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EXPLORING THE ESSENCE OF INDONESIAN SECURITIES-BASED CROWDFUNDING

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In Indonesia, crowdfunding is widely acknowledged as a collaborative financing method, enabling businesses, projects, or initiatives to raise funds through community engagement on online platforms. In addition to the ongoing growth of crowdfunding activities, the Indonesian government has been actively improving regulations related to crowdfunding. This effort is evident in the regulatory evolution from Equity Crowdfunding (ECF) to Securities Crowdfunding (SCF). The current study endeavors to identify and discuss critical areas requiring the Indonesian government's careful consideration in regulating crowdfunding activities. Although existing regulations are primarily focused on securities crowdfunding, ambiguities remain regarding the fundamental principles and objectives of crowdfunding as a whole. This ambiguity prompts a crucial question: Does the Indonesian government envision crowdfunding primarily as a tool for profit generation or as a means to support non-profit initiatives? The necessity for a comprehensive and detailed examination of the existing regulations is evident, with the objective of establishing guidelines that safeguard the interests of all stakeholders and preclude any perceptions of unfairness or exploitation.

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1. INTRODUCTION

Humans, as inherently social beings, depend on collaboration to fulfil their individual needs. Their social disposition consistently drives them to form groups and engage in joint efforts for mutual support [7]. In various fields, such as hunting, farming, and the construction of monumental works, human activities have historically been collective pursuits aimed at shared goals. Recognizing that the formation of nations also arises from individuals' collective efforts within a region, united by common aims, particularly the achievement of independence and sovereignty, is essential [31].

Throughout history, humans have recognized the need for a unified desire, determination, and strength from different groups to achieve significant goals and projects. This collaborative spirit, binding individual commitments, remains active in contemporary times and is expected to endure as a fundamental aspect of human existence.

From a philosophical standpoint, the fundamental purpose of human life is creation, whether directed towards oneself, others, or a higher power. The perpetual existence of unmet needs is a compelling motivation for individuals to continue their efforts. Since the advent of the Industrial Revolution in the late 1700s in Western countries, humanity has witnessed the generation of an immeasurable array of works and innovations [35]. Contributions to science, technology, economics, literature, politics, and law have propelled humans into the current era of artificial intelligence.

However, behind every monumental discovery at each era's turning point, fundamental questions arise to understand how reformers produced their remarkable works. The inquiries focus on identifying who met their fundamental needs, the obstacles encountered in creating these works, the critical elements necessary for impactful innovation, and the tactics used to maintain and further develop these groundbreaking discoveries. When distilled, these inquiries converge on a singular, overarching concept—funding [8].

The Statue of Liberty, a historically significant landmark, has stood prominently in New York City, United States, since the 1880s. It represents a beacon of freedom and symbolizes independent thought and action. However, historical records show that funding challenges significantly hindered its initial construction [17]. In the early stages, the New York City government refused to allocate local funds, amounting to approximately \$250,000 (equivalent to about \$7,000,000 today), for the construction of the statue's supporting tower and pedestal. This financial obstacle led to serious

discussions regarding the feasibility of erecting the statue, a gift from the French people. Even with the American Committee of the Statue of Liberty's successful fundraising efforts, a funding shortfall of over \$100,000 persisted.

In a critical turn of events, Joseph Pulitzer, a distinguished journalist and publisher, launched a fundraising campaign through The New York World newspaper to gather financial support for the tower's construction. This campaign attracted the participation of over 160,000 individuals from various walks of life, including children and politicians, who contributed to the statue's construction. Within approximately five months, this concerted community effort resolved the remaining financial shortfalls, ensuring the Statue of Liberty's enduring presence in New York City [9].

The financing saga of the Statue of Liberty, rooted in efficacious fundraising efforts, stands as a testament to the inherent altruism in society, where individuals altruistically contribute towards advancing communal progress. The Statue of Liberty's construction reflects a long-standing tradition of communities assisting each other, a practice that dates back to previous times. This tradition extends to the present day, with ongoing efforts to secure funding for innovative initiatives that contribute to human advancement. In tandem, technologies and methodologies are becoming more advanced and continue to develop in more sophisticated ways. A prime example is the concept of "crowdfunding," a term created from "crowd," meaning many participants, and "funding," which refers to the collective gathering of financial resources. Crowdfunding represents a method of collaborative financing, where diverse groups unite to gather funds, supporting various endeavors such as activities, projects, innovations, or business developments [6].

In the Indonesian context, crowdfunding retains its nomenclature and essence. It encompasses financing ventures, projects, or initiatives through participatory means from the community, predominantly facilitated via digital networks. This model operates by harnessing collaborative efforts on digital platforms, catering to a wide range of purposes. These include humanitarian, educational, political, and public infrastructure projects, as well as innovation and creative endeavors [15]. The evolution of crowdfunding marks a significant trajectory, positioning itself as a viable financial conduit for entrepreneurs and innovators seeking to materialize their endeavors through contributions from a wide spectrum of individuals [13].

This method involves widespread online participation through crowdfunding platforms or social media to attain financial objectives. Crowdfunding is not only a form of financing but also aligns

with crowdsourcing, establishing itself as an increasingly favored alternative for startups and small and medium enterprises (SMEs). Beyond its financial role, crowdfunding is a funding technique involving broad societal participation in various projects or business units [1]. Notably, crowdfunding extends beyond local boundaries, operating on a global scale. In Indonesia, crowdfunding initiatives receive robust support from both the government and society, evidenced by continuous enhancements in the legal system and developmental phases. This collaborative financial approach has become integral to fostering innovation, economic growth, and societal participation in Indonesia and globally [18].

