan beberapa anggota DPS merupakan anggota DSN meskipun masing-masing organ itu memiliki fungsi dan tugas berbeda dan terpisah. Fungsi DSN adalah perumusan fatwa di bidang ekonomi, sedangkan DPS hanya memiliki fungsi pengawasan (Anwar, 2020). DSN-MUI sebagai satu-satunya institusi yang memiliki kewenangan menerbitkan fatwa syariah pada bidang ekonomi di Indonesia (Prabowo & Jamal, 2017). Dapat dikatakan DPS merupakan lembaga kunci pada setiap lembaga syariah yang bertugas memastikan dan mengawasi pelaksanaan Fatwa DSN-MUI (Misbach, 2015). Di sisi lain, suatu institusi yang membutuhkan fatwa dari perspektif hukum Islam terhadap kegiatan usahanya dapat mengajukan permohonan fatwa kepada DSN-MUI. Berdasarkan penjelasan tersebut, fokus tugas Dewan Pengawas Syariah hanya pada pengawasan terhadap operasionalisasi suatu lembaga supaya sesuai syariah. Pengawasan DPS dilakukan dengan 2 (dua) bentuk, yaitu pengawasan sebelum bisnis dijalankan *(ex ante)* dengan membuat sistem dan prosedur syariah agar dipatuhi, sedangkan pengawasan setelah bisnis dilakukan *(ex post)* melalui audit sampling atas produk lembaga keuangan syariah (Rasyid et al., 2017).

Sekadar perbandingan, di Malaysia, lembaga pengawasan syariah dikendalikan oleh Majelis Penasihat Syariah (MPS) yang terdapat pada bank sentral Malaysia dan bersifat independen, yaitu Majelis Penasihat Syariah Bank Negara Malaysia (MPS BNM) yang memiliki kedudukan lebih tinggi dibanding dengan jawatan kuasa syariah bank-bank perdagangan. Majelis Penasehat Syariah bertanggung jawab atas segala sesuatu yang berkaitan dengan lembaga keuangan syariah dan memiliki kewenangan mengawasi Dewan Pengawas Syariah pada setiap bank Islam

di Malaysia (Anwar, 2020). Menurut Kurrohman (2017), jika terdapat perbedaan keputusan antara Majelis Penasihat Syariah Bank Negara dengan jawatan kuasa syariah bank lain, maka keputusan Majelis Penasihat Syariah Bank Negara-lah yang digunakan.

Pengawasan praktik syariah dalam layanan urun dana dilakukan oleh Dewan Pengawas Syariah yang ditunjuk Dewan Syariah Nasional Majelis Ulama Indonesia. Pijakan utama bagi Dewan Pengawas Syariah untuk menilai apakah kegiatan *equity crowdfunding* sudah memenuhi prinsip syariah atau belum adalah mendasarkan pada yang dikeluarkan Fatwa DSN-MUI dan peratuan hukum terkait. Keberadaan Dewan Pengawas Syariah di lembaga keuangan bisnis, dan ekonomi syariah di Indonesia diakui seperti dalam UU Nomor 40 Tahun 2007 tentang Perseroan Terbatas Pasal 109 yang berbunyi:

> *(1) Perusahaan yang menjalankan kegiatan usahanya berdasarkan prinsip syariah selain memiliki Dewan Komisaris, wajib memiliki Dewan Pengawas Syariah (2) Dewan Pengawas Syariah sebagaimana dimaksud pada ayat 1 terdiri dari seorang ahli syariah atau lebih yang diangkat oleh Rapat Uumum Pemegang Saham (RUPS) atas rekomendasi Majelis Ulama Indonesia, dan (3) Dewan Pengawas Syariah sebagaimana dimaksud pada ayat 1 bertugas memberikan saran dan nasehat pada direksi serta mengawasi kegiatan perseroan agar sesuai dengan prinsip syariah.*

Berdasarkan penjelasan di atas, setelah memperoleh rekomendasi DSN-MUI, akan dilakukan RUPS untuk penetapan komposisi DPS yang bertugas melakukan *review* syariah atas praktik usaha yang dilakukan dengan prinsip syariah. Dewan Pengawas Syariah biasanya diletakkan pada posisi setingkat Dewan Komisaris. Pengawasan terhadap lembaga syariah, meliputi pengawasan terhadap produk dan aktivitas usahanya untuk memastikan agar sesuai dengan prinsip-prinsip syariah. Hal penting lain yang harus diperhatikan dalam kegiatan layanan urun dana di Indonesia yang masih relatif baru adalah melakukan edukasi kepada para pihak *equity crowdfunding* mengenai halal dan haram yang semestrinya diperhatikan bagi pelaku ekonomi (Tripalupi, 2019).

Pada POJK Nomor 57/POJK.04/2020 mengatur ketentuan Dewan Pengawas Syariah pada penerbit dan penyelenggara (*platform*). Penerbit yang melakukan kegiatan usaha berdasarkan prinsip syariah dengan menerbitkan saham syariah melalui layanan urun dana, maka selain harus

memenuhi ketentuan Pasal 47 ayat (1) dan ayat (2), penerbit wajib menyampaikan fotokopi Anggaran Dasar (AD) yang menerangkan kegiatan dan prosedur pengelolaan usahanya harus berdasarkan kerangka syariah, serta pengangkatan Dewan Pengawas Syariah berdasarkan keputusan Rapat Umum Pemegang Saham (RUPS). Adanya ketentuan ini akan semakin memberikan kepastian hukum kepada masyarakat, khususnya yang terlibat dalam aktivitas layanan urun dana dengan prinsip syariah. Dewan Pengawas Syariah memiliki fungsi pengawasan untuk menjamin proses penerbitan saham oleh penerbit sesuai dengan prinsip syariah. Saham syariah harus terhindar dari unsur *maisir* (perjudian)*, gharar* (ketidakpastian)*, haram, riba* (tambahan)*, tadlis* (najis)*, dharar* (membahayakan), *riswah* (suap), *zhulm* (penganiayaan) dan maksiat. Dewan Pengawas Syariah bertugas mengawasi operasional kegiatan usaha penerbit dan produk-produknya (saham) yang akan diterbitkan agar sesuai dengan garis-garis syariah.

Sedangkan, penyelenggara layanan urun dana yang menjalankan kegiatan usaha dan melayani penawaran saham berdasarkan prinsip syariah harus menyampaikan dokumen berupa Anggaran Dasar yang menyatakan bahwa kegiatan dan jenis usaha serta cara pengelolaan usaha sesuai syariah. Harus ada bukti ada keputusan RUPS yang menyatakan telah dilakukan pengangkatan Dewan Pengawas Syariah dan izin ahli syariah pasar modal yang dimiliki Dewan Pengawas Syariah. Dalam hal penyelenggara yang melayani penawaran *sukuk* oleh penerbit tidak memiliki Dewan Pengawas Syariah, penyelenggara harus membuat surat pernyataan yang isinya akan menunjuk pihak pengawas syariah yang bertanggung jawab melakukan pengawasan terhadap pemenuhan prinsip syariah. Hal ini menegaskan kalau platform layanan urun dana juga harus diawasi dan diatur oleh dewan syariah agar kegiatannya sesuai dengan ketentuan syariah.

