



Shariah Securities Crowdfunding Platform in Indonesia: An Appraisal Based on Regulatory Framework and Shariah Perspectives

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Abstract—This paper explores the practices of Shariah Security Crowdfunding (SCF) based on existing Indonesian regulation of POJK Number 57 of 2020 and examines its relevance to derive a Shariah point of view on its operation. This paper employs a qualitative approach by undertaking library research on the relevant pedigree of security crowdfunding platform practices in Indonesia based on current regulation and Fatwa (verdict) of DSN-MUI (National Shariah Board-Indonesian Religious Council). POJK 57 and Sharia-compliant principles were taken as a benchmark to measure and produce legal and Shariah perspectives for all parties involved in SCF practices. This study finds that the existing Indonesian regulation on SCF has fulfilled the principles of legal and Sharia aspects. However, some Shariah issues were found in some cases from the issuer's perspective in the event of default cases, solution of early settlement, change of objects, and ownership that might wreak Shariah resolution to mitigate legal and Shariah disputes. Shariah's resolution of these issues are formidable work by platform providers and is regarded as a novelty of this study. Therefore, this study implies significant policy direction by relevant regulators to mitigate legal and Shariah risks.

Keywords—*Securities Crowdfunding, Regulatory Framework, Shariah Perspectives, Shariah Disputes*

I. INTRODUCTION

According to data from OJK, securities crowdfunding investment in Indonesia is increasingly in demand from year to year. It is recorded that in 2022 the investment value of securities crowdfunding in Indonesia reached 507 billion, far exceeding the figure when securities crowdfunding was first launched in Indonesia in 2018 of 6.4 billion [1].

This is also an interesting study because previous studies explain that in addition to having massive demand, SCF has also become Indonesia's savior from the COVID crisis that occurred in 2020 [2], [3]. This service has proven to be effective and adaptable to Indonesia's economic model. However, the government must also provide extra supervision of the implementation of this service due to its massive growth. Various problems that occur in financial institutions are also possible in the implementation of SCF. One thing to be aware of is that although SCF is under the supervision of the OJK, there is no financial guarantee institution in case of risks that result in losses to the parties involved.

In Indonesia, SCF has legal and sharia implications that must be considered. Along the way, there was a change in the status of Equity Crowdfunding to Security crowdfunding

(SCF) from POJK 37 in 2018 to POJK 57 in 2020. By changing the equity crowdfunding system to security crowdfunding through POJK 57 of 2020 [4], perfecting the previous equity crowdfunding system, which provided limited capital, there was a significant risk to investors and made the projects carried out inflexible due to the status of securities ownership in the form of shares. Although equity crowdfunding has the advantage of saving time in obtaining funds and managing marketing strategies, Aprihasyati in Ramadhani stated that Equity Crowdfunding has proven effective in funding 19 out of 24 businesses through the Santana and Bizhare platforms as well as Crowddana [5].

II. METHODS

This research employs a qualitative approach by conducting library research on the practices of Shariah Security Crowdfunding (SCF) in Indonesia. It examines the existing Indonesian regulation of POJK Number 57 of 2020 and the Fatwa (verdict) of DSN-MUI (National Shariah Board-Indonesian Religious Council) to derive a Shariah point of view on SCF operations. The study analyzes the legal and Shariah perspectives of SCF practices based on the benchmark of POJK 57 and Sharia-compliant principles. It identifies Shariah issues and proposes resolutions to mitigate legal and Shariah disputes. The article implies the need for significant policy direction by relevant regulators to address these risks.

III. LITERATURE REVIEW

Siti Anisah [6] discusses a study about crowdfunding securities, which confers the legal protection of crowdfunding security investors, mentioning POJK number 57 of 2020. The Financial Services Authority has issued Financial Services Authority Regulation Number 57 of 2020 concerning Crowdfunding Services Through Information Technology-Based Stock Offerings (Securities Crowdfunding). The problems studied in this research are the construction of legal relations and legal protection for parties in equity crowdfunding in Indonesia. Using normative methods in reviewing laws and regulations, the study results conclude that POJK regulations 57 of 2020 are insufficient to protect investors from the risks of investment securities crowdfunding disputes and threats that have the potential to occur in implementing crowdfunding securities. Ratno Hartanto [7] stated that equity crowdfunding investors need to obtain legal certainty and protection for their investments. On the other hand, equity issuers and platform operators also need to get legal assurance from the Financial Services Authority. The

Financial Services Authority has issued Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Stock Offerings (Equity Crowdfunding). Kadir [8] shows that OJK regulation Number 57 of 2020 has fulfilled the principles of legal protection for investors through transparency, honesty of information, and dispute resolution, which are manifested procedurally. However, there are weaknesses in formal justice, only in favor of the organizers, so it is not in favor of investors.

While developing in Indonesia, crowdfunding is convenient and has widened into Sharia crowdfunding. Therefore, regulation and synchronization between compliance with Sharia law and applicable rules are needed. Research from Rifaldi Majid et al. entitled "Crowdfunding and Islamic Securities: The Role of Financial Literacy" [9] emphasizes the need to strengthen product and contract literacy and the importance of supervision and implementation of contracts that are in line with Sharia principles through harmony between the Financial Services Authority (OJK) and associations FinTech crowdfunding and related stakeholders.