To date, the evolution of crowdfunding legislation in Indonesia has undergone three significant developments. The Financial Services Authority (Otoritas Jasa Keuangan - OJK) plays a pivotal role in issuing regulations about crowdfunding-based business activities. The initial regulation, Republic of Indonesia Financial Services Authority Regulation (Peraturan Otoritas Jasa Keuangan - POJK) Number 37/POJK.04/2018, addressed Crowdfunding Services through Information Technology-Based Share Offerings (Equity Crowdfunding) [26]. This regulation subsequently catalyzed the establishment of two technology startups, Santara and Bizhare, serving as platforms for Small and Medium Enterprises (SMEs) to secure funding from the public.

The OJK later refined the regulations governing equity-based crowdfunding, evolving them into the Republic of Indonesia Financial Services Authority (POJK) Regulation Number 57/POJK.04/2020. This regulation specifically addresses Securities Offerings through Information Technology-Based Crowdfunding Services. In this revision, the OJK introduced the concept of securities-based crowdfunding, marking a significant shift from the previous equity-based crowdfunding framework. OJK justified this conceptual shift by asserting that equity crowdfunding proved inadequate in meeting the financing needs of SMEs and startup businesses, particularly due to the diverse legal entities underpinning these enterprises, not all of which assumed the form of a limited liability company [24].

In essence, concerns exist that regulations centered on equity may pose potential hindrances for funders seeking to invest in securities beyond equity shares. It is crucial to recognize that securities, within the context of crowdfunding, encompass not only shares but also extend to various forms such as mutual funds, bonds, Real Estate Investment Trusts (REITs), Exchange Traded Funds (ETFs), and Asset-Backed Securities (Efek Beragun Aset - EBA). The most recent updates to the OJK regulations about securities crowdfunding are reflected in Republic of Indonesia Financial Services Authority

Regulation (POJK) Number 16/POJK.04/2021, amending Financial Services Authority Regulation Number 57/POJK.04/2020 concerning Securities Offerings Through Technology-Based Crowdfunding Services Information [25].

The OJK has subtly modified its regulations to improve the existing securities crowdfunding framework. These significant changes include the elimination of Article 6, which previously required crowdfunding service providers to obtain a business license from the Financial Services Authority and to register as Electronic System Operators with the ministry responsible for communication and information technology [34]. Under the revised regulations, providers are no longer mandated to register with the communications and informatics ministry. By removing Article 6, the OJK aims to expand access for crowdfunding platforms, particularly to enhance engagement with Small and Medium Enterprises (SMEs). This proactive stance by the OJK has led to tangible results, with more than three officially recognized crowdfunding companies now operational in Indonesia.

The OJK's endeavors to reshape crowdfunding regulations, transitioning from a previous emphasis on equity-based funding to encompass securities, require support from various stakeholders. This research constitutes a proactive measure backing the OJK and the Indonesian government in fostering the ongoing development of small, medium, and startup businesses through crowdfunding initiatives. The primary focus of this study is to delve into the core principles of securities-based crowdfunding, offering insights into its potential as an alternative avenue for business funding in Indonesia. Additionally, the research will address potential risks that merit consideration in the ongoing efforts to enhance legal regulations related to crowdfunding in Indonesia.

In this research, we adopt a normative legal research approach, concentrating on the primary legal foundations [21]. The objective is to assess various legal theories, concepts, and principles, along with pertinent laws and regulations within the legal framework applicable in Indonesia [4]. Our data collection method involves conducting a literature study and reviewing the primary legal sources and additional legal references.

The primary legal sources we rely on possess the highest authority and direct impact in shaping legal regulations. These include laws, government regulations, and court decisions. In the context of this research, we will reference the Republic of Indonesia Financial Services Authority Regulation (POJK) Number 16/POJK.04/2021 concerning Amendments to Financial Services Authority Regulation Number 57/POJK.04/2020 concerning Securities Offerings Through Information

Technology-Based Crowdfunding Services [24, 25]. This regulation serves as a key focus of discussion, particularly within the context of securities-based crowdfunding activities. We will examine the basic principles of securities-based crowdfunding, assess public reception, and explore potential risks associated with crowdfunding activities in Indonesia.

In addition, we will incorporate a variety of supplementary legal resources, including books, journals, conference proceedings, international laws like the JOBS Act [10], and expert opinions. Our aim is to interpret, compare, and elucidate the primary legal sources we have previously described. Although these supplementary resources do not directly shape lawmaking, they play a crucial role in deepening our understanding and aiding the effective application of the principles found in the primary legal sources.

2. PHILOSOPHY OF CROWDFUNDING

In their research, Hossain and Oparaocha [14] observed that crowdfunding does not have a precise definition and its interpretations evolve with socio-economic conditions and technological advancements. Various studies have shaped the concept to fit the developments of different eras. For example, the 1880s fundraising campaign for the Statue of Liberty's supporting tower, conducted through newspapers, is an early instance of donation-based crowdfunding [9]. At that time, donors contributed to the monument's construction without expecting financial returns, motivated instead by social causes. The fundraising efforts of the American people focused on constructing a symbol that represented the nation's struggles, encapsulating the ideals of freedom and democracy.

In the transition to the internet era (1997-2000), the English music group Marillion became a forerunner of digital age crowdfunding. Confronted with limited funds, Marillion had to choose between using their resources for printing and distributing music CDs to fans or embarking on a concert tour in the United States and North America [33]. The band presented the latter option, which involved raising \$60,000 for accommodation costs. Employing a strategic approach, they transparently communicated their financial situation to their fans through the website and mailing list, openly detailing Marillion's financial challenges at the time.