Fungsi Dewan Pengawas Syariah adalah melakukan pengawasan dan telaah terhadap proyek yang diajukan penerbit pada sistem elektronik *equity crowdfunding*. Dewan Pengawas Syariah wajib melakukan pengkajian substantif materi syariah terhadap kegiatan usaha yang dijalankan berdasarkan prinsip syariah. Dewan Pengawas Syariah dapat meminta penjelasan mengenai usaha yang sedang dikerjakan, memeriksa akad yang

digunakan, memberikan pendapat menurut perspektif syariah, hingga menjelaskan secara komprehensif terhadap pemenuhan prinsip syariah atas bisnis yang dikerjakan.

Kurrohman (2017) menyatakan bahwa kedudukan dan peran Dewan Pengawas Syariah sangat fundamental untuk memastikan pengawasan dan kepatuhan *shariah compliance* dalam setiap operasional lembaga syariah. Kepatuhan syariah bagi setiap lembaga yang menjalankan usaha dengan prinsip syariah adalah suatu tujuan atau *raison d'etre*. Setidaknya Qs. Al-Taubah (9): 105 telah memberikan landasan normatif terhadap konsep dan keabsahan pengawasan syariah.

وَقُلِ ا عْمَلُوا فَسَيَرَ ى اللّٰهُ عَمَلَكُمْ وَرَسُوْلُهٗ وَا لْمُؤْمِنُوْنَ ۗوَسَتُرَدُّوْنَ اِلٰى عٰلِمِ الْغَيْبِ وَا لشَّهَادَةِ فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ تَعْمَلُوْنَ {١٠٥}

"Dan katakanlah: Bekerjalah kamu, maka Allah dan Rasul-Nya serta orang-orang Mukmin akan melihat pekerjaanmu itu, dan kamu akan dikembalikan kepada (Allah) yang mengetahui yang ghaib dan yang nyata, lalu diberitakan-Nya kepada kamu apa yang telah kamu kerjakan" (Qs. At-Taubah: 105).

Menurut Anwar (2020), ayat di atas memerintahkan kepada setiap orang supaya bekerja dan senantiasa sadar diri jika pekerjaannya diawasi Allah *swt*, rasul, dan orang-orang Mukmin (masyarakat). Frasa "melihat" dalam ayat tersebut dapat dipahami sebagai pengawasan atas pekerjaan seseorang yang nantinya akan dimintai pertanggungjawaban. Dengan demikian, terdapat trilogi unsur sistem pengawasan syariah menurut Anwar (2020), yaitu (1) pengawasan Allah sebagai pengawasan hati nurani dengan senantiasai memiliki keyakinan kepada-Nya, (2) pengawasan rasul sebagai pengawasan formal-institusional bahwa beliau telah memberikan ketentuan hukum syariah, dan (3) pengawasan orang-orang beriman sebagai pengawasan sosial yang dilakukan oleh masyarakat. Penjelasan tersebut sebenarnya menginformasikan bahwa pengawasan syariah tidak akan maksimal jika hanya dilimpahkan pada satu pihak (DPS), tetapi harus menjadi tanggung jawab bersama (Misbach, 2015). Menurut Baehaqi (2014), tanggung jawab bersama dalam proses pengawasan harus menggunakan pendekatan sistem sebagai model pengawasan syariah. Pengawasananya tidak hanya dilakukan oleh Dewan Pengawas Syariah, tetapi juga melibatkan bagian-

bagian lain seperti pengawasan internal maupun eksternal (Baehaqi, 2014). Model pengawasan semacam ini dapat diterapkan dalam aktivitas layanan urun dana bahwa pengawasan kepada penyelenggaraan layanan urun dana secara moral bertanggung jawab kepada Allah *swt*, secara organisasi kepada DSN-MUI, dan secara kredibilitas kepada masyarakat. Semua *stakeholder* harus bersama-sama menjalankan fungsi pengawasan agar pelaksanaan *equity crowdfunding* sesuai dengan rambu-rambu syariah.

Dewan Pengawas Syariah pada masing-masing penerbit dan platform layanan urun dana berdasarkan prinsip syariah harus membuat pernyataan (laporan) secara berkala bahwa kegiatan yang diawasinya telah sesuai dengan ketentuan syariah atau belum. Pernyataan ini dimuat dalam laporan tahunan pada layanan urun dana yang bersangkutan. Dewan Pengawas Syariah juga diharuskan meneliti dan membuat rekomendasi atas proyek atau produk (saham) yang dihasilkan penerbit yang diawasi. Sehingga, dapat dikatakan Dewan Pengawas ini bertindak sebagai penyaring *(filter)* pertama sebelum suatu kegiatan atau produk dipromosikan dan difatwakan oleh DSN-MUI.

Mengingat pengawasan Dewan Pengawas Syariah sangat menentukan dalam mengawasi operasionalisasi layanan penawaran saham melalui urun dana agar tetap memenuhi prinsip-prinsip syariah, maka peran Dewan Pengawas Syariah harus aktif dijalankan secara optimal dalam melakukan pengawasan kepatuhan syariah dalam penyelenggaraan layanan urun dana. Meskipun keberadaan Dewan Pengawas Syariah sebagai prasyarat operasional industri keuangan syariah, tetapi kinerjanya harus dimaksimalkan supaya terwujud *shariah compliance* pada operasional *equity crowdfunding*. Dewan Pengawas Syariah harus dipilih berdasarkan kapasitas keilmuan dan pengalaman serta punya komitmen terhadap pengembangan ekonomi syariah. Sejak dini Dewan Pengawas Syariah harus tegas meluruskan jika terjadi penyimpangan syariah praktik layanan urun dana karena pelanggaran terhadap kepatuhan syariah oleh penerbit maupun penyelenggara hanya akan merusak kredibilitas dan integritas industri *equity crowdfunding* syariah di Indonesia.

E. Kesimpulan

Kegiatan *equity crowdfunding* berlandaskan prinsip syariah bersumber Al-Qur'an dan Al-Hadist. Pengaturan layanan urun dana syariah di Indonesia secara implisit diatur dalam POJK Nomor 57/POJK.04/2020, merupakan pembaharuan atas POJK Nomor 37/POJK.04/2018. Beberapa Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia sebagaimana telah dibahas dalam pembahasan dapat dijadikan pedoman untuk memenuhi kepatuhan syariah pada pelaksanaan layanan urun dana, sehingga *equity crowdfunding* boleh dikerjakan selama tidak ada aturan hukum yang melarang.

Konsekuensi *equity crowdfunding* syariah mengharuskan setiap aktivitasnya dijalankan secara prinsip syariah. Hubungan hukum para pihak, yaitu penyelenggara, penerbit saham, dan pemodal yang lahir karena perjanjian maupun ketentuan undang-undang menggunakan akad seperti *bai', muyarakah, mudharabah, wakalah,* dan *ijarah*. Proyek dan saham yang ditawarkan oleh penerbit dipastikan masuk standar syariah. Modal yang diserahkan pemodal untuk mendanai usaha penerbit bukan bersumber dari unsur *maisir, gharar, haram,* dan *riba*. Oleh karena itu, pemodal dan penerbit harus berkomitmen dan bersedia membuat pernyataan di awal bahwa modal (pemodal) dan usaha (penerbit) dipastikan halal. Keberadaan Dewan Pengawas Syariah saat mengawasi kegiatan penerbit dan penyelenggara (platform) harus difungsikan dengan baik dan penuh tanggung jawab.

Daftar Pustaka

Abdullah, S. dan Oseni, U. A. (2017). "Towards a Sharī'ah Compliant Equity-Based Crowdfunding For The Halal Industry In Malaysia," *International Journal of Business and Society*, 18(S1), hlm. 223–240.

