

## THE LEGAL PROTECTION FOR SECURITY CROWDFUNDING BASED ON SHARIA INVESTMENT IN MSMES ECONOMIC RECOVERY

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### **Abstract**

*The security crowdfunding (SCF) provides collective fundraising services for MSMES who have difficulty obtaining funding without collateral based on OJK Regulation No. 16/POJK.04/2021, the SCF investment rules above don't explicitly discuss investment activities in sharia-compliant securities for halal business financing that are free from Riba, maysir, and gharar elements. The purpose of this research is to examine the sharia economic legal protection for SCF investment contract transaction model and its legal implications in case of invalidity. This research uses a conceptual normative legal approach with a descriptive qualitative analysis. The results show that the contract activities in halal MSMES crowdfunding investment transactions have not fulfilled the principles of the Syirkah akad based on the Sharia Economic Law Compilation, which is from the expression side, the occurrence of ijab qabul (offer and acceptance) is not clearly in accordance with sharia, so the SCF contract can be invalidated and all activities related to the transaction are considered haram. Therefore, an issuer from DSN MUI is needed to guarantee that the SCF complies with sharia principles and has a sharia compliance officer.*

**Keyword:** Crowdfunding; Investment; Security.

### **A. INTRODUCTION**

The current economic dynamics are constantly evolving over time, where the current economic development has reached Industry 4.0 or commonly known as the Digital Revolution caused by the increasing knowledge of information technology and the needs of society, which has made industries with products and services to meet the needs of society become more competitive. Thus, currently, the economy, financial market, and industry are all in the digitalization phase.<sup>1</sup> This is based on the results of the Digital 2020 report, which stated that Indonesia, which is the fourth country with the highest population density in the world, had 64% internet technology users out of the total population in Indonesia in 2020. From year to year, this number has increased by 17% compared to 2019.<sup>2</sup> With the

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1 Agyztia Premana, Gian Fitralisma, Andi Yulianto, M. Badruz Zaman & M. A. Wiryo, Pemanfaatan Teknologi Informasi Pada Pertumbuhan Ekonomi dalam Era Disrupsi 4.0, *Jurnal Economic Management (JECMA)*, Vol. 1, No. 1, August 2020, page.1-7.

2 Vanessa Stefanny dan Beby Tiara, Overview Perbandingan Jumlah User Fintech (Peer-To-Peer Lending) dengan Jumlah Pengguna Internet di Indonesia Pada Masa Pandemi Covid-19, *Jurnal IPSIKOM*, Vol. 9, No. 1, June 2021, page.134-141.

existence of this internet technology, many activities have been shifted online to improve business performance. However, not all online-based activities can be recognized and function well by society, along with the increasing use of internet technology.<sup>3</sup>

During the Covid-19 pandemic, the need for internet usage has also increased, and new applications have emerged to assist in the financial field. One of the financial institutions that also utilizes internet technology is financial technology (hereinafter referred to as fintech) as one of the technological solutions in the financial sector that serves lending transactions, financing, and others.<sup>4</sup> In the current era of globalization, conducting economic transactions is no longer limited by time and distance, using application technology. Fintech is an innovation in the financial service sector that no longer requires the use of paper money. In other words, the existence of fintech transforms currency into digital for greater efficiency.<sup>5</sup> Products that can be categorized into fintech include payment processes (payments), digital wallets, investments (crowdfunding), Peer to Peer Lending, other financing (crowdfunding, microloans, credit facilities), insurance (risk management), cross-processes (big data analysis, predictive modeling), infrastructure (security).<sup>6</sup>

One independent effort is the Micro, Small and Medium Enterprises (MSMES). The development of MSMES is a driving force for economic growth in Indonesia. The contribution of MSMES in employment absorption can reach up to 95%.<sup>7</sup> Given the significant role and development of MSMES in the Indonesian economy, empowerment of MSMES is needed. Greater attention is needed on the MSMES sector as one of the main drivers of the national economy.<sup>8</sup> The potential that needs to be utilized is related to the halal product industry.<sup>9</sup> Therefore, government policy is needed in the future to encourage the MSMES industry in producing halal products for the domestic market and at the same time exporting halal products for the

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- 3 Lu Sudirman & Disemadi, Hari Sutra. Titik Lemah Industri Keuangan Fintech di Indonesia: Kajian Perbandingan Hukum. *Jurnal Pembangunan Hukum Indonesia*, Vol. 4, No. 3, 2022, page.471-493.
  - 4 Hari S. Disemadi, Yusro, M. A., & Balqis, W. G, The Problems of Consumer Protection in Fintech Peer to Peer Lending Business Activities in Indonesia, *Sociological Jurisprudence Journal*, Vol. 3, No. 2, August 2020, page.91-97.
  - 5 Hida Hiyanti, dkk, Peluang dan Tantangan Fintech (Financial Technology) Syariah di Indonesia, *Jurnal Ilmiah Ekonomi Islam*, Vol. 5, No. 3, Edition November 2019, page.326-333.
  - 6 Meline Gerarita Sitompul, Urgensi Legalitas Financial Technology (Fintech) : Peer To Peer (P2P) Lending di Indonesia, *Jurnal Yuridis Unaja*, Vol. 1, No. 2, December 2018, page.68-79.
  - 7 Nilasari, A.P., Hutajulu, D.M., Retnosari., Astutik, E.P, Strategi Pemberdayaan dan Kontribusi UMKM Menghadapi Ekonomi Digital, *Prosiding Seminar Nasional Fakultas Ekonomi Untidar*, Vol. 15, October 2019, Page 576-594.
  - 8 Hari Sutra Disemadi. Contextualization of Legal Protection of Intellectual Property in Micro Small and Medium Enterprises in Indonesia, *Law Reform*, Vol. 18, No. 1, 2022, page.89-110.
  - 9 Evita Farcha Kamila, Peran Industri Halal Dalam Mengdongkrak Pertumbuhan Ekonomi Indonesia Di Era New Normal, *Jurnal Likuid*, Vol. I, No. 1, 2021, page.33-42.