Marillion's open communication about their situation to fans led to a remarkable transformation. In just a few weeks, they raised around \$20,000, enabling them to tour America and

distribute CDs of their albums to loyal supporters. The tour was not only successful enough to reimburse the funds fans had contributed, but it also generated profit. As a gesture of gratitude, Marillion sent CDs of their music to all the fans who financially supported the tour.

As Strähle & Bulling (2017) note, the crowdfunding by Marillion's fans transcends basic fundraising, reflecting a deeper bond. This research suggests that the fans' support embodies a fundamental human trait: compassion for others. This quality, known as philanthropy, comes from the Greek "philo" (love) and "anthrōpos" (human beings), symbolizing love and affection towards others. Philanthropy is essentially a personal commitment to the common good, aimed at enhancing the quality of life for others.

In contemporary times, crowdfunding has evolved into more intricate forms. For example, in 2009, BrewDog introduced the concept of equity crowdfunding to the beer and bar enthusiast community [30]. The founders of BrewDog astutely recognized the innate human inclination towards kindness and generosity in supporting others. Seeking assistance from like-minded individuals to contribute to developing of work and innovation is a strategic approach to navigating challenges, particularly when the shared vision aligns with the objectives at hand. BrewDog stands as a testament to the success of this theory and concept, embodying a communal effort that has effectively demonstrated the potential of collective support in achieving common goals.

During this period, BrewDog had a vision and goal to create artisanal beer beverages that were not only "tasty" but also customizable according to consumers preferences. Beyond this, BrewDog contemplated expanding its business lines to include bar and brewery services [11]. In the inaugural edition of the 'Equity for Punks' project campaign, they extended an offer to the Scottish public to acquire equity ownership in the BrewDog business unit. Remarkably, BrewDog raised over 1.2 million GBP from 1,300 investors, leading to the establishment of its first beer bar in 2010. The Equity for Punks project campaign, initiated by BrewDog, persists to the present day, enabling the continued development of their brewery projects, extending even to Australia and Ireland. Per the financial report in the Equity for Punks Tomorrow prospectus in 2019, they achieved a business revenue exceeding 200 million GBP.

The success of BrewDog's equity crowdfunding campaign underscores the remarkable support community-based customers provide for business development, particularly in fostering innovation and creativity. In equity-based crowdfunding, as demonstrated by BrewDog, contributors are often

reciprocated with a stake in the business, similar to owning company shares. However, BrewDog's crowdfunding campaign's essence extends beyond mere profit-seeking. It is fueled by a dedication to nurturing and enhancing the culture among craft beer enthusiasts.

BrewDog's sustained business growth and success showcase effective management. This success, rooted in BrewDog's sound business strategies, serves as a model for aspiring entrepreneurs, particularly in startup ventures. BrewDog's journey demonstrates that successful business managers possess capability, responsibility, and integrity. At its core, BrewDog's management team prioritizes more than financial gains. They demonstrate a long-term commitment to responsibility and engagement, maintaining this focus even after successfully raising public funds.



Figure 1. Screenshot depicting gameplay of Coral Island, a farming simulation video game from Yogyakarta, Indonesia, launched through an internet-based crowdfunding campaign on the Kickstarter platform. Source: author – September 27, 2023.

Global success stories of crowdfunding initiatives have motivated Indonesian creators to persist in their innovative efforts. In Indonesia, a prominent example is "Coral Island," a digital video game that came to life through internet-based crowdfunding on Kickstarter [12]. As of September 7, 2023, this farming simulator game has raised over \$1.6 million from more than 36,000 backers on Kickstarter. Stairway Games, a software developer in Yogyakarta, Indonesia, has developed the game,

which is now in the refinement phase and available for purchase and play on Steam, a platform owned by Valve. Significantly, when the developers of Coral Island launched their crowdfunding campaign in early 2021, their initial goal was to raise \$70,000 to facilitate the game's immediate publication and playability.

The Coral Island project on Kickstarter presents an intriguing aspect. Stairway Games, the developer, transparently communicated that the game was in its prototype development phase and offered rewards like digital HD (high-definition) wallpapers to backers. The backers' response was phenomenal: within about 36 hours, they reached the developer's funding goal. Consequently, Coral Island has been successfully released and is now available for players (see Figure 1).

The successful funding of Coral Island highlights the altruistic nature inherent in people. This tendency towards altruism relates closely to philanthropy, which involves actions to improve the well-being of others [5]. The success of crowdfunding campaigns often hinges on philanthropy, which stems from a deep-seated desire to contribute to the happiness of others. A detailed examination of numerous crowdfunding campaigns uncovers that the main driving force for contributors is typically to offer help without anticipating any returns, particularly in campaigns that are not profit-oriented.

2.1 The United States and Its Impactful JOBS Act Title III

On April 5, 2012, a significant milestone was reached with the initiation of the legalization of securities laws governing crowdfunding activities in the United States. This period marked America's endeavor to recover from the far-reaching economic downturn 2008, which had adversely affected numerous businesses and structurally impeded the national economy [10]. The repercussions of the economic crisis extended beyond the borders of the United States, impacting citizens globally. In response, various methods and policies were implemented to rejuvenate the nation's economy, focusing on supporting small and medium-sized enterprises (SMEs).

In pursuit of economic revitalization, the United States Congress enacted several bills to foster the recovery process. One notable example is the Small Company Capital Formation Act (Legislation H.R. 1070), which was designed to encourage small companies to access capital markets, enabling them to make investments and expand their workforce [29]. A key provision of this legislation was the significant increase in the offering threshold for companies exempt from Securities and Exchange Commission (SEC) registration, soaring from \$5 million to \$50 million. This legislative effort reflects

a strategic approach to empower small businesses and stimulate economic growth after the economic crisis.