However, this paper provides a comprehensive analysis of the regulatory framework and Shariah perspectives surrounding SCF practices in Indonesia, which can be useful for policymakers, regulators, and stakeholders in the industry. The paper also identifies Shariah issues and proposes resolutions to mitigate legal and Shariah disputes, implying the need for significant policy direction by relevant regulators to address these risks.

IV. USING THE TEMPLATE

POJK 57/2020, promulgated by Indonesia's Financial Services Authority (OJK), regulates securities crowdfunding, offering alternative financing for SMEs and startups. This supersedes POJK 37/2018, which solely addressed equity crowdfunding. To ensure a structured, fair, and efficient capital market, the OJK has fortified regulations and oversight, safeguarding both investors and the general public [10].

OJK has also established a regulation that every Sharia SCF provider must have a Sharia Supervisory Board that oversees and ensures that the SCF provider is by the principles of Sharia compliance. While for hybrid SCF providers (conventional and sharia), sharia experts are required [11]. The transaction of the instrument of investigation (shares and sukuk) must be settled in accordance with Shariah principles and practices, and the crowdfunding platform must provide legal protection and settlement related to the sale and purchase of Sukuk or share [10], [12]. Crowdfunding platforms must adhere to the disclosure and investor protection stipulations in POJK Regulation Number 57/POJK.04/2020. Shariah-compliant securities crowdfunding offers investors elevated returns and access to early-stage opportunities not typically available in conventional investment avenues [13].

POJK 57/2020 stipulates the maximum investment limit for investors. Income up to Rp500 million, maximum investment 5% of income per year; income more than Rp500 million, maximum investment 10% of income per year [14]. However, there are still some risks associated with securities

crowdfunding that have not been addressed in POJK 57/2020. For instance, the several reasons that cause default payments such as financial hardship, low income, fraud, and business failure cause the issuer to be unable to fulfill its obligations to investors [15]–[17].

In the context of *ijarah sukuk* instruments, there is a risk of early settlement that could potentially be carried out by the issuer to the detriment of investors. *Ijarah Salam* and *Istisna'a* are particularly exposed to this risk [18]. Sukuk certificates entail credit, counterparty, and loss risks, and *Ijarah sukuk* ratings typically lag behind the lessee due to reduced recovery potential and elevated lease-related risks [19]. Managing the financial risks of sukuk structures is important, and leasing is a special case of exchange contracts that can follow both object deferred and price deferred routes (Tariq, 2004). "*Ijarah sukuk*" denotes financial instruments representing ownership stakes in clearly defined, identifiable assets linked to a lease agreement, where the primary source of returns is the rental income derived from these assets [21]. In the risk point in POJK 57/2020, there is no discussion about the risk if there is a transfer in the object and ownership of the pledged sukuk or shares. Changes in objects in Islamic crowdfunding securities may pose a risk to investors, including the risk of capital loss [22] the risk of non-compliance with Sharia principles [23], the Risk of project failure [24], Liquidity risk [24].

POJK 57/2020 does not specifically address dispute resolution and arbitration in securities crowdfunding. However, POJK 57/2020 requires crowdfunding platforms to comply with disclosure requirements and investor protection measures set out in the regulation. In terms of dispute resolution, POJK 57/2020 requires crowdfunding platforms to have internal dispute resolution mechanisms in place to handle disputes between investors and issuers. If the internal dispute resolution mechanism fails to resolve the dispute, the parties may seek external dispute resolution mechanisms, such as mediation and arbitration. Dispute resolution in Islamic transactions can be overcome in the contract agreed upon beforehand based on the instrument.

In the event of a default payment in sukuk and share, which are Islamic securities, several factors come into play to address the situation. Since sukuk are asset-based or asset-backed instruments, investors have ownership rights to the underlying assets and the income they generate [25]. However, the enforcement of investor rights in sukuk differs from conventional bonds due to the modified role of the trustee. In a sukuk default, the trustee is usually the issuer and a special purpose vehicle (SPV), making it challenging for sukuk certificate holders to sue the issuer [26].

To address default payment in Sukuk, restructuring is a common approach. For example, Investment Dar, a Kuwait-based company, defaulted on a \$100 million sukuk and restructured it in 2011 by converting the debt into equity in the company's assets [27]. In general, sukuk restructuring scenarios continue to develop slowly and unevenly across various jurisdictions [28].

It is important to note that sukuk recoveries given default vary between key issuing jurisdictions and remain largely untested and underdeveloped [29]. As a result, the level and

scope of investors' ability to exercise their contractual rights are uncertain. However, the default rate for sukuk is relatively low, standing at 0.27% by the end of 2021, making it an attractive and secure financial instrument [30].

Early settlement in sukuk can have several implications for investors in securities crowdfunding including Loss of investment and redemption risk [31], and Risk-reward profile because Sukuk investments have a unique risk-reward profile. As the sector is still developing, investors can expect growth and development in this market [32].