global halal market.<sup>10</sup> The Islamic finance industry in Indonesia has successfully risen to the 2nd rank, supported by improvements in the Governance, Awareness, and Knowledge indicators.<sup>11</sup>

In 2020, the Indonesian economy faced an extraordinary challenge. The emergence of the Corona Virus Disease 2019 (hereinafter referred to as Covid-19) hit the economy so hard that economic engines such as trade and investment had to decline significantly.<sup>12</sup> During the Covid-19 period, the policy of Large-Scale Social Restrictions (PSBB) emerged, where the Indonesian government urged people to practice social and physical distancing, which was a measure to prevent the spread of COVID-19. This became an opportunity for fintech financial services to develop small businesses because the characteristics of fintech are different from banking, namely providing online loan services to the community.<sup>13</sup>

According to the Chairman of the Indonesian MSMES Association (Akumindo), Ikhsan Ingrabatun, the estimated turnover of MSMES has decreased by 30-35% since the Covid-19 pandemic hit.<sup>14</sup> One of the main problems faced by MSMES is the limited access to capital, the low quality of human resources in management, and the low level of technology and information literacy. Limited access to capital is one of the main issues faced by MSMES, despite the fact that the legal certainty of financing for MSMES, including Sharia-based MSMES, is guaranteed in the Law No. 20 of 2008 on Micro, Small and Medium Enterprises (hereinafter referred to as the MSMES Law). Article 1 number 11 of the MSMES Law legalizes financing assistance for MSMES in the form of funding provided by the government, local government, business community, and the public through banks, cooperatives, and non-bank financial institutions to develop and strengthen MSMES capital.

There are several alternatives to solving business financial problems, such as applying for business credit from a bank. However, the requirements set by banks for distributing credit are very strict, so those who need capital assistance often have difficulty meeting them, for example, in terms of providing collateral. In contrast to bank credit, financing through venture capital institutions does not require collateral from those who need capital participation. The most suitable form of assistance

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10 Dewi Nurita, New Normal, Wapres Ma'ruf Amin: Ini Peluang Industri Produk Halal, <https://bisnis.tempo.co/read/1349645/new-normal-wapres-maruf-amin-ini-peluang-industri-produk-halal>, diakses pada 12 December 2022.

11 Bank Indonesia, Laporan Ekonomi dan Keuangan Syariah, *Bersinergi Membangun Ekonomi & Keuangan Syariah*, Jakarta, Bank Indonesia, 2020, ISSN 2722-8665, page.6

12 Rahmi Rosita, Pengaruh Pandemi Covid-19 Terhadap UMKM di Indonesia, *Jurnal Lentera Bisnis*, Vol. 9, No. 2, November 2020, page.109-120.

13 Hari S. Disemadi, Legal Aspects of 'Gali Lubang Tutup Lubang' in Fintech P2P Lending Business During Covid-19, *Tadulako Law Review*, Vol. 6, No. 2, December 2021, page.237-256.

14 Rais Agil Bahtiar & Juli Panglima Saragih, Dampak Covid-19 Terhadap Perlambatan Ekonomi Sektor UMKM, Pusat Penelitian Badan Keahlian DPR RI, *Jurnal Bidang Ekonomi dan Kebijakan Publik info singkat Kajian Singkat terhadap Isu Aktual dan Strategis*, Vol. 12, No. 6, Maret 2020, Page 19-23.

from a venture capital company to support MSMEs capital is a loan with the lowest interest rate. Nevertheless, financing assistance through venture capital can only be selectively given to certain companies that are deemed to have very good prospects.<sup>15</sup> And for Sharia-based MSMEs products, it is necessary to pay attention to financing activities that can lead to *Riba* through the emergence of "interest". The opportunity for Sharia-based MSMEs financing according to Article 22 letter d of the MSMEs Law states that it can be sourced from cooperation between MSMEs through savings and loan cooperatives or financial service cooperatives. This provides an opportunity for the community to engage in activities and facilitates their ability to carry out business development by expanding their networking.

In this era of globalization, crowdfunding business is growing rapidly, leading to new innovations related to stock offerings called security crowdfunding. Security Crowdfunding (SCF) is a part of Crowdfunding. Crowdfunding is one of the alternative funding methods where a group of people contribute to fund a business project.<sup>16</sup> OJK regulations related to securities crowdfunding will allow investment activities if they have fulfilled normative requirements in the form of all licensing documents prepared by the organizers.<sup>17</sup> Therefore, business activities must comply with what has been regulated in the principles of Sharia Muamalat.