Another notable piece of legislation that was successfully passed later on was Legislation H.R. 2930, known as the Entrepreneur Access to Capital Act. This law introduced crowdfunding as a means to finance new businesses, allowing issuing companies to accept donations of up to \$5 million without the requirement of prior registration with the Securities and Exchange Commission (SEC). During this period, crowdfunding was conceptualized as a low-risk alternative financing method, enabling multiple individuals to contribute funds to a specific company [28]. The existing SEC regulations, which had previously posed barriers to the growth of crowdfunding in the United States by prohibiting public solicitations, were officially amended. The bill received approval from the Government-backed Capital Markets and Enterprise Subcommittee with a vote of 18 to 14.

Table 1. JOBS Act Titles

| | |
|-----------|--|
| Title I | Reopening American Capital Markets to Emerging Growth Companies. |
| Title II | <i>Access to Capital for Job Creators</i> |
| Title III | <i>Crowdfunding</i> |
| Title IV | <i>Small Company Capital Formation</i> |
| Title V | <i>Private Company Flexibility and Growth</i> |
| Title VI | <i>Capital Expansion</i> |
| Title VII | <i>Outreach on Changes to The Law or Commission</i> |

Source: Jumpstart Our Business Startups - JOBS Act

In essence, the passage of Legislation H.R. 2930 laid the groundwork for the subsequent formation of Legislation H.R. 3606, commonly known as the Jumpstart Our Business Startups (JOBS) Act. The JOBS Act encompasses seven titles, each addressing specific aspects of business and capital formation (refer to Table 1). This legislative framework played a pivotal role in reshaping the regulatory landscape and fostering the growth of crowdfunding in the United States [27]. The JOBS Act comprises a series of changes and regulatory integrations designed to streamline both Initial Public Offerings (IPOs) and private capital raising for companies, thereby facilitating their ongoing growth. Under this regulatory framework, companies issuing securities have the flexibility to extend their shareholder base to include up to 2000 investors, consisting of both accredited and non-accredited

investors, and increase their assets to \$10 million before they are required to report to the Securities and Exchange Commission (SEC).

The JOBS Act was established with the primary aim of simplifying non-bank funding for Emerging Growth Companies (EGCs) [10]. This act involves granting these companies the opportunity to raise additional funds by offering ownership stakes in the form of equity or debt through crowdfunding, with a maximum cap of \$1 million. It is essential to recognize that post-global crisis economic recovery necessitates diverse and alternative strategies, and non-bank funding emerges as a crucial avenue to support companies in sustaining their business operations. The preference for non-bank funding stems from the systemic upheaval experienced by the global banking system during that period, marked by widespread bad credit, particularly in the real estate sector.

The crisis placed debtors in a challenging position when it came to repaying their loans, forcing many banks to opt for asset liquidation to secure their operational continuity and survival. However, this liquidation process faced hurdles as asset management firms showed a preference for acquiring bank securities, particularly bonds, over physical assets due to their perceived profitability.

Between 2008 and 2012, global banking institutions faced a credit crunch, tightening their lending practices [19]. As they grappled with their financial challenges, these institutions resorted to issuing bonds to sustain their operations rather than extending credit facilities to the public. This strategy raised a crucial question: in a scenario where banks primarily borrowed to meet their operational needs, how could entities like Emerging Growth Companies (EGCs) and the general public secure funding to sustain and grow their businesses? The resolution to this challenge emerged in 2011-2012 when U.S. monetary experts and Congress collaboratively passed the JOBS Act, offering an innovative solution to the funding predicament faced by small and medium-sized companies post-crisis.

During the 2011-2012, the JOBS Act became a lifeline for many Americans, especially considering the formidable challenges of obtaining asset-backed credit facilities from banks. The Act, particularly its Title III, governed the rules for fundraising through Internet portals, providing a beacon of hope for businesses in the United States. Title III outlined the permissible investment amounts for individual investors (non-accredited) engaging in equity-based crowdfunding (ECF). Individuals with an annual income of up to \$100,000 could invest a maximum of \$2,000 or 5% (whichever is greater), while those with an income exceeding \$100,000 could invest \$10,000 or 10% (whichever is smaller).

Notably, the JOBS Act rules also exhibited flexibility in financial statement audits. Companies aiming to raise equity funds between \$100,000 and \$500,000 were exempt from financial audit requirements, with audits mandated only for those seeking over \$500,000. The maximum permissible equity funds from the public in a single crowdfunding campaign stood at \$1 million. These official regulations surrounding crowdfunding played a pivotal role, allowing numerous businesses to save themselves and continue development during the recovery period from the 2008-2014 global economic recession [10].

2.2 Crowdfunding: Alternative Funding Initiatives in Indonesia

In Indonesia, the Financial Services Authority Regulation (POJK) of the Republic of Indonesia Number 37/POJK.04/2018 outlines the initial regulations governing crowdfunding. This regulation specifically addresses Equity Crowdfunding (ECF) or Crowdfunding Services through Information Technology-Based Share Offerings. The official body responsible for formulating and overseeing these regulations to ensure the legal and lawful implementation of crowdfunding practices in Indonesia is the Financial Services Authority (OJK). ECF campaigns were initiated in Indonesia during the 2018-2019 period. Currently, two ECF platforms, Santara and Bizhare, have received official approval from the OJK. In summary, Santara and Bizhare have successfully introduced the public to the ECF investment model, enabling numerous Small and Medium Enterprises (SMEs) to secure funding from the public.

