LEGAL PROTECTION FOR SECURITIES CROWDFUNDING SERVICE INVESTORS THROUGH INFORMATION TECHNOLOGY-BASED STOCK OFFERING

UNDERGRADUATE (S1) THESIS



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LEGAL PROTECTION FOR SECURITIES CROWDFUNDING SERVICE INVESTORS THROUGH INFORMATION TECHNOLOGY-BASED STOCK OFFERING

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APPROVAL PAGE

بسم الله الرحمن الرحيم

LEGAL PROTECTION FOR SECURITIES CROWDFUNDING SERVICE INVESTORS THROUGH INFORMATION TECHNOLOGY-BASED STOCK OFFERING

It has been checked and approved by the Final Project Supervisor for submission in the future, the Examiner Team in the Awareness Examination

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LEGAL PROTECTION FOR SECURITIES CROWDFUNDING SERVICE INVESTORS THROUGH INFORMATION TECHNOLOGY-BASED STOCK OFFERING

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PAGE OF APPROVAL

بسم الله الرحمن الرحيم

A BACHELOR DEGREE THESIS

LEGAL PROTECTION FOR SECURITIES CROWDFUNDING SERVICE INVESTORS THROUGH INFORMATION TECHNOLOGY-BASED STOCK OFFERING

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SURAT PERNYATAAN ORISINALITAS KARYA TULIS ILMIAH/TUGAS

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" LEGAL PROTECTION FOR SECURITIES CROWDFUNDING SERVICE INVESTORS THROUGH INFORMATION TECHNOLOGY-BASED STOCK OFFERING".

Karya Ilmiah ini saya ajukan kepada Tim Penguji dalam ujian Pendadaran yang diselenggarakan oleh Fakultas Hukum Universitas Islam Indonesia. Sehubungan dengan hal tersebut dengan ini saya menyatakan :

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من جدّ وجد

“ Whoever strives shall succeed.”

"You worship Allah as if you see Him. If you do not see Him, He will see you."

-HR. Muslim

DEDICATION

With His Mercy and Blessings, this Thesis I present to

My beloved Papap and Mommy, Sist, Broth
Who always behind me with love and affection.

My whole lovely family
The endless support and care will always be upon me.

The Honourable, My Supervisor
Who have taught and guided me patiently to complete my study
.

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Yes, I did. Thanks!

And all of my unforgettable friends,
Who always beside me in easy and hard times.

THE FOREWORD

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" **LEGAL PROTECTION FOR SECURITIES CROWDFUNDING SERVICE INVESTORS THROUGH INFORMATION TECHNOLOGY-BASED STOCK OFFERING".**

This thesis aims to complete the academic requirements for the Bachelor of Laws (S1) degree at the Faculty of Law, Islamic University of Indonesia. Given that the author is aware of the flaws and errors in this writing, the author will be open to constructive criticism and suggestions to advance the author's ongoing learning process.

In preparing this thesis, the author realizes that she must be kept from various parties' encouragement, guidance, and assistance. Therefore, the writer would like to thank:

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CHAPTER I
INTRODUCTION

A. Background of Study

In this modern era, most Indonesians realize the need for job opportunities. Technology development has reduced job opportunities since the COVID-19 pandemic, which has caused many people and companies to lose or go bankrupt. However, starting a new business activity today takes work. There are many factors to consider before getting started. Online-based technology results from developing information and communication technology that can be used as an alternative means to capital or cost needs. In recent years, the world has been introduced to financial technology. Fintech is a technology-based financial system in the digital era, and its presence is essential in supporting financial service activities. Fintech was developed to provide convenience for several economic sectors that conventional financial systems cannot run.

However, the development of micro-businesses has several problems. The main issues are still around capital or financing that still needs to touch micro businesses and the lack of financial institutions that look at micro-enterprises to be able to provide the funding. The difficulty of micro-enterprises in accessing banking is because the business character of micro-enterprises is that they are informal businesses that still need to meet the criteria of banks in providing credit.[1] Securities crowdfunding can be defined as a digital platform that functions as a forum for collecting and distributing funds from fund owners

[1] Cut Misni Mulasiwi dan Karina Odia Julialeva, *Optimalisasi Financial Technologi Terhadap Peningkatan Literasi Dan Inklusi Keuangan Usaha Menengah Purwokerto* , Jurnal Personalia, Financial, Operasional, Marketing dan Informasi, Vol 27 No 1 Tahun 2020, p.14.