Abu 'Abdillah Muhammad Ibn Ismail Bukhari (tt). *Sahih Bukhari*. Diedit oleh M. D. Al-Buga. Damaskus: Dar Ibn Kasir dan Al-Yamamah li At-Tiba'ah wa An-Nasyr wa Ta-Tauzi.

Adhikary, B. K., Kutsuna, K. dan Hoda, T. (2018). *Crowdfunding: Lessons from Japan's Approach*. Singapore: Springer Singapore.

Agus, A. A. dan Riskawati (2016). "Penanganan Kasus Cyber Crime Di Kota Makassar (Studi Pada Kantor Kepolisian Resort Kota Besar Makassar)," *Jurnal Supremasi*, 11(1), hlm. 20–29.

Ahlers, G. K. C. *et al.* (2015). "Signaling in equity crowdfunding," *Entrepreneurship theory and practice*. SAGE Publications Sage CA: Los Angeles, CA, 39(4), hlm. 955–980.

Ansori, M. (2019). "Perkembangan dan Dampak Financial Technology (Fintech) terhadap Industri Keuangan Syariah di Jawa Tengah," *Wahana Islamika: Jurnal Studi keislaman*, 5(1), hlm. 31–45.

Anwar, S. (2007) *Hukum Perjanjian Syariah : Studi tentang Teori Akad dalam Fikih Muamalat*. Diedit oleh 1. Jakarta: PT. Raja Grafindo Persada.

Anwar, S. (2020). *Studi Hukum Islam Kontemporer : Bagian Dua*. Pertama. Yogyakarta: UAD Press.

Apriliani, R., Ayunda, A. dan Fathurochman, S. F. (2019). "Kesadaran dan Persepsi Usaha Mikro dan Kecil Terhadap Crowdfunding Syariah," *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah*, 3(2), hlm. 267–289. doi: 10.29313/amwaluna.v3i2.4798.

Arief, B. N. (2005). "Kebijakan Penanggulangan Cyber Crime dan Cyber Sex," *Jurnal Law Reform*, 1(1), hlm. 11–27. Tersedia pada: https://ejournal2.undip.ac.id/index.php/dplr/article/view/5109.

Ariyanti, R. P., Kartini, A. A. T. dan Sari, S. W. (2020). "Tinjauan Yuridis Terhadap Perlindungan Pemodal Platform Crowdfunding Kitabisa.Com," *Perspektif Hukum*, 20(1), hlm. 55–70. doi: 10.30649/phj.v20i1.240.

Aswandi, R., Muchsin, P. R. N. dan Sultan, M. (2020). "Perlindungan Data dan Informasi Pribadi melalui Indonesian Data Protection System (IDPS)," *Legislatif*, 3(2), hlm. 167–190. doi: 10.15900/j.cnki.zylf1995.2018.02.001.

Baehaqi, A. (2014). "Usulan Model Sistem Pengawasan Syariah pada Perbankan Syariah di indonesia," *Jurnal Dinamika Akuntansi dan Bisnis*, 1(2), hlm. 119–133. doi: 10.24815/jdab.v1i2.3583.

Balfas, H. M. (2012). Hukum Pasar Modal Indonesia (Edisi Revisi). In Jakarta: PT Tata Nusa.

Barthelemy, F. dan Irwansyah (2019). "Strategi Komunikasi Crowdfunding melalui Media Sosial (Crowdfunding Communication Strategy through Social Media)," *JURNAL IPTEKKOM : Jurnal Ilmu Pengetahuan & Teknologi Informasi*, 21(2), hlm. 155–168. doi: 10.33164/iptekkom.21.2.2019.155-168.

Belleflamme, P., Lambert, T. dan Schwienbacher, A. (2014). "Crowdfunding: Tapping the right crowd," *Journal of business venturing*. Elsevier, 29(5), hlm. 585–609.

Chrismastianto, I. A. W. (2017). "Analisis SWOT Implementasi Teknologi Finansial terhadap Kualitas Layanan Perbankan di Indonesia," *Jurnal Ekonomi dan Bisnis*, 20(1), hlm. 133–144.

Cumming, D. J. dan Johan, S. A. (2019). *Crowdfunding: Fundamental Cases, Facts and Insights*. Cambridge: Academic Press.

Dewi, G., Wirdyaningsih dan Barlinti, Y. S. (2005). *Hukum Perikatan Islam di Indonesia*. 4 ed. Jakarta: Kencana Prenada Media

Group.

Dewi Rosadi, S. dan Gumelar Pratama, G. (2018). "Urgensi Perlindungan Data Privasi dalam Era Ekonomi Digital di Indonesia," *Veritas et Justitia*, 4(1), hlm. 88–110. doi: 10.25123/vej.2916.

Dewi, S. (2016). "Konsep Perlindungan Hukum Atas Privasi Dan Data Pribadi Dikaitkan Dengan Penggunaan Cloud Computing Di Indonesia," *Yustisia Jurnal Hukum*, 5(1), hlm. 22–30.

Djafar, W. (2019). "Perlindungan Data Pribadi di Indonesia: Lanskap, Urgensi, dan Kebutuhan Pembaruan," *Jurnal Becoss*, 1(1), hlm. 147–154.

Djamil, F. (2015). *Hukum Ekonomi Islam : Sejarah, Teori, dan Konsep*. Kedua. Jakarta: Sinar Grafika.

Djazuli, A. (2006). *Kaidah-Kaidah Fikih : Kaidah-Kaidah Hukum Islam dalam Menyelesaikan Masalah-Masalah yang Praktis*. 1 ed. Jakarta: Kencana Prenada Media Group.

DSN-MUI (2000a). *Fatwa Dewan Syari'ah Nasional No. 07/DSN-MUI/IV/2000*, *Himpunan Fatwa DSN MUI*.

DSN-MUI (2000b). *Fatwa Dewan Syariah Nasional Nomor 08/DSN-MUI/IV/2000 Tentang Pembiayaan Musyarakah*.

DSN-MUI (2011). *Fatwa Dewan Syariah Nasional Nomor 80/DSN-MUI/III/2011 Tentang Penerapan Prinsip Syariah dalam Mekanisme Perdagangan Efek Bersifat Ekuitas di Pasar Reguler Bursa Efek*.

DSN-MUI (2018). *Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia No: 117/DSN-MUI/II/2018 Tentang Layanan Pembiayaan Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah*.

DSN-MUI (2020). *Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Nomor 135/DSN-MUI/V/2020 tentang Saham*.

Ekawati, D. (2018). "Perlindungan Hukum Terhadap Nasabah Bank yang Dirugikan Akibat Kejahatan Skimming Ditinjau dari Perspektif Teknologi Informasi dan Perbankan," *Unes*

Law Review, 1(2), hlm. 157–171.

Faizal, E. B. (2016). *Palapa Ring Project to Bring Faster Internet to Indonesia*. The Jakarta Post. https://www.thejakartapost.com/news/2016/03/06/palapa-ring-project-to-bring-faster-internet-to-indonesia.html.

Febrina Nur Ramadhani (2019). "Equity-Based Crowdfunding : Alternatif Penerapan Akad Mudharabah Berbasis Nonbank," *Imanensi: Jurnal Ekonomi, Manajemen, dan Akuntansi Islam*, 4(2), hlm. 9–15. doi: 10.34202/imanensi.4.2.2019.9-15.

Freedman, D. M. dan Nutting, M. R. (2015). *Equity Crowdfunding for Investors : A Guide to Risks, Returns, Regulations, Funding Portals, Due Diligence, and Deal Terms*. New Jersey: John Wiley & Sons, Inc.