During the initial one to two years of ECF regulation implementation, Santara and Bizhare effectively channelled funding to tens to hundreds of SMEs, involving tens of thousands of investors. Over time, OJK refined ECF regulations, transitioning to securities-based crowdfunding (SCF). The most recent regulation concerning SCF is the Republic of Indonesia Financial Services Authority Regulation (POJK) Number 16/POJK.04/2021, which pertains to Amendments to Financial Services Authority Regulation Number 57/POJK.04/2020 regarding Securities Offerings Through Information Technology-Based Crowdfunding Services.

The recognition that not all eligible start-up companies seeking crowdfunding need to adopt a corporate legal entity prompted this transformation. It is important to understand that the fundamental concept of equity includes two categories: shareholder equity and owner's equity. Shareholder equity represents the net value allocated to shareholders once a company's liabilities are deducted. In contrast, owner's equity reflects an owner's share in a business. The process of calculating owner's equity is

similar to that of shareholder equity, involving the deduction of a business's total liabilities from its assets.

When examining equity-based crowdfunding, the OJK considered challenges arising from the equity concept's inherent nature. This consideration aligns with the stipulations of the Law of the Republic of Indonesia Number 40 of 2007 on Limited Liability Companies. This law mandates that capital partnerships, functioning as legal entities, must be established through an agreement. They should engage in business activities with authorized capital, fully distributed into shares, within a limited liability company structure (*Perseroan Terbatas* - PT) [16]. At the same time, the OJK's vision for crowdfunding aims to maximize funding opportunities for all business entities, especially nascent start-ups, to encourage their growth and development. By November 2021, Indonesia transitioned from equity-based crowdfunding (ECF) to securities-based crowdfunding (SCF). The Indonesian Central Securities Depository (*Kustodian Sentral Efek Indonesia* - KSEI) reports that ten companies offering SCF have received official approval from the OJK, as detailed in Table 2.

The government's unwavering commitment to fostering growth and development in Indonesia's economic landscape is highlighted by the establishment of ten companies actively engaged in Securities Crowdfunding (SCF).

Table 2. The officially designated organization overseeing Securities-Based Crowdfunding (SCF) activities in Indonesia

| No. | Companies | Company Code | Website | License granted by the Financial Services Authority (OJK) |
|-----|---|--------------|-----------------|---|
| 1 | PT Investasi Digital Nusantara (Bizhare) | BZHR1 | bizhare.id | KEP-38/D.04/2021 |
| 2 | PT Crowddana Teknologi Indonusa (Crowddana) | CRWD1 | crowddana.id | KEP-87/D.04/2022 |
| 3 | PT Dana Saham Bersama (Danasaham) | DSMB1 | danasaham.co.id | KEP-16/D.04/2021 |
| 4 | PT Dana Investasi Bersama (Fundex) | FNDX1 | fundex.id | KEP-51/D.04/2021 |
| 5 | PT ICX Bangun Indonesia | LNDX1 | icx.id | LANDX: KEP-68/D.04/2020 (Equity Crowdfunding) |
| | Recent: LANDX (PT. Numex) | | | ICX: ~ |

Table 2. The officially designated organization overseeing Securities-Based Crowdfunding (SCF) activities in Indonesia

| No. | Companies | Company Code | Website | License granted by the Financial Services Authority (OJK) |
|-----|---|--------------|---------------|---|
| | Teknologi Indonesia) | | | |
| | Current: rebranded to Indonesia Crowdfunding Exchange (ICX) | | | |
| 6 | PT LBS Urun Dana | LBSU1 | LBS.id | KEP22/D.04/2022 |
| 7 | PT Santara Daya Inspiratama | SDIM1 | santara.co.id | KEP-59/D.04/2019 (Equity Crowdfunding) |
| 8 | PT Shafiq Digital Indonesia | SHFQ1 | shafiq.id | KEP-37/D.04/2021 |
| 9 | PT Likuid Jaya Pratama | EKUI1 | eku.id | KEP-11/D.04/2022 |
| 10 | PT Dana Aguna Nusantara | DNMR1 | danamart.id | KEP-15/D.04/2023 |

Sources: ksei.co.id (2023) and OJK (2023)

This initiative focuses on strengthening the small and medium-sized business sector, aiming to transform these businesses into key contributors to Indonesia's multifaceted development. Securities Crowdfunding, as facilitated through SCF, offers numerous benefits, including improved transparency, greater efficiency, and higher success rates. Beyond just boosting investment growth, SCF actively contributes to the advancement of financial technology solutions [3].

Key factors driving significant changes in the investment landscape and support for the technology-driven economy highlight the relevance of SCF-based fundraising in modern times. SCF activities democratize investment, allowing individuals from various backgrounds to engage in investment opportunities previously exclusive to institutional or affluent investors. This democratization opens up a wide range of investment options to retail investors, previously out of their reach.

Securities Crowdfunding also acts as a catalyst for innovation and start-ups, offering a more accessible funding source for entrepreneurial ventures and groundbreaking projects. It promotes economic progress by enabling the funding of new ideas through a community that believes in their

potential. The government's recognition of SCF's importance is clear in the strict regulatory guidelines imposed on SCF platforms. These guidelines aim to protect investors' interests and establish a transparent and secure environment for investment activities. This strategic approach is crucial in preventing fraudulent investment practices and ensuring the integrity of the crowdfunding process [22].