In previous research, discussions related to the issue of investment activities with the security crowdfunding model for MSMEs economic have been widely discussed, but didn't explicitly discuss sharia based investment activities in halal business financing.<sup>18</sup> The research in this article specifically discusses the legal protection of investment activities with SCF for halal businesses in creating investments that are free from elements of usury, maysir, and *gharar* with the involvement and position of the MUI's DSN in OJK regulation Number 16/POJK.04/2021.

In security crowdfunding, investments must refer to Sharia contracts where there is a Sharia supervisory board that assesses investment activities to avoid Maysir, *Gharar*, and *Riba*. Therefore, contracts in security crowdfunding must comply with Sharia principles. However, there are still some contracts that do not provide profit-sharing compensation for the management of MSMEs according to the initial contract. Meanwhile, in small businesses, there are still financial systems that do not meet standards where personal and company assets are still mixed into one entity, and unethical behavior from the issuer may leave some investors and developers without legal protection because the PJOK SCF has not explicitly explained legal protection for investors. The contradiction in the implementation of

15 Neni Sri Imaniyati, *Pengantar Hukum Perbankan Indonesia*, Bandung, Refika Aditama, 2010, page.2

16 Arief Yuswanto Nugroho & Fatichatur Rachmaniyah, Fenomena Perkembangan *Crowdfunding* di Indonesia, *Jurnal EkoNiKA*, Vol. 4, No. 1, 2019, page.34-46.

17 Mahkamah Agung, Direktorat Jenderal Badan Peradilan Agama, Pasal 576 Buku II, *Kompilasi Hukum Ekonomi Syariah*, 2011.

18 Andini Astarianti Soemarsono & Ukhti Dyandra Sofianti, Perspektif Hukum Mengenai Penggunaan Securities Crowdfunding pada Masa Pemulihan Ekonomi UMKM Akibat Pandemi, *Jurnal Hukum Lex Generalis*, Vol. 2, No. 8, 2021, page.607-626.

SCF has a significant impact on the organization and discipline of the Sharia effect in SCF in Indonesia. Based on the above presentation, the researcher is interested in further investigating the role of Sharia-compliant SCF investments in MSMES capital according to Sharia principles.

Based on the background above, the purpose of the research are as follows to examine the Sharia legal perspective on the transaction model of investment contracts in security crowdfunding for halal MSMES funding and to examine the legal consequences if the investment contract transactions with security crowdfunding instruments are deemed invalid.

## **B. RESEARCH METHODS**

The type of research that will be examined by the Author in this research object is legal-normative research, by conducting analysis and interpretation of theoretical aspects related to the concepts, theories, principles, and legal norms related to regulations and legislation. In normative legal research, the Author will process secondary data consisting of primary legal materials related to regulations and legislation on Sharia Investment Law. In this research, the Author will use a data analysis method that does not involve calculations, namely the qualitative method, which produces descriptive data in the form of a written or spoken text and also the behavior of observed individuals.<sup>19</sup>

## **C. RESULTS AND DISCUSSION**

### **1. The Sharia Legal Perspective on the Model of Transaction in Security Crowdfunding Investment for Halal MSMES Funding.**

Security crowdfunding (SCF) is one of the financing models that involves raising funds through digital crowdfunding platforms in the capital market. This financing model is carried out by collecting funding from various sources through joint ventures for the purpose of developing a business.<sup>20</sup> The SCF scheme is needed by MSMES during the current Covid-19 pandemic, where MSMES need funding sources to strengthen their capital and sustainability. Banking institutions are facing difficulties in providing solutions to the funding problems currently faced by MSMES.<sup>21</sup> There are several reasons why banking institutions are not interested in financing MSMES, including: a) some MSMES do not have clear identities; b) MSMES organizations tend to be informal; and c) MSMES do not have clear financial records. Thus, one of the inhibiting factors for the growth of MSMES' economy is the difficulty of MSMES in applying for capital financing from banking institutions,<sup>22</sup> requiring

19 Pupu Saeful Rahmat, Penelitian Kualitatif, *Journal Equilibrium*, Vol. 5, No. 9, June 2009, page.1-8.

20 Suryanto, Securities Crowdfunding: Transformation of Financing of Small and Medium Enterprises in Indonesia, *AdBispreneur*, Vol. 6, No. 2, August 2021, page.163-171.

21 Suryanto, Rusdin, & Dai, R. M, Fintech as a catalyst for growth of micro, small, and medium enterprise in Indonesia, *Academy of Strategic Management Journal*, Vol. 19, No. 5, December 2021, page.1-12.

22 Hajer Zarrouk, Mohamed Sherif, Laura Galloway & Teheni El Ghak, Entrepreneurial orientation, access to financial resources and SMEs' business performance: The case of

alternative sources of funding to restore MSMEs' funding during the current pandemic.