Gavison, R. (1980). "Privacy and the Limits of Law," *The Yale Law Journal*, 89(3), hlm. 421–471. doi: https://doi.org/10.2307/795891.

Greenleaf, G. (2013). *Malaysia : ASEAN's First Data Privacy Act in Force*, *126 Privacy Laws & Business International Report, UNSW Law Research Paper No. 2014-12*.

Gunawan, A. (2020). *OJK: Equity Crowd Funding Efektif Tingkatkan Jumlah Emiten Syariah*, *Finansial*.

Gupta, R. (2018). *Reward and Donation Crowdfunding: A Complete Guide for Emerging Startups*. Chennai: Notion Press.

Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia: sebuah studi tentang prinsip-prinsipnya, penanganannya oleh pengadilan dalam lingkungan peradilan umum dan pembentukan peradilan administrasi negara*. Bina Ilmu.

Harahap, M. Y. (1986). *Segi-Segi Hukum Perjanjian*. Bandung: Penerbit Alumni.

Hartanto, R. (2020). "Hubungan Hukum Para Pihak dalam Layanan Urun Dana melalui Penawaran Saham Berbasis Teknologi Informasi," *Jurnal Hukum Ius Quia Iustum*, 27(1), hlm. 151–168. doi: 10.20885/iustum.vol27.iss1.art8.

Haryanti, Dewi Meisari, Hidayah, I. (2018). *Potret UMKM Indonesia*

Si Kecil yang Berperan Besar UKM Indonesia, *Ukmindonesia.Id*.

Herna et al. (2019). "Strategi Komunikasi Media Sosial untuk Mendorong Partisipasi Khalayak pada Situs Social Media Communication Strategy to Encourage Participation of," *Jurnal Komunikasi Pembangunan*, 17(2), hlm. 146–156.

Hornuf, L. dan Neuenkirch, M. (2017). "Pricing Shares in Equity Crowdfunding," *Small Business Economics*. Springer US, 48(4), hlm. 795–811. doi: 10.1007/s11187-016-9807-9.

HS, S. dan Nurbani, E. S. (2013). *Penerapan Teori Hukum pada Penelitian Disertasi dan Tesis*. Jakarta: PT Raja Grafindo Persada.

Hutomo, C. I. (2019). "Layanan Urun Dana melalui Penawaran Saham Berbasis Teknologi Informasi (Equity Crowdfunding)," *Jurnal Prespektif: Kajian Masalah Hukum dan Pembangunan*, 24(2), hlm. 65–74.

Ibrahim, D. M. (2015). "Equity Crowdfunding: A Market for Lemons?," *Minnesota Law Review*, 100(2), hlm. 561–607. doi: 10.2139/ssrn.2539786.

Indonesia, D. S. N. M. U. (2018). *Fatwa Nomor 117/DSN-MUI/II/2018/ tentang Layanan Pembiayaan Berbasis Teknologi Informasi berdasarkan Prinsip Syariah*.

Intyaswati, D. (2016). "Pesan Komunikasi dalam Penggalangan Dana Melalui Website," *Informasi Kajian Ilmu Komunikasi*, 46(1), hlm. 73–86.

Irawan, A. W. *et al.* (2020). *Laporan Survei Internet APJII*.

Irwan Fauzy, R. (2020). "Equity Crowdfunding Dalam Distribusi Zakat," *La Zhulma Jurnal Ekonomi Syariah*, 12(1), hlm. 15–28.

Karim, A. A. K. (2007). *Bank Islam : Analisis fiqih dan Keuangan*. 3 ed. Jakarta: PT. Raja Grafindo Persada.

Kemp, S. (2020). *DIGITAL 2020: INDONESIA*, *Datareportal*.

Keuangan, O. J. (2017). Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Departemen Perlindungan Konsumen-Otoritas Jasa Keuangan. *Cetakan Pertama, Jakarta*.

Keuangan, O. J. (2020). *Peraturan Otoritas Jasa Keuangan Republik*

Indonesia Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi.

Khoramchahi, K. M. (2020). *Equity Crowdfunding Essays about the Scientific Development and the Investor Perspective*. Wuppertal, Germany Springer: Springer.

Kurrohman, T. (2017). "Peran Dewan Pengawas Syariah terhadap Syariah Compliance pada Perbankan Syariah," *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum dan Keadilan*, 8(2), hlm. 49–61.

La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. (2000). Investor protection and corporate governance. *Journal of Financial Economics*, *58*(1), 3–27. https://doi.org/https://doi.org/10.1016/S0304-405X(00)00065-9.

Malia, I. (2021). *Sebelum BPJS Kesehatan, Ini 3 Kasus Kebocoran Data Konsumen E-commerce*. IDN Times. https://www.idntimes.com/business/economy/indianamalia/selain-bpjs-kesehatan-ini-3-kasus-kebocoran-data-konsumen-e-commerce/3.

Marwa, M. H. M. (2020). "Analisis Status Badan Hukum Dana Pensiun," *Jurnal Yustika*, 23(1). doi: 10.24123/yustika.v23i01.2403.

Misbach, I. (2015). "Kedudukan dan Fungsi Dewan Pengawas Syariah dalam Mengawasi Transaksi Lembaga Keuangan Syariah di Indonesia," *Jurnal Minds : Manajemen Ide dan Inspirasi*, 2(1), hlm. 1–27.

Muchsin. (2003). *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*. Univesitas Sebelas Maret.

Muslim (tt) *Shahih Muslim*. Diedit oleh M. F. A. Baqi. Beirut: Dar Al-Fikr li At-Tiba'ah wa An-Nasyr wa At-Tauzi.

Muzlifah, E. (2013). "Maqashid Syariah Sebagai Paradigma Dasar Ekonomi Islam," *Economic: Jurnal Ekonomi dan Hukum Islam*, 3(2), hlm. 177–183.

Napitupulu, D. (2017). "Kajian Peran Cyber Law dalam

Memperkuat Keamanan Sistem Informasi Nasional," *Deviance Jurnal Kriminologi*, 1(1), hlm. 100–113.

Nasrabadi, A. G. (2016). Equity crowdfunding: Beyond financial innovation. In A. K. Joern H. Block (Ed.), *FGF Studies in Small Business and Enterpreneurship*. Springer Nature, hlm. 201–208.

Njatrijani, R. (2019). "Perkembangan Regulasi Dan Pengawasan Financial Technology di Indonesia," *Diponegoro Private Law Review*, 4(1), hlm. 462–474. Tersedia pada: https://ejournal2.undip.ac.id/index.php/dplr/article/view/5109.

Norita, N., & Harahap, D. (2018). *Penerapan Hukum Pasar Modal Dalam Kegiatan Penawaran Saham Menggunakan Layanan Equity-Based Crowdfunding (Studi Komparatif Dengan Negara Malaysia)*. https://hkhpm.com/wp-content/uploads/2019/03/Deborah-Harahap_Naomi-Norita_AILRC2019_FH_UniversitasIndonesia.pdf.

Nugraheny, D. E. (2020). *Data Kependudukan 2020: Penduduk Indonesia 268.583.016 Jiwa*. Kompas.Com. https://nasional.kompas.com/read/2020/08/12/15261351/data-kependudukan-2020-penduduk-indonesia-268583016-jiwa.

Nugroho, A. Y. dan Rachmaniyah, F. (2019). "Fenomena Perkembangan Crowdfunding di Indonesia," *EkoNika: Jurnal Ekonomi Universitas Kediri*, 4(1), hlm. 34–46. doi: 10.30737/ekonika.v4i1.254.