For small businesses, particularly those falling within the small and medium enterprise (SME) category, Securities Crowdfunding stands out as an indispensable alternative for capital acquisition. SME entrepreneurs often face challenges in securing the necessary funds to drive the development of their businesses. In this context, SCF emerges as a valuable mechanism to overcome funding obstacles and foster the growth of small businesses in Indonesia.

Securities Crowdfunding offers a compelling alternative to conventional bank loans when securing additional funding. It provides financial benefits beyond just acquiring capital. SCF, or Securities Crowdfunding, enables investors to diversify their portfolios by allocating funds across various initiatives and companies. This diversification approach reduces investment risk while simultaneously exposing investors to the potential for higher returns. The subsequent step toward successful SCF investment involves listing the company's shares on the stock exchange. A successful listing positions early investors to capitalize on increased profitability within a broader investment market.

The significance of securities fundraising extends to the active involvement of the community in supporting chosen initiatives. This active engagement fosters a close bond between investors and the companies or projects they support, cultivating a profound sense of ownership and commitment. When considered collectively, these factors underscore the relevance and importance of securities crowdfunding in the contemporary financial landscape.

3. IDENTIFYING POTENTIAL RISKS IN INDONESIA'S SECURITIES CROWDFUNDING INITIATIVES

Although the concept of Securities Crowdfunding (SCF) offers an alternative non-bank funding model with various advantages, it comes with potential risks that warrant consideration in the

context of SCF development in Indonesia. The first notable challenge pertains to the legal status of the business entity (Issuer) participating in the SCF campaign.

Financial Services Authority Regulation (POJK) Number 57/POJK.04/2020 outlines that Article 47 defines the eligible entities for acting as securities Issuers in SCF, which can be legal entities or other business entities. These Issuers fall into three broad categories. The first category includes equity securities like shares, the second category encompasses debt securities or *sukuk* (Shariah-compliant bonds), and the third category consists of debt securities that can be converted into shares.

Unfortunately, the current regulations do not provide a thorough clarification regarding which legal entities are allowed to issue shares, debentures, or convertible debt securities. This absence of clear guidance increases the risk of potential inconsistencies in the future implementation of crowdfunding. This concern is especially pertinent for Issuers operating under legal entities other than the Limited Liability Company (LLC) structure. Article 47, section (1) and point (b), articulates this issue as follows:

"(1) When raising funds through the Crowdfunding Service, the Issuer is required to provide documents and, or information to the Organizer, at a minimum...,

"b. For Issuers in the form of other business entities, this entails furnishing details about the business entity's form and name, along with the deed of establishment and the most recent articles of association duly ratified or approved by the authorized agency or reported to the authorized agency..."

Article 47 clarifies that it includes limited partnerships (CV), firm partnerships, and civil partnerships under the term "other business entities." Per Article 47, this suggests that these business entity types, specifically limited partnerships (*Commanditaire Vennootschap* - CV), firm partnerships, and civil partnerships, have the eligibility to register as Issuers on the ECF exchange. Consequently, this prompts concerns about how effectively this particular category of business entities can utilize the ECF mechanism for fundraising.

The subsequent challenge that draws our attention pertains to voting rights, which represent the investors' influence in contributing to each type of share-based security they hold. This issue remains closely linked to the preceding challenge regarding the legal entity that issues shares to investors. We argue that the success of the equity-based SCF concept, particularly for securities like

shares or convertible debt, is more likely for business Issuers structured as Limited Liability Companies (*Perseroan Terbatas* - PT).

This preference arises from the regulatory framework, which grants only corporate legal entities the authority to address voting rights associated with equity held by investors. To elaborate, when the Issuer intends to convene a General Meeting of Shareholders (GMS), amend the Company's Articles of Association or Bylaws, issue new shares, distribute business dividends, or appoint a board of directors or commissioners, the democratic, transparent, fair, and objective exercise of voting rights can only be effectively facilitated by Issuers structured as limited liability companies. Consequently, we will delve into an exploration of various potential risks for Issuers with legal entities other than Limited Liability Companies (*Perseroan Terbatas* - PT).

3.1 Potential Risks for Issuers with Cooperative Legal Entity Structure (*Badan Hukum Koperasi*)

An example of a legal entity that Issuers can use for Securities Crowdfunding (SCF) is a cooperative. Cooperatives have played a fundamental role in Indonesia's socio-economic structure since the early 1900s. Dr. Mohammad Hatta, the first Vice-President of the Republic of Indonesia, formally established the cooperative movement in 1960, following the nation's independence. Initially, the government actively used cooperatives to distribute essential goods like food and clothing to the people. These cooperatives have not only persisted but also evolved over time, playing a crucial role in both rural and corporate communities [32]. They serve as active platforms for promoting communication, collaboration, and community among members. The cooperatives in Indonesia exemplify a vital aspect of the country's traditional values and social organization.

Law Number 25 of 1992 concerning Cooperatives, or the Cooperative Law, governs cooperatives. It sets out the conditions and procedures for establishing and managing cooperatives, with a focus on applying economic democracy principles. This law ensures that each cooperative member has equal voting rights, usually adhering to the principle of one member, one vote. Therefore, regardless of their financial contribution, all members have equal voting rights in the cooperative. The approach to capital participation in cooperatives differs markedly from that in companies. Cooperative members document their capital participation through the Cooperative Capital Certificate (*Sertifikat Modal Koperasi* - SMK). Yet, their voting rights do not correlate directly with the amount of capital they contribute.