to those in need.[2] This crowdfunding is engaged in non-profit social fields, such as health, education, and the environment. Crowdfunding means informing a project or business activity through information technology by parties needing funds to obtain large amounts.[3] The Development of the Investment World Particularly related to Crowdfunding Securities, the Financial Services Authority (OJK) made regulations regarding Securities crowdfunding in 2018. It formed Regulations related to Crowdfunding in Indonesia. This regulation is OJK Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Share Offerings, later amended by OJK Regulation Number 57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services.[4]

In 2021, OJK Regulation No.57/POJK.04/2020 was changed into OJK No.16/POJK.04/2021. Crowdfunding Service Provider as a forum for Publishers to sell their Securities to Investors through an open electronic network as referred to and regulated in Article 1 Number 1 Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Financial Services Authority Regulation No.57/POJK.04/2020.[5] According to the Capital Market

[2] Rafi, et.al, *Optimalisasi Pengaturan Layanan Urun Dana (Crowdfunding) Berbasis Teknologi Informasi Sebagai Solusi Permodalan Usaha Mikro, Kecil, dan Menengah di Masa Pandemi Covid-19,* Lex Renaissan, Vol. 6, No. 4, 2021, p.735.

[3] Novia & Nadhlotul, *Legal Protection For Investors in Crowdfunding Services Through Information Technology Offers (Equity Crowdfunding),* Syiah Kuala Law Journal, Vol. 4, No. 2, 2020, p.158.

[4] Arief Yuswanto Nugroho and Fatichatur Rachmaniyah, The Phenomenon of The Development of Crowdfunding in Indonesia, *Jurnal Ekonomi*, Vol. 4, No. 1, 2019 p. 40.

[5] Article 1 Number 1 POJK Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020.

Law (UUPM) Article 1 number 5, Securities traded on the capital market, namely debt acknowledgments commercial papers, shares, bonds, proof of debt, units of collective investment contracts (Mutual funds), futures contract on securities (Option), any derivative of securities.[6] This service also allows startup companies as publishers to obtain funding through the capital market.

Since MSMEs are on a small business scale, they still need the help of banks to borrow capital from them. Consequently, for the growing interest in and broad support for publishers in crowdfunding services, a solid legal basis is required to guarantee legal certainty and trust from users, especially investors. This is intended to avoid any loss or legal uncertainty regarding the rights and obligations of the user parties, especially for investors in the crowdfunding service. In addition, preventive and repressive legal protection efforts are also needed from the authorities, in this case, the OJK, whose function is to organize and supervise activities in the financial services sector.[7] Several examples of Platforms related to SCF (are PT Santara Inspiratama, PT Investasi Digital Nusantara or Bizhare, PT Numex Teknologi Indonesia or LandX). SCF is regulated in the Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020. Those regulations explain the legal protection for investors. The purpose of these regulations is to

[6] Article 1 Number 5 Law Number 8 the Year 1995 Concerning Capital Markets.

[7] Viodi Childnadi Widodo dan Dona Budi Kharisma, "Problematika Perlindungan Hukum Terhadap Para Pihak Dalam Transaksi Layanan Urunan Dana Melalui Penawaran Saham Berbasis Teknologi Informasi", *Jurnal Privat Law* Vol. VIII No. 2 , Fakultas Hukum Universitas Sebelas Maret, Surakarta, 2020, p.232.

provide legal protection for business actors and provide information related to SCF. POJK No.16/POJK.04/2021 was issued to provide legal certainty and protection for interested parties. Because there are no statutory regulations governing information technology-based crowdfunding services, there is a need for regulations and supervision regarding these activities.

The principle explains the legal guardian for investors, Specifically in chapters 72 until 81. Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020 does not explicitly explain the legal protection for the investors, Advantages, and Weaknesses. Even though the purpose of forming these regulations is for investors in SCF to have proper legal protection and obtain their rights, one example is the Publisher's disclosure of information to investors. Even though there have been regulatory changes, changes to protection guarantees have a small impact on Consumers. There are several things that the author must underline regarding Consumer protection based on the regulations above, namely, Supervision of Securities Crowdfunding Activities and Public Accountability.