Nuruddin, M. (2019). *Ilmu Mantik: Panduan Mudah & Lengkap untuk Memahami Kaidah Berpikir*, Depok: Keira Publishing.

OJK (2017) "Financial Technology (FinTech) di Indonesia," *Kuliah Umum tentang FinTech-IBS*.

Ong, C. K. (2020). "Inovasi Keuangan di Bidang Equity Crowdfunding dalam Pengembangan Pasar Modal," *Airlangga Journal of Innovation Management*, 1(2), hlm. 1–9. doi: 10.20473/ajim.v1i1.19438.

Otoritas Jasa Keuangan (2018). *Peraturan Otoritas Jasa Keuangan Nomor 37/POJK.04/2018 tentang Layanan Urun Dana Melalui*

Penawaran Saham Berbasis Teknologi Informasi (Equity Crowdfunding), *Peraturan Otoritas Jasa Keuangan*.

Otoritas Jasa Keuangan (2020). *Peraturan Otoritas Jasa Keuangan Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi*.

Pandoman, A. (2017). *Sistem Hukum Perikatan BW dan Islam*. 1 ed. Yogyakarta: PT. Raga Utama Kreasi.

Peraturan Otoritas Jasa Keuangan Nomor 37/POJK.04/2018 tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (Equity Crowdfunding), Peraturan Otoritas Jasa Keuangan 1 (2018).

Peraturan Otoritas Jasa Keuangan Nomor 57/POJK.04/2020 tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi, (2020).

Prabowo, B. A. dan Jamal, J. Bin (2017). "Peranan Dewan Pengawas Syariah terhadap Praktik Kepatuhan Syariah dalam Perbankan Syariah di Indonesia," *Jurnal Hukum IUS QUIA IUSTUM*, 24(1), hlm. 113–129. doi: 10.20885/iustum.vol24.iss1.art6.

Prananingrum, D. H. (2014). "Telaah Terhadap Esensi Subjek Hukum: Manusia dan Badan Hukum," *Refleksi Hukum : Jurnal Ilmu Hukum Fakultas Hukum Universitas Kristen Satya Wacana*, 8(1), hlm. 73–92.

Pranoto, P., Kholil, M. dan Tejomurti, K. (2019). "Indonesia's Loan Unbanked to Develop the Inclusive," *Hang Tuah Journal*, 3(2), hlm. 105–119.

Priscyllia, F. (2019). "Perlindungan Privasi Data Pribadi dalam Perspektif Perbandingan Hukum," *Jatiswara*, 34(3), hlm. 1–5. doi: 10.29303/jatiswara.v34i3.218.

Prosser, W. L. (2010). "Privacy [a legal analysis]," *Philosophical Dimensions of Privacy*. doi: https://doi.org/10.1017/cbo9780511625138.006.

Rahadiyan, I. (2017). *Pokok-Pokok Hukum Pasar Modal di Indonesia*, *UII Press*. Yogyakarta: UII Press.

Rahardjo, S. (2000). *Ilmu Hukum*. PT Citra Aditya Bakti.

Rahardjo, S. (2006). *Ilmu Hukum*. VI. Bandung: PT Citra Aditya Bakti.

Rahardyan, A. (2020). *Salurkan Rp84,5 Miliar, Ini Jurus Fintech Santara Gaet Investor di Masa Pandemi*, *Finansial*.

Rahma, T. I. F. (2018). "Persepsi Masyarakat Kota Medan Terhadap Penggunaan Financial Technology (Fintech)," *At-Tawassuth*, 3(1), hlm. 642–661.

Rahmawati, L., Tanjung, I. dan El Badriati, B. (2018). "Analisis Permintaan dan Perilaku Konsumen Fintech Syariah Model Crowdfunding," *Profit : Jurnal Kajian Ekonomi dan Perbankan Syariah*, 2(1), hlm. 35–49. doi: 10.33650/profit.v2i1.552.

Rasyid, M. A.-Z., Setyowati, R. dan Islamiyati (2017). "Crowdfunding Syariah untuk Pengembangan Produk Perbankan Syariah dari Perspektif Shariah Compliance," *Diponegoro Law Jurnal*, 6(4), hlm. 1–16.

Rizal, M. S. (2019). "Perbandingan Perlindungan Data Pribadi Indonesia dan Malaysia," *Jurnal Cakrawala Hukum*, 10(2), hlm. 218–227. doi: 10.26905/idjch.v10i2.3349.

Rosadi, S. D. (2015). *Cyber Law: Aspek Data Privasi Menurut Hukum Internasional, Regional, dan Nasional*. Bandung: PT Refika Aditama.

Safera, I. K. A. dan Atmadja, I. B. P. (2018). "Perlindungan Hukum terhadap Pemodal dalam Kegiatan Equity Crowdfunding," *Kertha Semaya*, 6(9), hlm. 1–13.

Sahm, M. *et al.* (2014). "Corrigendum to 'Crowdfunding: Tapping the right crowd,'" *Journal of Business Venturing*. Elsevier Inc., 29(5), hlm. 610–611. doi: 10.1016/j.jbusvent.2014.06.001.

Salam, N. (2020). *Layanan Urun Dana (Equity Crowdfunding) Perspektif Ekonomi Islam*. Institute Agama Islam Negeri (IAIN) Ponorogo.

Santara. (2019). Syarat dan Ketentuan Pemodal. https://www.santara.co.id/syarat-ketentuan-pemodal.

Santi, E., Budiharto dan Saptono, H. (2017). "Pengawasan Otoritas Jasa Keuangan terhadap Financial Technology (Peraturan Otoritas Jasa Keuangan Nomor 77/Pojk.01/2016)," *Diponegoro Law Journal*, 6(3), hlm. 1–20.

Satria, M. H. (2019). "Perlindungan Kerahasiaan Data Investor untuk Pencegahan Kebocoran Data Investor pada Perusahaan Inovasi Keuangan Digital Goolive," *Jurisdictie*, 10(1), hlm. 1. doi: 10.18860/j.v10i1.6967.

Sautunnida, L. (2018). "Urgensi Undang-Undang Perlindungan Data Pribadi di Indonesia: Studi Perbandingan Hukum Inggris dan Malaysia," *Kanun Jurnal Ilmu Hukum*, 20(2), hlm. 369–384. doi: 10.24815/kanun.v20i2.11159.

Schwienbacher, A. (2019). Equity crowdfunding: anything to celebrate? *Venture Capital*, *21*(1), 65–74. https://doi.org/10.1080/13691066.2018.1559010.

Schwienbacher, A. dan Larralde, B. (2010). "Crowdfunding of Small Entrepreneurial Ventures," *SSRN Electronic Journal*. doi: 10.2139/ssrn.1699183.

Shneor, R., Zhao, L., & Flåten, B. T. (2020). Advances in crowdfunding: research and practice. library.oapen.org. https://library.oapen.org/handle/20.500.12657/41282.

Siagian, L. *et al.* (2018). "The Role of Cyber Security in Overcome Negative Contents To," *Jurnal Prodi Perang Asimetris*, 4(3), hlm. 1–18.

Soekanto, S. (2006). *Pengantar penelitian hukum*. Penerbit Universitas Indonesia (UI-Press).

Subekti, R. dan Tjirosudibio, R. (2001). *Kitab Undang-Undang Hukum Perdata*. 31 ed. Jakarta: PT Pradnya Paramitha.