In companies, investors with more shares typically exert greater influence over strategic decisions. However, in cooperatives, strategic decisions involve a collective, deliberative process among members, who each have an equal say. When cooperatives face deadlocks, members resolve these through voting to set the policy direction. While cooperatives distribute business results proportionally, their decision-making process, especially in intricate situations, requires careful deliberation [23]. In the context of Securities Crowdfunding (SCF), this deliberative process becomes even more critical. Here, all cooperative members (investors) have equal voting rights, meaning each member influences the decision-making equally. The challenge in cooperative-based SCF is to manage each member's rights fairly and objectively, ensuring effective governance.

3.2 Potential Risks for Issuers with Partnership Legal Entity (*Badan Usaha Jenis Persekutuan*)

In addition to the cooperative legal entity model, the use of civil partnerships, CV (*Commanditaire Vennootschap* or Commanditer Partnership), and general partnerships in business entities carries inherent risks when serving as the legal foundation for Issuer organizations in SCF. The primary concern involves the lack of a clear separation between the company's liabilities and the personal wealth of its active managers. Specifically, active managers in civil partnerships, CVs, and general partnerships are not only responsible for organizational administration but also risk their personal wealth. The Commercial Code (*Kitab Undang-Undang Hukum Dagang Untuk Indonesia - KUHD*) explicitly states this in Article 19. Additionally, the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number 17 of 2018, regarding the Registration of Commanditer Partnerships, General Partnerships, and Civil Partnerships (*Permenkumham 17/2018*), reinforces this rule in Article 1.

Business entities that adopt partnership structures offer significant benefits in terms of organizational governance. This structure enables all partners to actively participate and take responsibility for business operations, aligning with the organization's goals. However, a notable drawback in entities structured as civil partnerships or general partnerships is the aspect of joint and several liability for each member. This means that each partner is accountable not only for their own actions but also for the actions of their fellow partners. Consequently, if one partner's actions result in a loss or deviate from the organization's established procedures, the other partners are equally liable for that loss [2].

The *Commanditaire Vennootschap* (CV) operates in three distinct types. The first type, known as the silent CV (*CV diam-diam*), operates as a covert partnership, refraining from openly identifying itself as a CV to external parties. In practice, it resembles a general partnership by using a general partnership's name in external collaborations. However, within the organization, active partners (complementors) who participate in daily management and passive partners (*commanditaires*) who do not engage in management are subject to different treatments. The second type, known as the open CV (*CV Terang-terangan* or *terbuka*), explicitly presents itself as a partnership to third parties. It features a signboard and openly engages in administrative activities, such as correspondence, thus clarifying its legal standing and the responsibilities of its managers both internally and externally, in line with cooperative principles.

A "CV with shares" operates similarly to a limited liability company (PT) with a shareholder structure. In this setup, active partners are responsible for their personal assets. Passive partners (*commanditaires*), who choose not to participate in management or governance, limit their liability to their capital investment in the CV. However, they must avoid any involvement in the CV's management or administration.

Passive partners cannot vote or take part in the organization's management. This includes refraining from offering suggestions, commenting on procedures, giving critiques, or taking over the roles of active partners. Essentially, a *commanditaire* partner acts only as an investor, sharing profits without influencing strategic decisions or actions made by the active partners (complementors).

According to Articles 20 and 21 of the Indonesia Commercial Code (KUHD), a passive partner (*commanditaire*) who engages in the CV's management is reclassified as an active partner (complementor). This change removes the limitations on their management responsibilities, making them equally responsible for organizational obligations and liable for personal assets, alongside other active partners. Our primary concern is the potential exploitation of governance loopholes within these partnership-form organizations by unscrupulous Issuers who have no intention of genuinely developing their businesses. A significant criminal risk arises when Issuers, having met their fundraising targets, leverage the limited rights of passive partner investors.

This limitation allows the managers of these entities to freely use investor capital at their discretion, knowing that investors cannot intervene. We are concerned that such scenarios may prevent organizers from ensuring continuous adherence to high governance standards by the issuing

companies. Unscrupulous Issuers might manipulate the company's affairs, leading to consistent losses by intentionally mismanaging capital expenditure, operational expenses, cash flow, income, equity, and liabilities. They exploit the fact that passive partners, unable to take action unless they become active partners, are effectively powerless. This raises a crucial question: Who would be willing to assume joint responsibility, even extending to their personal assets, in a consistently loss-making business sector?

3.3 Potential Risks for Issuers with Legal Entities such as Foundations (*Yayasan*)

Indonesia Law Number 16 of 2001 concerning Foundations establishes that a foundation is a legal entity created from distinct assets, aiming to fulfil specific objectives in social, religious, and humanitarian fields, and operates without requiring members [20]. According to Articles 2 and 3 of the law, a foundation's organizational structure includes Founders, Administrators, and Supervisors. Foundations can participate in business activities to support their goals, either by creating business entities or by partnering with existing ones. However, the law prohibits the distribution of business activity proceeds to the Founders, Administrators, and Supervisors.

The SCF regulations currently lack specific guidelines regarding the types of legal entities eligible to issue securities. This ambiguity raises the possibility that foundations, as legal entities, might register as Issuers on the SCF exchange. Such a scenario increases the risk of administrative conflicts during fund-raising through securities. Despite foundations primarily focusing on social, religious, and humanitarian goals rather than profit-making, OJK regulations Number 16/POJK.04/2021 and Number 57/POJK.04/2020 do not set clear boundaries on which legal entities can issue securities on the SCF exchange.

In the philosophy of crowdfunding, we should actively encourage a true non-profit objective to realize various innovations and works. It is essential to define the context of crowdfunding clearly to prevent overly broad interpretations. We advocate for legal entities such as foundations to participate robustly in crowdfunding programs. However, non-profit legal entities like foundations should ideally avoid using the concept of securities in crowdfunding activities. We view the trading of securities as more suitable for profit-oriented activities. Therefore, only legal entities like limited

companies (*Perseroan Terbatas* - PT) should serve as the primary basis for Issuers, as they align more appropriately with these objectives.