However, since the latest regulation changes, OJK has been collaborating with the official ALUDI (*Asosiasi Lembaga Urun Dana Indonesia*), and the Organizer can collaborate with third parties. However, ALUDI's authority cannot guarantee protection. These changes to the regulations are still needed to guarantee overall consumer protection. In other

words, Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020 still needs to be added and changed. The purpose of creating this OJK Regulation is to provide legal protection that guarantees protection for participants who carry out securities crowdfunding activities, especially investors. Because, in previous regulations, investor protection still did not provide security and clarity. However, after being updated, the POJK does provide more detailed and clearer protection to investors, but there are still several weaknesses that can be used to commit fraud and cause losses to investors. Therefore, even though these regulations have been replaced, they still need to provide complete protection that guarantees the safety of investors. There still needs to be a gap for organizers or publishers to carry out activities which is detrimental to the investors. However, these regulatory changes at least provide a slight change in the protection of investors.

B. Problem Formulation

1. Does the Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020, provide legal protection for SCF investors through technology-based stock offerings?
2. What are the Legal Regulations and Protection for Investors in Securities Crowdfunding activities in Indonesia and the United States?

C. Research Objective

1. To find out whether the Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020 provides legal protection for SCF investors through technology-based stock offerings.
2. To figure out the What are the Legal Regulations and Protection for Investors in Securities Crowdfunding activities in Indonesia and the United States.

D. Originalities of Research

No.	Sources	Discussion
1.	Dina Oktavia, Perlindungan Hukum Terhadap Investor Dalam Layanan Equity Crowdfunding (Studi Komparasi Indonesia Dengan Amerika Serikat), Universitas Islam Negeri Jakarta, 2020.[8]	**Problem Formulation** 1. What is the service model for Equity Crowdfunding? 2. What are the legal arrangements and protections for investors in Equity Crowdfunding service activities in Indonesia and the United States? **Conclusion** Based on the results of research and discussion of legal protection for customers in the Equity Crowdfunding service or Crowdfunding Service in Indonesia and the United States, it can be concluded : 1. This Equity Crowdfunding Service Model is an Information Technology-Based Share Offering; the service provider offers shares directly to the customer through an open electronic

[8] Dina Oktavia, *"Perlindungan Hukum Terhadap Investor Dalam Layanan Equity Crowdfunding"* (Studi Komparasi Indonesia Dengan Amerika Serikat), (Thesis, Fakultas Hukum Universitas Islam Negeri Jakarta, 2020).

No.	Sources	Discussion
		system network. Users of this ECF service consist of organizers, publishers, and customers. 2. Regulation of ECF Services in Indonesia is regulated in OJK Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Stock Offerings (Equity Crowdfunding. Meanwhile, ECF Services in the United States are regulated by the JOBS ACT Title III Law of 2012, which President Barack Obama directly ratified. Regarding the regulations of the two countries, they are pretty similar in implementing the terms and conditions of ECF users. The difference is that before making a public offering at ECF, the organizer must register with the OJK for Indonesia and the SEC and FINRA for the United States, FINRA is supervised by the SEC. A public offering made at the ECF is similar to a mini IPO. 3. The difference is that Indonesia still needs to have a secondary market, while America already has a secondary market, investors can sell their shares twice a year. Legal protection for investors in ECF services is carried out in a preventive and repressive manner. preventively by imposing careful terms and conditions and repressively with sanctions and dispute resolution. The two countries, namely Indonesia and the United States, have almost the same legal protection, but the United States already has rules regarding the ECF. The US has a FINRA that is overseen by the SEC. and stated that the most important legal protection is educating investors. Every ECF organizer is required to provide educational content

No.	Sources	Discussion
		on each of their websites. The similarity of legal protection between the two countries is such as limiting the amount of investment, i.e. Every with an income of up to Rp. 500,000,000.00 (five hundred million rupiahs) per year, can buy shares through Crowdfunding Services at a maximum of 5% (five per cent) of income. per year, and those with more than Rp. 500,000,000.00 can buy shares of 10% (ten per cent) of the income. Meanwhile, if a loss occurs in the United States, it will have little impact on investor. Unaccredited investors are restricted from making investments, i.e. Individuals with an annual income and net worth of less than $100,000 can invest more than $2,000 or 5 per cent of their income or 5 per cent of net worth. Individuals with an income or net worth of $100,000 or more can invest up to 10 per cent of their income.
2.	Silvia Arleinia, Perlindungan Hukum Bagi Pemodal Dalam Penyelenggaraan Layanan Urun Dana Berbasis Teknologi Informasi (Securities Crowdfunding), Universitas Pembangunan Nasional Veteran Jakarta, 2022.[9]	**Problem Formulation** 1. What is the legal relationship of the information parties' technology-based crowdfunding services based on POJK Number 57/POJK.04/2020? 2. What form of legal protection is provided by OJK to investors in information technology-based crowdfunding service activities related to the expansion of the Publisher's legal subject? **Conclusion** Based on the research results from Chapter I to Chapter V concerning Legal Protection for investors in Information Technology-Based Crowdfunding Services, it can be concluded from