The presence of financing models such as SCF has become one of the solutions for MSMEs in fulfilling their funding sources. Through a digital platform, fintech SCF companies can connect investors with MSMEs businesses that need funding. Investors who want to invest through SCF can convert their investment into ownership of stocks, bonds, or *sukuk*. Investors will receive returns in the form of dividends or profit sharing from the company's profits, which are distributed periodically. Meanwhile, MSMEs businesses obtain additional capital quickly and easily to increase their business capacity. The concept of crowdfunding has a unique approach to fundraising using internet facilities.<sup>23</sup> The general public can contribute to support a business plan that has been published on the digital fintech crowdfunding platform.<sup>24</sup>

The emergence of security crowdfunding has changed the landscape of funding for MSMEs, where they no longer have to approach financing institutions but simply fill out applications on digital platforms. MSMEs in remote areas no longer need to travel long distances to seek financing institutions, but can utilize digital platforms provided by fintech crowdfunding companies.<sup>25</sup> Crowdfunding financing involves three parties, namely 1) Platform Provider: acts as the organizer of fundraising activities that brings together funders with issuers (MSMEs); 2) Project owner (Issuer): is the MSMEs that submits funding proposals to be published to the public; and 3) Investor: is the public who are interested in the MSMEs business offered on the security crowdfunding platform. These three parties have their respective roles in creating an ecosystem that can support the needs of each party.<sup>26</sup>

Indeed, the SCF system offers several advantages as an alternative source of funding for MSMEs, compared to traditional offerings on the stock market.<sup>27</sup> Firstly, the procedure for issuing securities is simplified, making it easier and faster for MSMEs to raise funds. Secondly, the issuing company is not required to be a limited liability company, meaning that even informal MSMEs can participate. Thirdly, the types of securities offered are diverse, including stocks,

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the United Arab Emirates, *The Journal of Asian Finance, Economics, and Business*, Vol. 7, No. 12, December 2020, page.465-474.

- 23 Ethan Mollick, The dynamics of crowdfunding: An exploratory study, *Journal of Business Venturing*, Vol. 29, No.1, January 2014, Page1–16.
- 24 Suncem Koçer, Social Business in Online Financing : Crowdfunding Narratives of Independent Documentary Producers in Turkey, *New Media & Society*, Vol. 17, No. 2, November 2014, page.231–248
- 25 R. M., Lambert, B. A., Roy, N., Sylvain, J., & Nadeau, F, *A digital tsunami: Fintech and crowdfunding*, International Scientific Conference on Digital Intelligence, 2016, page.1–5.
- 26 Suryanto, Rusdin, & Dai, R. M, Fintech as a catalyst for growth of micro, small, and medium enterprise in Indonesia, *Academy of Strategic Management Journal*, Vol.19, No.5, 2020, page.1–12.
- 27 Suryanto, Securities Crowdfunding: Transformation of Financing of Small and Medium Enterprises in Indonesia, *AdBispreneur: Jurnal Pemikiran dan Penelitian Administrasi Bisnis dan Kewirausahaan*, Vol.6, No. 2, August 2021, page.163-171.

bonds, and *sukuk*, giving investors more options. Fourthly, funds can be raised gradually, providing more flexibility to MSMES in terms of planning and management.

MSMES with halal products require the principles of Sharia transactions on the SCF platform. The mechanism for Sharia SCF funding is almost the same as the concept of crowdfunding in general. The difference lies in the application of "asset-backed" transaction mechanisms and profit-loss margins.<sup>28</sup> To compete in the crowdfunding market, Sharia crowdfunding companies must increase awareness among Muslims to understand the differences between conventional and Sharia crowdfunding. However, Sharia-based crowdfunding provides better benefits for venture capitalists and investors because it is based on profit-sharing principles without interest. Sharia-based MSMES products need to pay attention to financing activities free from *Riba* to avoid the emergence of "interest." This is because in crowdfunding, investment involves the object of funding from the funder and management from the manager or businessperson, which provides compensation for profit-sharing without interest or debt that could harm either party.

In the Hadith of the Prophet Muhammad SAW narrated by Imam al-Bukhari, it is mentioned that "The Prophet Shallallahu 'Alaihi wa Sallam gave the Jews of Khaibar a date-palm garden and its land so that they could work on it and bear the cost themselves, and half of the produce would go to the Prophet Shallallahu 'Alaihi wa Sallam." This Hadith explains how the Prophet has set an example for us regarding investment activities that benefit all parties. In this case, investment is certainly not allowed to harm any party, and both the capital manager and the investor must adhere to the principle of mutual satisfaction with each other.<sup>29</sup>

In Islamic Sharia, the meeting of capital objects by investors and business management by entrepreneurs with halal products that receive profit-sharing compensation refers to the *Syirkah* contract. This means that both investors and MSMES must understand well how the *Syirkah* contract that complies with Sharia principles. As this *Syirkah* contract will be the basis of crowdfunding investments, whether the crowdfunding investment contract is permissible or not (*haram*) depends on whether the *Syirkah* contract is valid or not, which means it fulfills the pillars and conditions of *Syirkah*.

The principles of Islam provide an alternative financing method without the involvement of *Riba* (interest) for all parties. One of the financing methods that do not involve *Riba* is through the use of the akad *syirkah* (partnership contract). Based on the characteristics of the

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28 Achsanía Hendratmi, dkk, The Role of Islamic Crowdfunding Mechanisms in Business and Business Development, *Journal of Business and Economics Review*, Vol. 4, No. 1, September 2019, page.10-23.