Tampubolon, W. S. (2016). "Upaya Perlindungan Hukum bagi Konsumen Ditinjau dari Undang-Undang Perlindungan Konsumen," *Jurnal Ilmiah "Advokasi,"* 4(01). doi: https://dx.doi.org/10.36987/jiad.v4i1.356.

Tripalupi, R. I. (2019). "Equity Crowdfunding Syari'ah dan Potensinya Sebagai Instrumen Keuangan Syari'ah di

Indonesia," *'Adliya*, 13(2), hlm. 229–246.

Tumalun, B. (2018). "Upaya Penanggulangan Kejahatan Komputer dalam Sistem Elektronik menurut Pasal 30 Undang-Undang Nomor 11 Tahun 2008," *Lex Et Societatis*, VI(2), hlm. 24–31.

Umam, K. (2016). *Perbankan Syariah : Dasar-Dasar dan Dinamika Perkembangannya di Indonesia*. 1 ed. Jakarta: Rajawali Pers.

Wahid, S. H. (2019). "Dinamika Fatwa dari Klasik ke Kontemporer (Tinjauan Karakteristik Fatwa Ekonomi Syariah Dewan Syariah Nasional Indonesia [DSN-MUI])," *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam*, 10(2), hlm. 193–209.

Wahjono, S. I., Marina, A. dan Widayat (2015.) "Islamic Crwodfunding : Alternatif Funding Solution," in *Wordl Islamic Social Science Congress*, hlm. 30.

Walfajri, M. (2020). *Equity crowdfunding salurkan modal Rp 153,91 miliar kepada UKM per September 2020*. Kontan.Co.Id. https://keuangan.kontan.co.id/news/equity-crowdfunding-salurkan-modal-rp-15391-miliar-kepada-ukm-per-september-2020.

Warren, S. D. *et al.* (1890). "The Right to Privacy Today," *Harvard Law Review*, 4(5), hlm. 193–220. doi: 10.2307/1330091.

Wibowo, A. (2011). Maqoshid Asy Syariah: The Ultimate Objective of Syariah. *Islamic Finance*, *4*, 3–15.

Windari, R. A. (2014). *Hukum Perjanjian*. Yogyakarta: Graha Ilmu.

Yuniarti, S. (2019). "Perlindungan Hukum Data Pribadi di Indonesia," *Jurnal Becoss*, 1(1), hlm. 147–154.

Zuhaili, W. (1986). Ushul Fiqh Islamy, juz 2. *Damaskus: Dar Al Fikr*.

Tentang Penulis

Dr. Fithriatus Shalihah, S.H, M.H. lahir di Blora pada 19 Oktober 1974. Menyelesaikan pendidikan S1 Ilmu Hukum dan S2 Magister Ilmu Hukum di Universitas Islam Riau dan lulus S3 Program Doktor Ilmu Hukum di Universitas Islam Bandung pada tanggal 15 Juni 2015. Saat ini berprofesi sebagai Dosen Tetap di Fakultas Hukum Universitas Ahmad Dahlan (UAD) Yogyakarta. Dalam menjalankan Tri Dharma Perguruan Tinggi, penulis aktif menjadi konsultan ahli bidang Kekayaan Intelektual pada Kementrian Hukum dan HAM kanwil Riau, Majelis Pengawas Notaris Wilayah Provinsi Riau, konsultan ahli bidang hubungan kerja pada JNP Group, dan lain-lain. Penulis juga aktif melaksanakan penelitian, baik penelitian internal (LPPM UAD), Penelitian Kerja sama Luar Negeri (*Matching Grant* UUM), maupun penelitian yang didanai oleh DRPM Dikti tentang Model Perlindungan Pekerja Migran Indonesia (PMI) Pada Masa Pra Kerja, Masa Kerja, dan Purna Kerja Berbasis Layanan Terpadu Satu Atap (Studi di Enam Provinsi: Sumut, Jateng, Jatim, Bali, NTB, dan NTT). Selain itu, ia juga merupakan anggota aktif dalam beberapa organisasi, antara lain Perkumpulan Pengajar dan Praktisi Hukum Ketenagakerjaan Indonesia (P3HKI) Nasional dan Asosiasi Doktor Hukum Indonesia (ADHI). Penulis telah menulis beberapa buku antara lain Etika dan Tanggung Jawab Profesi Hukum (2019), Hukum Ketenagakerjaan (2019), Sosiologi Hukum (2017), Membangun Hukum Perburuhan Berkeadilan (2020), Perlindungan Pekerja Migran Indonesia (2020) dan yang terbaru berjudul Penanganan Pengungsi di Indonesia (2021).

Muhammad Habibi Miftakhul Marwa, adalah dosen bagian hukum Islam dan hukum perdata di Fakultas Hukum Universitas Ahmad Dahlan, lahir di Klaten, 05 Juli 1991. Menyelesaikan pendidikan dasar di kampung halaman, SD N II Kragilan. Pendidikan setara SMP dan SMA ditempuh di Madrasah Mu'allimin Muhammadiyah Yogyakarta, sekolah kader di bawah naungan Pimpinan Pusat Muhammadiyah. Memperoleh gelar Sarjana Hukum Islam (S1) di Universitas Islam Negeri Sunan Kalijaga Yogyakarta (2009-2013), kemudian Magister Ilmu Hukum di Universitas Gadjah Mada Yogyakarta (2014-2016). Selama kuliah aktif mengikuti organisasi kemahasiswaan. Pernah menjadi Ketua Umum Pimpinan Cabang Ikatan Mahasiswa Muhammadiyah Kabupaten Sleman (2013-2014), dan Sekretaris Umum Dewan Pimpinan Daerah Ikatan Mahasiswa Muhammadiyah Daerah Istimewa Yogyakarta (2015-2017). Saat ini penulis menjadi Dosen di Fakultas Hukum Universitas Ahmad Dahlan.

Muhammad Farid Alwajdi, lahir di Mojokerto, 23 Juli 1991. Menyelesaikan pendidikan Sarjana Hukum di Fakultas Hukum Universitas Gadjah Mada, Yogyakarta pada tahun 2013. Pendidikan Magister diselesaikan pada tahun 2016 pada program studi Magister Kenotariatan di Universitas Gadjah Mada, Yogyakarta. Saat ini penulis aktif menjadi Dosen di Fakultas Hukum Universitas Ahmad Dahlan dan menjabat sebagai Pejabat Pembuat Akta Tanah (PPAT) di Kabupaten Bantul. Penulis dapat dihubungi melalui alamat email: muhammad.farid@law.uad.ac.id

Uni Tsulasi Putri, lahir di Gunungkidul, 19 Oktober 1994. Saat ini penulis aktif sebagai dosen pada Fakultas Hukum Universitas Ahmad Dahlan dan sebagai Advokat. Penulis menempuh pendidikan sarjana di Internasional Program Fakultas Hukum Universitas Islam Indonesia dan lulus pada tahun 2016. Pada Desember 2018, penulis lulus dari Magister Ilmu Hukum Universitas Gadjah Mada dan diwisuda pada Januari 2019. Selama kuliah, penulis aktif mengikuti kompetisi *Phillip C. Jessup International Law Moot Court Competition* (2012 – 2015), serta aktif berorganisasi pada UKM *Student Association of International Law* UII (2013 – 2015), Takmir Masjid Al-Azhar Universitas Islam Indonesia (2012 – 2016), dan Keluarga Mahasiswa Magister Ilmu Hukum UGM (2017-2018).