[9] Silvia Arleinia, *"Perlindungan Hukum Bagi Pemodal Dalam Penyelenggaraan Layanan Urun Dana Berbasis Teknologi Informasi (Securities Crowdfunding)* , (Thesis, Universitas Pembangunan Nasional Veteran Jakarta, 2022).

No.	Sources	Discussion
		the problems raised in this thesis research, namely: 1. Legal relationship of the parties in service delivery Information technology-based crowdfunding (SCF) is tied to one another. The Operator, the provider, manager and operator of crowdfunding services, has a two-sided legal relationship with its users, namely the Publisher and the Investors. The legal relationship between the Provider and the Publisher arising from the agreement is regulated in Chapter V concerning Crowdfunding Service Agreements at POJK Number 57/POJK.04/2020 within the scope of Article 61 to Article 63. Furthermore, the legal relationship between the Provider and the costumers arising from the agreement is regulated in Article 64 of the POJK. Meanwhile, the legal relationship between the Publisher and the Costumers, although the form and terms of the agreement are not explicitly stated in POJK Number 57/POJK.04/2020, but each party, both the Publisher and the Costumers, has rights and obligations that must be carried out. 2. The legal protection provided by the OJK to investors in conducting Securities Offerings through Information Technology-Based Crowdfunding Services (SCF) in Indonesia in relation to the potential for uncertainty about the rights of investors due to the expansion of the Publisher's legal subject can be provided in a preventive and repressive manner. Legal protection efforts for investors in SCF services in Indonesia can be found in Law Number 8 of 1995 concerning the Capital Market, Law Number 21 of 2011 concerning the Financial Services Authority, POJK Number 57/POJK.04/2020 concerning Securities Offering through Services. Information Technology-Based Crowdfunding and POJK Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, however, with the above legal protection efforts, there is still potential for uncertainty about investors' rights due to the expansion of legal subjects from publisher.

No.	Sources	Discussion
3.	Amalia Syarifah, Perlindungan Hukum Bagi Pihak Pemodal Dalam Layanan Equity Crowdfunding Perspektif Prinsip Perlindungan Konsumen dan Kompilasi Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2021.[10]	**Problem Formulation** To carry out this research, researchers have included the following problem formulation. 1. What is the form of the legal relationship between the implementation of Equity Crowdfunding between Santara.co.id and the Investor? 2. What is the form of Santara.co.id's legal relationship with the investors from the perspective of the Sharia Economic Law Compilation? 3. What are the legal protection efforts for Investors as parties who have the potential to experience losses in the implementation of Equity Crowdfunding by Santara.co.id based on the Principles of Consumer Protection and Compilation of Sharia Economic Law? **Conclusion** The explanation that has been presented in the previous discussion regarding legal protection for investors by Santara during organizing equity crowdfunding can be summed up as follows. 1. The legal relationship held by Santara with the investors is stated in the form of a standard agreement containing the terms and conditions that will be presented to Investors as mandated in Article 45 paragraph (1) OJK Regulation No.37/POJK.04/2018. Regardless of Article 45 paragraph (3) OJK Regulation No.37/POJK.04/2018, the agreement has been fulfilled minimum substance regarding delivery on behalf of the investor by Santara, rights and obligations, transfer of responsibility in the implementation of equity crowdfunding, as well as settlement procedures disputes in the event of negligence on the part of the Issuing Party. 2. The scheme of the contract agreement between

[10] Amalia Syarifah, *"Perlindungan Hukum Bagi Pihak Pemodal Dalam Layanan Equity Crowdfunding Perspektif Prinsip Perlindungan Konsumen dan Kompilasi Hukum Ekonomi Syariah"*, Fakultas Syariah, (Thesis, Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2021).