29 Diana Wiyanti, Perspektif Hukum Islam terhadap Pasar Modal Syariah Sebagai Alternatif Investasi Bagi Investor, *Ius Quia Iustum Law Journal*, Vol. 20, No. 2, May 2013, page.234-54

akad *syirkah*, it can be an alternative for halal MSMEs to conduct their business activities and obtain compensation for their profits.<sup>30</sup> The foundation or legal basis of *Syirkah* is also regulated by the National Sharia Council of the Indonesian Council of Ulama in Fatwa DSN MUI No. 8 of 2000, which is the Fatwa DSN No. 08/DSN-MUI/IV/2000 regarding the akad *musharakah*.

Meanwhile, there are three pillars of *syirkah*:<sup>31</sup> 1) Clear agreement between the parties involved in the contract (*Al-Aaqidaani*) or the actors of the contract, namely the manager (*mudharib*) and/or the funder (*shohibul maal*); 2) Existence of the contract object (*Al-Ma'quud 'alayhi*), which covers work (*amal*) or capital (*maal*); and 3) Presence of *Ijab qabul* (*Ash-Shighat*), which is any statement or action that indicates willingness.

In fulfilling the above pillars, the conditions of partnership (*syirkah*) must also be fulfilled, as follows conditions for the parties involved in the agreement (*akad*): Must be sane (*aqil*) and conscious; Must be above the age of 10 (*mumayyiz*); and Must be mutually willing (*mukhtar*) and not under duress. Conditions for the object of the agreement (*akad*): The object must be in the form of *tasharruf* (a charitable object), which means a statement or action that has legal implications, such as conducting a sale and purchase agreement with words or accepting goods with an action; and The object must be in the form of capital (*maal*), which can be represented so that the profits of the partnership become a common right among the business partners (*syarik*). Conditions for the offer and acceptance (*ijab qabul*): There must be agreement between the offer and acceptance (*muwafiq*); The agreement must be made in one gathering, meaning at the same time and/or place; There must be no separation between the offer and acceptance; and All parties must be able to hear (*sama'*) each other's statements. In a transaction, there are two types of agreements: Valid agreement is an agreement that fulfills the requirements of the pillars and conditions of the agreement according to Islamic law (*syara'*); and Invalid agreement is an agreement that does not fulfill the requirements of the pillars and conditions of the agreement according to Islamic law (*syara'*).

Therefore, the researcher will analyze whether the security crowdfunding investment transaction meets the pillars and conditions of the partnership agreement mentioned above or not. If the SCF investment transaction does not fulfill the pillars and conditions of the partnership agreement, then the partnership agreement is not valid or void (*bathil*).

The most fundamental thing that needs to be analyzed is when the partnership agreement for the SCF investment was made. This is because evaluating whether the pillars and conditions of the partnership

30 Muhammad Ismail Yusanto dan Muhammad Arif Yunus, *Pengantar Ekonomi Islam*, Bogor, Al-Azhar Press, 2009, page.27.

31 *Ibid*

agreement for the SCF investment are fulfilled or not is determined at the time of the agreement. It turns out that it was never clear when the partnership agreement for the SCF investment was made, where the funds should have been used only after a clear partnership agreement was made. In fact, the partnership agreement for the SCF investment was never made because some of the requirements related to the pillars and conditions of the partnership agreement according to Islamic law could not be fulfilled.

On the part of the actors involved in the partnership agreement, it was never certain how many people were involved and who the investors were, as it was constantly changing or increasing. However, according to the partnership agreement, it is necessary to clearly identify who the investors are and how many there are at the time of the agreement. If the actors involved in the agreement are not clear at the time of the agreement, the agreement cannot be made.

Regarding the object of the agreement, although the total amount of capital required is known, the proportion of capital contributed by each investor is uncertain. Not only should the total value of the capital be clear at the time of the agreement, but also the value of each investor's portion of the capital should be clear in order to enter into the agreement. In addition, investors usually agree on the value of their own portion of the capital, rather than the total amount of capital required.

Furthermore, there was never a valid offer and acceptance (*ijab qabul*) that met the requirements of Islamic law. There was no agreement on the time of the agreement (*muwafiq*) because the value accepted by investors was usually only their own portion of the capital, rather than the total value of all investors' capital. There was no agreement made in one assembly (*majelis*) because the exact time of the agreement was never known, i.e. when the offer and acceptance were made by all parties involved in the agreement, including investors and business owners. Therefore, the SCF investment partnership agreement is invalid or void.