Deslaely Putranti, S.H, M.H. Lahir di Wonosobo, 17 Desember 1987. Menyelesaikan Pendidikan Sarjana Hukum di International Program Fakultas Hukum Universitas Islam Indonesia, Yogyakarta pada tahun 2006. Mengenyam pendidikan magister pada program studi Magister Ilmu Hukum di Universitas Islam Indonesia pada tahun 2010-2012. Saat ini Penulis aktif menjadi Dosen di Fakultas Hukum Universitas Ahmad Dahlan sekaligus sebagai advokat/konsultan hukum di Yogyakarta. Penulis dapat dihubungi melalui alamat email: deslaely.putranti@law.uad.ac.id

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

[1]Fithriatus Shalihah & [2]Roos Niza Mohd Shariff
[1]Department of Civil Law, Faculty of Law,
Ahmad Dahlan University Yogyakarta, Indonesia
[2]School of Law, Universiti Utara Malaysia, Malaysia

[1]*Corresponding author: fithriatus.shalihah@law.uad.ac.id*

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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

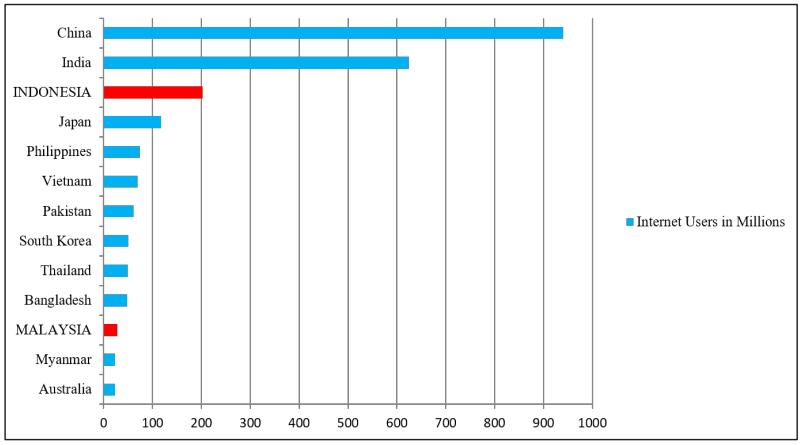
No.	Year	Percentage
1	2012	64.1%
2	2014	66.6%
3	2016	76.9%
4	2018	87.4%
5	2020	88.7%

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 & Schwienbacher, 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 platfrom 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 (Chrismastianto, 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.

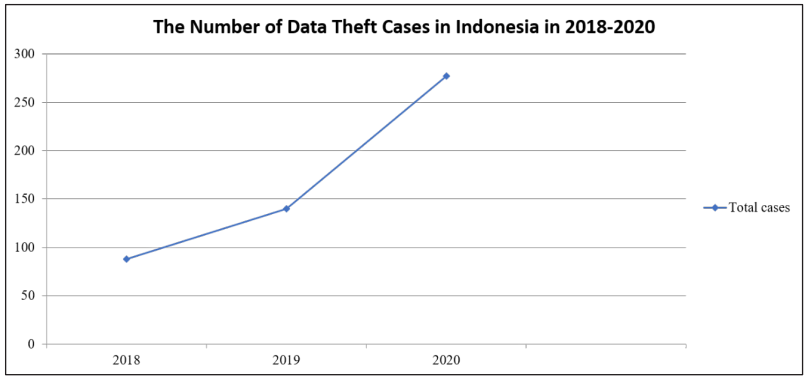
Regarding the implementation of ECF, the security of the applications used is still not stable. Other parties can still enter the security system by damaging the existing system for a specific purpose. Professionals using barcodes can also do system destruction.

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



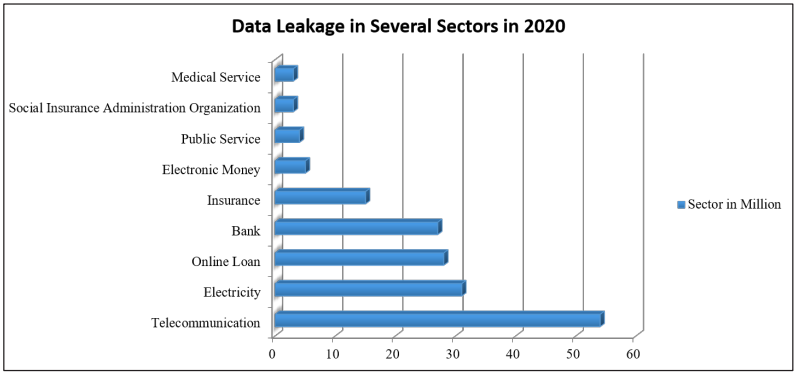
Source: Indonesia Internet Services Providers Association.

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.;

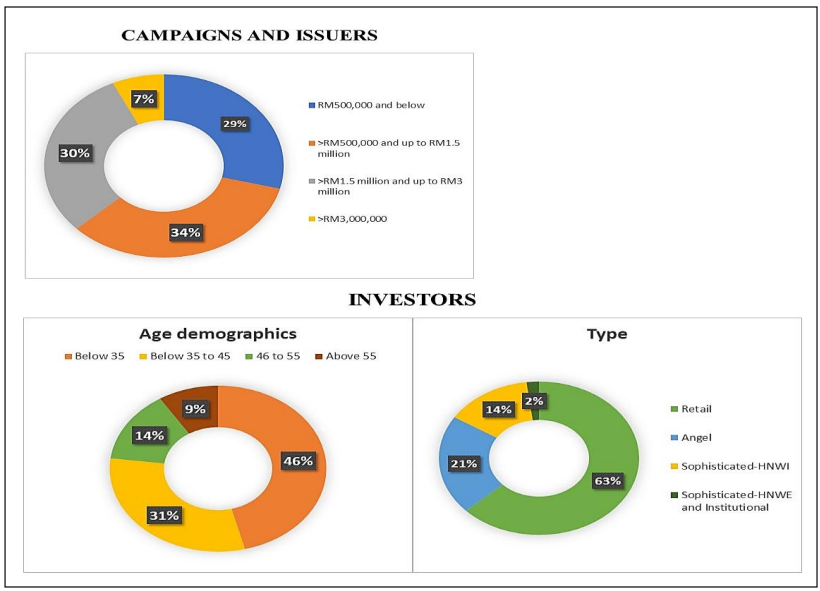
6. FBM Crowdtech Sdn. Bhd.;
7. Fundnel Technologies Sdn. Bhd.;
8. Leet Capital Sdn. Bhd.;
9. MyStartr Sdn. Bhd.;
10. Pitch Platforms Sdn. Bhd.

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.

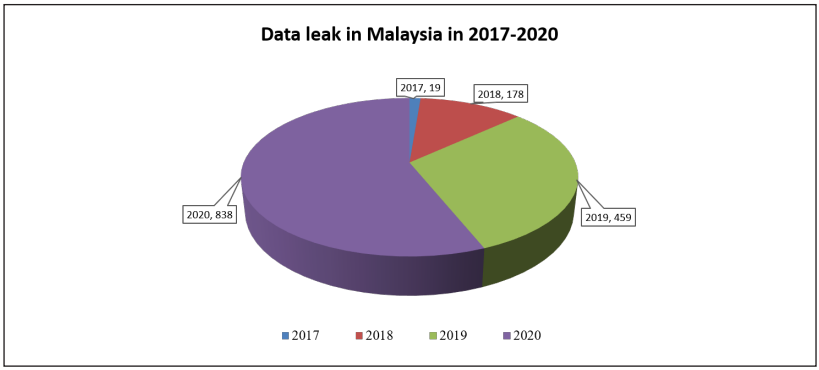
The issue of legal certainty that may arise is the risk that shareholders' data can be exposed to the public if the data user does not follow principles stipulated in Article 10 of the PDPA 2010. There is a risk of the data being exposed. Public exposure is on the rise as ECF operates virtually on the 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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REFERENCES

Amamou, S., Trifa, Z., & Khmakhem, M. (2019). Data protection in cloud computing: A survey of the state-of-art. *Procedia Computer Science*, *159*, 155–161. https://doi.org/10.1016/j.procs.2019.09.170

Ayub, Z. A., & Yusoff, Z. M. (2020). Right of online informational privacy of children in Malaysia: A statutory perspective. *UUM Journal of Legal Studies*, *9*, 221–241.