In the case of early settlement on sukuk ijarah, the settlement will depend on the terms agreed between the sukuk issuer and sukuk holder. Ijarah sukuk are securities representing ownership of assets that are linked to a lease contract, with lease rentals being the source of returns to investors in this contract. When addressing early settlement in Sukuk ijarah, it is essential to consider the specific terms and conditions outlined in the lease contract between the lessor (asset owner) and lessee (beneficiary). The duration of the rental and the fee are agreed upon in advance in the contract [33]. In the event of early settlement, the parties involved may need to negotiate and agree on new terms to ensure a fair resolution for both the issuer and the sukuk holder.

In the case of early settlement in sukuk mudharabah, the impact on investors will depend on the terms agreed between the sukuk issuer and holders. Mudharabah sukuk is an equity-based sukuk structure where profits and losses are shared between the partners [21] If early settlement occurs, investors may experience different outcomes depending on the specific terms and conditions outlined in the mudharabah contract. For example, investors may receive a portion of the realized profits as mentioned in the issuance publication [34].

If the provision regarding early settlement has been regulated in the sukuk prospectus and approved by sukuk holders, then early settlement will not harm sukuk holders. The Sukuk holders will receive the principal payments and a share of the profits generated by the business funded by the funds from the Sukuk in accordance with the agreed terms.

However, if there is no provision regarding early settlement In the prospectus of the sukuk mudharabah, the issuer must negotiate with the sukuk holders regarding the term of early settlement.

The change of the object of financing under the Sukuk ijarah may affect the structure and terms of the Sukuk. Changes in the object of financing can occur for various reasons, such as damage, loss, or changes in the condition of the asset that is an object of financing [35].

In such a situation, the party issuing sukuk the sukuk ijarah will reassess the financing object on which the sukuk is based. If the object of financing can still be repaired or replaced with a similar project, the party issuing the Sukuk will make repairs or replacements [36].

However, if the financing object cannot be repaired or replaced, the sukuk issuer will find the best solution to fulfill the payment obligation to sukuk holders. One possible solution is to make a compensation payment to the sukuk

holder in accordance with the previously agreed value In the ijarah sukuk [34].

Change of object contract in the implementation of sukuk mudharabah can occur if there's a change in the intended use of funds mentioned in the sukuk contract. This can occur for various reasons, such as changes in market conditions or changes in the company [37]. The issuer can discuss the changes with the investor so that the investors can understand and approve restructuring the sukuk to reflect the changes. The restructuring can be done by changing the terms of the existing Sukuk contract. If the investor disagrees with the change, then the platform provider can decide to cancel the Sukuk, and the issuer must repay all funds received from investors as long as the issuer utilizes the investment fund in accordance with the promised object.

In changing the object of the contract, both stocks and sukuk, the policy in solving the problem is to look at the object of the contract, whether it damages or changes the status of the object of the contract from halal to haram. Then suppose the status of the object of the contract is haram lidzaatihi [21], [38]. In that case, the implementation of crowdfunding securities financing can be canceled, and the issuer must settle obligations to investors. However, if it is *haram lighairihi*, then the contract is fasid. In this case, the dispute resolution is carried out to correct the things that cause the transaction to be fasid. With this solution, it can be seen that both parties benefit and do not lose each other.

V. CONCLUSION

Shariah Security Crowdfunding (SCF) in Indonesia is a relatively new funding option for small and medium-sized enterprises (SMEs) and startups. It is regulated by POJK Number 57 of 2020, which aims to provide alternative funding options while adhering to Shariah principles. However, some Shariah issues need to be addressed, such as default cases, early settlement, change of objects, and ownership. The resolution of these issues requires platform providers to work on internal and external dispute resolution mechanisms.

The Financial Services Authority (OJK) has issued amendments to the regulation, such as Regulation Number 16/POJK.04/2021, to address some of the concerns related to SCF. Additionally, the OJK has issued a circular letter regarding the mechanism and procedure for determining Islamic stocks in SCF, which provides more clarity on the criteria for issuing Shariah securities

Notwithstanding the presence of an established regulatory framework, the continuous exercise of oversight and the implementation of rigorous risk management procedures are imperative to uphold the effective operation of the Shariah Security Crowdfunding (SCF) market and safeguard the interests of investors and the general public. The Financial Services Authority of Indonesia (OJK) demonstrates its unwavering commitment to fortify regulatory measures and supervision efforts, with the overarching goal of cultivating an organized, equitable, and proficient capital market, all while preserving the welfare and interests of investors and the public.

The Indonesian regulation on SCF is designed to support the development of securities crowdfunding while adhering to Shariah principles. However, continuous supervision and risk management are essential to ensure the proper functioning of

the SCF market and protect the interests of investors and the public. As the SCF market in Indonesia continues to evolve, regulators and platform providers must address Shariah issues and implement effective risk mitigation strategies to ensure the sustainable growth of this alternative funding option for SMEs and startups.

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