## **2. The Legal Consequences if the Investment Agreement Transaction with the Security Crowdfunding Instrument is Invalid**

The legal consequence of a transaction with a crowdfunding investment security instrument that is *Bathil* (void) is that the contract is flawed in one of its essential elements or conditions that must be met in the contract's essential elements. The contract is the main matter, so the impact of an invalid contract is that its derivative matters are also invalid. According to the Fiqh principle that "if the main matter falls, then the derivative matters or its consequences also fall." Therefore, if the capital from the SCF contract is used for business purposes, the business is not valid. For example, profit-sharing distribution is not valid. *Bathil* contracts under Sharia law must be annulled for the sake of the law, meaning that they must be returned to the state before the contract was made and

considered as if the contract never existed.<sup>32</sup> If the invalid SCF investment contract is still executed, then all activities performed under the invalid contract are also invalid, and any assets produced from the invalid contract are illegitimate. Illegitimate assets are considered unlawful. If the primary matter of the *syirkah* contract is nullified, then the investors who have contributed their funds are entitled to receive back their principal amount. However, the profits (which are considered as derivative matters) are prohibited for the investors, as the status of the assets should not belong to them. The nature of the contract that occurs is not a *syirkah* contract but rather a *qardh* (loan) contract, where the investors provide loans to the business. Therefore, the business must repay the principal amount given by the investors.<sup>33</sup> If there is an additional profit-sharing request from the loan contract, it will be considered as *Riba* (usury), as stated in the fiqh principle by Baihaqi that "every loan that results in benefit is considered *Riba*".

The Compilation of Sharia Economic Law (KHES) states that "an issuer or party offering public offerings in securities crowdfunding can be equated with an organizer, if intending to issue Sharia securities, must sign and comply with Sharia-compliant transaction requirements for the Sharia securities issued." Issuers issuing Sharia securities must ensure that their business activities are based on Sharia principles and have a Sharia compliance officer. The pros and cons of implementing a Sharia compliance officer significantly affect the discipline and order of the system and the implementation of Sharia securities in SCF in Indonesia.<sup>34</sup>

The Indonesian Ulama Council has not issued a specific Fatwa DSN regulation regarding the implementation of digital-based SCF fundraising services, but in principle, technology-based financing has been regulated in the National Sharia Council Fatwa of the Indonesian Ulama Council (Fatwa DSN MUI) No. 117 of 2018 concerning technology-Based Financing Services. Where in technology-based financing service scheme based on sharia principles applied in the MUI Fatwa it only regulates financing for the procurement of goods for business actors who sell online by paying through providers with payment gateways, with goods sellers, with third party orders, for business actors and employees selling online. However, there is no guarantee of legal protection in crowdfunding security financing.

Based on Surah An-Nisa Verse 29, Ibn Kathir explains that "Allah Ta'ala has prohibited His believing servants from consuming other people's property by unlawful means, namely all efforts to obtain

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32 Alfin Yuli Dianto, Strategi Penerapan Akad Musyarakah Pada Bidang Pertanian Di Lembaga Keuangan Mikro Agribisnis (Lkma) Amanah Mandiri Sekarputih, Nganjuk, *Jurnal Dinamika Ekonomi Syariah*, Vol. 6, No. 1, January 2019, page.1-15.

33 Hanafi Hadi Susanto, Konsep Syirkah Pada Perbankan Syariah, *Jucticia Islamica: Jurnal Kajian Hukum dan Sosial*, Vol. 13, No. 2, 2016, page.283-301.

34 Nurdin & Mir'atun, Do Government And Private Sharia Commercial Banks Practice Similar Financial Social Responsibility Disclosure?, *Hunafa: Jurnal Studia Islamika*, Vol. 15, No. 2, December 2018, page.285-321.

unpermitted wealth such as usury in all its forms, gambling, and all transactions involving fraud and speculation."<sup>35</sup>

Islamic law sources in the Qur'an Surah An-Nisa Verse 29 are used as a reference in human interaction in conducting business transactions. Scholars also use Surah An-Nisa Verse 29 as a normative foundation in answering problems where there are no laws and regulations, including the opinion of the National Sharia Council in making the latest fatwa. Islam as a perfect religion brings universal and comprehensive teachings for all aspects of human life. Thus, Islamic teachings do not only regulate an individual to be Sharia-compliant but also socially Sharia-compliant. In fact, in this social life, it is not only towards fellow Muslims but also towards non-Muslims.<sup>36</sup>

In this research, there are no restrictions on conducting business transactions or investing through any financial digital platform, but attention needs to be paid to the contract which must be a *syirkah* contract. Similarly, Ali Ahmed al-Salus stated that investing in shares of companies (MSMES) that engage in halal activities but still operate in some *haram* work such as using working capital with elements of *gharar* or *Riba* and not fulfilling the *syirkah* contract requirements, the legal consequence is *haram*.

This research found that there is no legal limitation to conduct muamalah or investment through any financial digital platform. However, in terms of Sharia economy, the contract of *syirkah* must be considered. If the investment in MSMES engages in halal activities but still operates some *haram* practices, such as using capital with *gharar* or *Riba* elements, and one of the pillars of the *syirkah* contract is not fulfilled, it will have implications for the use of *haram* funds.

#### D. CONCLUSION

The issuer of sharia-based securities is required to ensure that its business activities comply with sharia principles and have a sharia compliance officer based on the Indonesian Sharia Economic Society's guidelines. Therefore, the regulation of the sharia-based investment system in Indonesia needs to be supervised by the Financial Services Authority (OJK) and MUI regarding sharia-based security crowdfunding (SCF). SCF that collects investments for Halal MSMES funding must refer to sharia contracts with the involvement of issuers from the MUI Sharia Supervisory Board who assess investment activities to avoid Maysir, *Gharar*, and *Riba*. Based on the principles of sharia law, whether the SCF investment contract is valid or not is seen from the fulfillment of the pillars and conditions of the *Syirkah* contract such as the contract actor, the object of the contract and

35 Abu Al-Fidq Ismq'il ibn 'Umar ibn Katsir Al-Qurashi Al-Başri Tsumma Al- Dimashqi, *Tafsir Al-Qur'an Al-Azim, Juz 2*, Tahqiq: Sami ibn Muḥammad Salamah, Dar Al-Ṭaibah, 1999, page.268.