4. CONCLUSION

Securities Crowdfunding (SCF) undeniably offers a valuable non-bank funding alternative, significantly benefiting business progress. In Indonesia, crowdfunding's growth captures the attention of the public, industry, and government, thriving on creative ideas and innovations. As technology rapidly advances, standard regulations for crowdfunding evolve to match the dynamic business world. This research strongly supports advancing crowdfunding initiatives in Indonesia.

The government, as the regulator and overseer, must focus on several fundamental aspects of crowdfunding. A primary concern of this research is the types of legal entities eligible to issue securities in securities crowdfunding. We suggest that discussions about securities and their derivative products become most relevant and effective when the legal entities responsible for issuing securities are limited liability companies (*Perseroan Terbatas* - PT). According to Indonesian regulations, limited liability companies are deemed the most reliable for profit-seeking and distributing business profits to investors. However, this differs when fundraising by publishers and organizers is not profit-oriented.

If the Indonesian government considers enabling non-profit fundraising, it is crucial to develop specific regulations for this type of crowdfunding. Crowdfunding's evolution, from the Statue of Liberty's construction in the United States to modern digital platforms like Kickstarter supporting global digital artists, highlights its significant impact. We fully support and value crowdfunding's growth in Indonesia. However, we suggest the Indonesian government refine its crowdfunding laws to avoid potential regulatory confusion arising from overly broad rules.

Balancing crowdfunding for profit and non-profit purposes presents challenges due to the differing expectations of investors and donors. Investors typically look for returns and capital gains, while donors contribute without expecting material rewards. As the regulator of crowdfunding activities, the government must address these varied risk factors. Presently, Indonesia's regulations on crowdfunding mainly focus on securities crowdfunding, leading to uncertainties about crowdfunding's true purpose and scope. This situation prompts a vital question: What direction does the government

envision for crowdfunding in Indonesia, towards profit or non-profit? We advocate for a comprehensive review and re-evaluation of these regulations. Effective regulation should protect all stakeholders, preventing any feelings of deception.

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ABOUT THIS ARTICLE

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EXPLORANDO LA ESENCIA DEL CROWDFUNDING BASADO EN VALORES DE INDONESIA

RESUMEN

En Indonesia, el crowdfunding es ampliamente reconocido como un método de financiación colaborativo que permite a empresas, proyectos o iniciativas recaudar fondos a través de la participación comunitaria en plataformas en línea. Además del crecimiento continuo de las actividades de financiación colectiva, el gobierno de Indonesia ha estado mejorando activamente las regulaciones relacionadas con la financiación colectiva. Este esfuerzo es evidente en la evolución regulatoria del Equity Crowdfunding (ECF) al Securities Crowdfunding (SCF). El presente estudio se esfuerza por identificar y discutir áreas críticas que requieren una cuidadosa consideración por parte del gobierno de Indonesia al regular las actividades de financiación colectiva. Aunque las regulaciones existentes se centran principalmente en el crowdfunding de valores, persisten ambigüedades con respecto a los principios y objetivos fundamentales del crowdfunding en su conjunto. Esta ambigüedad suscita una pregunta crucial: ¿Considera el gobierno de Indonesia el crowdfunding principalmente como una herramienta para generar ganancias o como un medio para apoyar iniciativas sin fines de lucro? Es evidente la necesidad de un examen exhaustivo y detallado de las regulaciones existentes, con el objetivo de establecer directrices que salvaguarden los intereses de todas las partes interesadas y excluyan cualquier percepción de injusticia o explotación.

Palabras clave: derecho comercial, crowdfunding de valores, crowdfunding de Indonesia, financiamiento alternativo, autoridad de servicios financieros de Indonesia (Otoritas Jasa Keuangan-OJK).

探索印尼证券众筹的本质

摘要

在印度尼西亚，众筹被广泛认为是一种协作融资方式，使企业、项目或倡议能够通过在线平台上的社区参与筹集资金。这种集体融资策略服务于各种目的，包括对人道主义事业、教育、商业企业、政治活动、公共基础设施和创新努力的支持。众筹作为一种重要的金融工具，为寻找资金的企业家提供了重要的支持，使得这种融资模式得到了显著的扩展。除了众筹活动的持续增长外，印尼政府还一直在积极完善与众筹相关的法规。从股权众筹（ECF）向证券众筹（SCF）的监管演变就证明了这一点。证券众筹作为一种非传统的非银行融资方式脱颖而出。它通过鼓励创造力和创新，为企业成长提供了显著的优势。印尼的这些监管变化表明，政府致力于使众筹成为一种更有效、更便捷的金融选择。

众筹虽然带来了显著的好处，但它也面临着监管方面的挑战，特别是在各种从事众筹的商业实体中一致实施规则方面，无论其是出于盈利还是非盈利动机。本研究旨在确定并讨论印尼政府在规范众筹活动时需要考虑的关键领域。虽然现行法规主要关注证券众筹，但关于众筹作为一个整体的基本原则和目标仍存在歧义。这种歧义引出了一个关键问题：印尼政府是将众筹主要视为一种盈利工具，还是支持非盈利倡议的手段？显然，我们需要对现有法规进行全面而详细的审查，目的是制定保障所有利益相关者利益的指导方针，并排除任何不公平或剥削的观点。

关键词：商业法，证券众筹，印尼众筹，替代融资，印度尼西亚金融服务管理局（Otoritas Jasa Keuangan-OJK）。