Barkatullah, A. H., & Djumadi. (2018). Does self-regulation provide legal protection and security to e-commerce consumers? *Electronic Commerce Research and Applications*, *30*(May), 94–101. https://doi.org/10.1016/j.elerap.2018.05.008

Baskaran, H. (2020, August). Blockchain and the Personal Data Protection Act 2010 (PDPA) in Malaysia. In *2020 8th International Conference on Information Technology and Multimedia, ICIMU 2020* (pp. 189–193). https://doi.org/10.1109/ICIMU49871.2020.9243493

Butarbutar, R. (2020). Personal data protection in P2P lending: What Indonesia should learn from Malaysia? *Pertanika Journal of Social Sciences and Humanities*, *28*(3), 2295–2307. https://api.elsevier.com/content/abstract/scopus_id/85092666971

Chrismastianto, I. A. W. (2017). Analisis swot implementasi teknologi finansial terhadap kualitas layanan perbankan di indonesia. *Jurnal Ekonomi dan Bisnis*, *20*(1), 133–144.

Conti, C., & Reverberi, P. (2021). Price discrimination and product quality under opt-in privacy regulation. *Information Economics and Policy*, *55*, 100912. https://doi.org/10.1016/j.infoecopol.2020.100912

De Crescenzo, V., Ribeiro-Soriano, D. E., & Covin, J. G. (2020). Exploring the viability of equity crowdfunding as a fundraising instrument: A configurational analysis of contingency factors that lead to crowdfunding success and failure. *Journal of Business Research*, *115*(June 2019), 348–356. https://doi.org/10.1016/j.jbusres.2019.09.051

de Terwangne, C. (2021). Council of Europe convention 108+: A modernised international treaty for the protection of personal data. *Computer Law and Security Review*, *40*, 105497. https://doi.org/10.1016/j.clsr.2020.105497

Gai, K., Qiu, M., & Sun, X. (2018). A survey on FinTech. *Journal of Network and Computer Applications*, *103*(March 2017), 262–273. https://doi.org/10.1016/j.jnca.2017.10.011

Galič, M., & Gellert, R. (2021). Data protection law beyond identifiability? Atmospheric profiles, nudging and the Stratumseind Living Lab. *Computer Law and Security Review*, *40*, 105486. https://doi.org/10.1016/j.clsr.2020.105486

Goad, D., Collins, A. T., & Gal, U. (2021). Privacy and the Internet of Things−An experiment in discrete choice. *Information and Management*, *58*(2), 103292. https://doi.org/10.1016/j.im.2020.103292

Guo, X., Bi, G., & Lv, J. (2021). Crowdfunding mechanism comparison if there are altruistic donors. *European Journal of Operational Research*, *291*(3), 1198–1211. https://doi.org/10.1016/j.ejor.2020.10.014

Haniff, W. A. A. W. (2019). The regulation of equity crowdfunding in United Kingdom and Malaysia: A comparative study. *Academic Journal of Interdisciplinary Studies*, *8*(3), 45–56. https://doi.org/10.36941/ajis-2019-0004

Hoegen, A. (2018). How do investors decide? An interdisciplinary review of decision-making in crowdfunding. *Electronic Markets*, *28*(3), 339–365. https://doi.org/10.1007/s12525-017-0269-y

Hornuf, L., & Schwienbacher, A. (2018). Market mechanisms and funding dynamics in equity crowdfunding. *Journal of Corporate Finance*, *50*, 556–574. https://doi.org/10.1016/j.jcorpfin.2017.08.009

Lee, I., & Shin, Y. J. (2018). Fintech: Ecosystem, business models, investment decisions, and challenges. *Business Horizons*, *61*(1), 35–46. https://doi.org/10.1016/j.bushor.2017.09.003

Li, J., Li, J., Zhu, X., Yao, Y., & Casu, B. (2020). Risk spillovers between FinTech and traditional financial institutions: Evidence from the U.S. *International Review of Financial Analysis*, *71*(June), 101544. https://doi.org/10.1016/j.irfa.2020.101544

Li, Y., Liu, F., Fan, W., Lim, E. T. K., & Liu, Y. (2020). Exploring the impact of initial herd on overfunding in equity crowdfunding. *Information and Management*, *September 2018*, 103269. https://doi.org/10.1016/j.im.2020.103269

Mamonov, S., & Malaga, R. (2020). A 2020 perspective on "Success factors in Title III equity crowdfunding in the United States." *Electronic Commerce Research and Applications*, *40*(January), 100933. https://doi.org/10.1016/j.elerap.2020.100933

Marzuki, P. M. (2014). *Penelitian hukum cetakan ketujuh*. Jakarta: Kencana Prenada Media Group.

Milian, E. Z., Spinola, M. de M., & Carvalho, M. M. d. (2019). Fintechs: A literature review and research agenda. *Electronic Commerce Research and Applications*, *34*(September 2018). https://doi.org/10.1016/j.elerap.2019.100833

Pattanapanyasat, R. P. (2020). Do conventional financial disclosures matter in alternative financing? Evidence from equity crowdfunding. *Journal of Accounting and Public Policy*, *40*(3), 106799. https://doi.org/10.1016/j.jaccpubpol.2020.106799

Di Pietro, F., Bogers, M. L. A. M., & Prencipe, A. (2021). Organisational barriers and bridges to crowd openness in equity crowdfunding. *Technological Forecasting and Social Change*, *162*(January 2020), 120388. https://doi.org/10.1016/j.techfore.2020.120388

Rahman, M. P. (2020). Developing a Sharīʿah-compliant equity-based crowdfunding framework for entrepreneurship development in Malaysia. *ISRA International Journal of Islamic Finance*, *12*(2), 239–252. https://doi.org/10.1108/IJIF-07-2018-0085

Saniei, S., & Kent, M. L. (2021). Social license to operate in crowdfunding campaigns. *Public Relations Review*, *47*(2), 102008. https://doi.org/10.1016/j.pubrev.2020.102008

Shahwahid, F. M., & Miskam, S. (2015). Personal Data Protection Act 2010: Taking the first steps towards compliance. *Journal of Management and Muamalah*, *5*(2), 64–75. http://journal.kuis.edu.my/fpm/wp-content/uploads/2016/10/Journal-of-Management-Muamalah-Vol.-5-No.-2-2015.pdf#page=66

Tiberius, V. (2021). Equity crowdfunding: Forecasting market development, platform evolution, and regulation. *Journal of*

Small Business Management, *59*(2), 337–369. https://doi.org/10.1080/00472778.2020.1849714

Wang, Y., Xiuping, S., & Zhang, Q. (2021). Can fintech improve the efficiency of commercial banks? —An analysis based on big data. *Research in International Business and Finance*, *55*(January 2020), 101338. https://doi.org/10.1016/j.ribaf.2020.101338