36 Ade Wahidin, Tinjauan dan Hukum Tasyabbuh Perspektif Empat Imam Mazhab, *AL-MASHLAHAH: Jurnal Hukum Islam dan Pranata Sosial Islam*, Vol. 6, No. 1, June 2018, page.49-72.

Shighat, namely when the *ijab* and *qabul* occurs, all contract actors are clear, both investors and businessmen in one assembly, but in SCF investment the pillars of the contract are not clear. If one of the pillars is not fulfilled, it will have implications for the use of *haram* funds so that the SCF investment contract is null and void under sharia law.

## BIBLIOGRAPHY

### Books:

- Imaniyati, Neni Sri, 2010, *Pengantar Hukum Perbankan Indonesia*, Refika Aditama, Bandung;
- Mahkamah Agung, 2011, *Kompilasi Hukum Ekonomi Syari'ah*, Direktorat Jenderal Badan Peradilan Agama, Jakarta;
- Yusanto, Muhammad Ismail dan Muhammad Arif Yunus, 2009, *Pengantar Ekonomi Islam*, Al-Azhar Press, Bogor;

### Journals:

- Bahtiar, Rais Agil & Juli Panglima Saragih, Dampak Covid-19 Terhadap Perlambatan Ekonomi Sektor MSMEs, Pusat Penelitian Badan Keahlian DPR RI, *Jurnal Bidang Ekonomi dan Kebijakan Publik info singkat Kajian Singkat terhadap Isu Aktual dan Strategis*, Vol. 12, No. 6, 2020;
- Dianto, Alfin Yuli, Strategi Penerapan Akad Musyarakah Pada Bidang Pertanian Di Lembaga Keuangan Mikro Agribisnis (Lkma) Amanah Mandiri Sekarputih, Nganjuk, *Jurnal Dinamika Ekonomi Syariah*, Vol. 6, No. 1, 2019;
- Disemadi, Hari S, Legal Aspects of 'Gali Lubang Tutup Lubang' in Fintech P2P Lending Business During Covid-19, *Tadulako Law Review*, Vol. 6, No. 2, 2021;
- Disemadi, Hari S., Yusro, M. A., & Balqis, W. G, The Problems of Consumer Protection in Fintech Peer to Peer Lending Business Activities in Indonesia, *Sociological Jurisprudence Journal*, Vol. 3, No. 2, 2020;
- Disemadi, Hari S. Contextualization of Legal Protection of Intellectual Property in Micro Small and Medium Enterprises in Indonesia, *Law Reform* Vol. 18, No. 1, 2022;
- Hendratmi, Achsanika, dkk, The Role of Islamic Crowdfunding Mechanisms in Business and Business Development, *Journal of Business and Economics Review*, Vol. 4, No. 1, 2019;
- Hiyanti, Hida, dkk, Peluang dan Tantangan Fintech (Financial Technology) Syariah di Indonesia, *Jurnal Ilmiah Ekonomi Islam*, Vol.5, No. 3, 2019;

- Kamila, Evita Farcha, Peran Industri Halal Dalam Mendongkrak Pertumbuhan Ekonomi Indonesia Di Era New Normal, *Jurnal Likuid*, Vol. I, No. 01, 2021;
- Kocer, Suncem, Social business in online financing: Crowdfunding narratives of independent documentary producers in Turkey, *New Media & Society*, Vol. 17, No. 2, 2014;
- Lambert, R. M., B. A., Roy, N., Sylvain, J., & Nadeau, F, A digital tsunami: Fintech and crowdfunding, *International Scientific Conference on Digital Intelligence*, 2016.
- Mollick, Ethan, The dynamics of crowdfunding: An exploratory study, *Journal of Business Venturing*, Vol. 29, No. 1, 2014;
- Nilasari, Ayunda Putri., Hutajulu, D.M., Retnosari., Astutik, E.P, Strategi Pemberdayaan dan Kontribusi MSME Menghadapi Ekonomi Digital, *Prosiding Seminar Nasional Fakultas Ekonomi Untidar*, 2019;
- Nugroho, Arief Yuswanto & Fatichatur Rachmaniyah, Fenomena Perkembangan Crowdfunding di Indonesia, *Jurnal EkoNiKa*, Vol. 4, No. 1, 2019;
- Nurdin & Mir'atun, Do Government And Private Sharia Commercial Banks Practice Similar Financial Social Responsibility Disclosure?, *Hunafa: Jurnal Studia Islamika*, Vol.15, No. 2, 2018;
- Premana, Agyztia, Gian Fitralisma, Andi Yulianto, M. Badruz Zaman & M. A. Wiryo, Pemanfaatan Teknologi Informasi Pada Pertumbuhan Ekonomi dalam Era Disrupsi 4.0, *Jurnal Economic Management (JECMA)*, Vol. 1, No. 01, 2020;
- Rahmat, Pupu Saeful, Penelitian Kualitatif, *Journal Equilibrium*, Vol. 5, No. 9, 2009;
- Rosita, Rahmi, Pengaruh Pandemi Covid-19 Terhadap MSME di Indonesia, *Jurnal Lentera Bisnis*, Vol. 9, No. 2, 2020;
- Saripudin, Udin, Aplikasi Akad *Syirkah* Dalam Lembaga Keuangan Syariah, *Jurnal Al Amwal (Hukum Ekonomi Syariah)*, Vol. 1, No. 1, 2018;
- Sitompul, Meline Gerarita, Urgensi Legalitas Financial Technology (Fintech) : Peer To Peer (P2P) Lending di Indonesia, *Jurnal Yuridis Unaja*, Vol. 1, No. 2, 2018;
- Soemarsono, Andini Astarianti & Ukhti Dyandra Sofianti, Perspektif Hukum Mengenai Penggunaan Securities Crowdfunding pada Masa Pemulihan Ekonomi UMKM Akibat Pandemi, *Jurnal Hukum Lex Generalis*, Vol. 2, No. 8, 2021;
- Stefanny, Vanessa & Beby Tiara, Overview Perbandingan Jumlah User Fintech (Peer-To-Peer Lending) dengan Jumlah Pengguna Internet di Indonesia Pada Masa Pandemi Covid-19, *Jurnal IPSIKOM*, Vol. 9, No. 1, 2021.

- Suryanto, Rusdin, & Dai, R. M, Fintech as a catalyst for growth of micro, small, and medium enterprise in Indonesia, *Academy of Strategic Management Journal*, Vol. 19, No. 5, 2020;
- Suryanto, Securities Crowdfunding: Transformation of Financing of Small and Medium Enterprises in Indonesia, *AdBispreneur: Jurnal Pemikiran dan Penelitian Administrasi Bisnis dan Kewirausahaan*, Vol. 6, No. 2, 2021;
- Susanto, Hanafi Hadi, Konsep *Syirkah* Pada Perbankan Syariah, *Jucticia Islamica: Jurnal Kajian Hukum dan Sosial*, Vol. 13, No. 2, 2016;
- Sudirman, Lu & Disemadi, Hari Sutra. Titik Lemah Industri Keuangan Fintech di Indonesia: Kajian Perbandingan Hukum, *Jurnal Pembangunan Hukum Indonesia*, Vol. 4, No. 3, 2022;
- Tsumma, Al- Dimashqi, Abu Al-Fida Isma'il ibn 'Umar ibn Katsir Al-Qurashi Al-Basri, Tafsir Al-Qur'an Al-'Azim, Juz: 2, *Tahqiq: Sami ibn Muhammad Salāmah*, Dar Al-Ṭaibah, 1999;
- Wahidin, Ade, Tinjauan dan Hukum Tasyabbuh Perspektif Empat Imam Mazhab, *AL-MASHLAHAH: Jurnal Hukum Islam dan Pranata Sosial Islam*, Vol. 6, No. 1, 2018;
- Wiyanti, Diana, Perspektif Hukum Islam terhadap Pasar Modal Syariah Sebagai Alternatif Investasi Bagi Investor, *Ius Quia Iustum Law Journal*, Vol. 20, No. 2, 2013.
- Zarrouk, Hajer, Mohamed Sherif, Laura Galloway & Teheni El Ghak, Entrepreneurial orientation, access to financial resources and MSMEs' business performance: The case of the United Arab Emirates, *The Journal of Asian Finance, Economics, and Business*, Vol. 7, No. 12, 2020;

### **Regulation:**

- Undang-Undang Nomor 8 Tahun 2008 tentang Usaha Mikro, Kecil, dan Menengah;
- Peraturan Otoritas Jasa Keuangan No.16/POJK.04/2021 Perubahan Atas Peraturan Otoritas Jasa Keuangan No. 57/POJK.04/2020 Tentang Penawaran Efek Melalui Layanan Urun Dana Berbasis Teknologi Informasi;
- Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia, Fatwa DSN MUI Nomor 8 Tahun 2000 tentang akad Musharakah;
- Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia, Fatwa DSN MUI Nomor 117 Tahun 2018 tentang Layanan Pembiayaan Berbasis Teknologi;

### **Internet:**

- Bank Indonesia, *Laporan Ekonomi dan Keuangan Syariah 2020, Bersinergi Membangun Ekonomi & Keuangan Syariah*, ISSN 2722-8665,

Jakarta,  
[https://www.bi.go.id/id/publikasi/laporan/Documents/LEKSI\\_2020\\_31032021.pdf](https://www.bi.go.id/id/publikasi/laporan/Documents/LEKSI_2020_31032021.pdf), diakses pada 7 December 2022;

Nurita, Dewi, *New Normal, Wapres Ma'ruf Amin: Ini Peluang Industri Produk Halal*, <https://bisnis.tempo.co/read/1349645/new-normal-wapres-maruf-amin-ini-peluang-industri-produk-halal>, diakses pada 12 December 2022.