No.	Sources	Discussion
		Santara and Investors. the form of the wakalah bil ujrah contract when viewed from the Compilation of Laws Sharia Economics and DSN-MUI Fatwa Number: 113/DSN-MUI/IX/2017 which are included in the form of wakalah Khashah and Wakalah Muqayyadah which equally indicates the existence of terms & conditions as reference for the exercise of authority and prohibited from exceeding the limits of authority. 3. Santara's legal safeguards refer to the principles of OJK Regulation No.1/POJK.07/2013 concerning Consumer Protection. The Financial Services Sector is divided into preventive and non-preventive forms repressive. The form of prevention carried out by Santara starts from the publisher selection process by the Business Analyst Team based on PAS (Profitable, Accountable, and Sustainable) considerations. So also, the application of the principle of preventive protection includes: a) transparency with information disclosure to investors; b) treatment which is fair, namely Santara prioritizes the condition of the Investors without certain group discrimination; c) reliability carried out with recognition of ISO 27001:2013 certification for technology system security information; d) the confidentiality and security of data carried out with legality and credibility licensing by the Ministry of Communication and Informatics (Kemkominfo) with No. 01107/DJAI.PSE/2018. Then the last repressive legal protection was returned fixed funds (buyback) based on the principle of protecting consumers: a) complaint handling, which constitutes an act following up on investors complaints objectively by analyzing the negligence of the Issuing Party as the responsibility of Santara in avoiding unjust acts; b) dispute settlement which 128 implemented by Santara as Article 32 of OJK Regulation No. 1/POJK.07/2013 through an internal process of dispute resolution with deliberations for consensus in achieving shulhu or peace, as well as the process of external dispute

No.	Sources	Discussion
		resolution through litigation (Court Sleman State) as the territory of al-qadha (the Judiciary Authority) as well as the authorized institution at the Alternative Settlement Agency Disputes as tahkim such as mediation, adjudication, and arbitration. The decision issued is final as stated in Article 535 KHES.

E. Literature Review

1. An Overview of Legal Protection

This literature review will provide an overview of legal protection in the Indonesian legal system. According to Setiono, Legal Protection is an action or effort to protect society from arbitrary actions by authorities, not by the rule of law, to create order and tranquillity to enable humans to enjoy their dignity.[11] Consumer protection is all efforts that guarantee legal certainty to protect consumers. Consumers use goods and/or services available in society to benefit themselves, their families, other people, and other living things and not for trading.[12] The government provides preventive legal protection to prevent violations before they occur. This is contained in laws and regulations to avoid a breach and provide signs or limitations in carrying out an obligation.[13] Repressive Legal Protection is absolute in the form of

[11] Setiono, *Supremasi Hukum*, Surakarta, UNS, 2004, p.3.
[12] Law No. 8 of 1999 concerning consumer protection
[13] Jestica Anna , *Mengenal Bentuk Perlindungan Hukum Preventif dan Represif,* https://adjar.grid.id/read/543542766/mengenal-bentuk-perlindungan-hukum-preventif-dan-represif?page=all , accessed on January 27, 2023.

sanctions such as fines, imprisonment, and additional punishment when a dispute occurs or an offense has been committed.[14]

In investing, there must be something called an investment dispute or risk. In investing in Crowdfunding, there is also the possibility of a dispute between 2 parties, namely the Investors and the Share Publisher. Regarding resolving disputes over risks in the administration of crowdfunding securities, it can be done in 2 ways, namely through non-litigation and litigation. Litigation is a litigation dispute settlement, a form of dispute resolution conducted in court by following trial procedures according to procedural law provisions. Non-litigation is a non-litigation dispute resolution, a form of dispute resolution conducted outside the court. Non-litigation dispute resolution can be in the form of negotiations between the disputing parties to reach a consensus, mediation, arbitration, and conciliation, each of which appoints a neutral third party to assist in resolving disputes that occur.[15] Non- litigation dispute resolution is divided into two forums: the internal dispute resolution forum, organized by the organizing platform, and the external dispute resolution forum, organized by the authorized arbitration institution. Regarding litigation dispute resolution, it is divided into 2 categories of case risk: *wanprestasi* and acts against the law.

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[14] Zennia Almaida and Moch. Najib Imanullah ,"Perlindungan Hukum Preventif dan Represif Bagi Pengguna Uang Elektronik Dalam Melakukan Tranksaksi Tol Non-Tunai", *Privat Law Volume 9* Nomor 1 , Fakultas Hukum Universitas Sebelas Maret, Solo, 2021, p.224.

[15] Admin, *Difference between litigation and non-litigation,* https://www.indonesialegalnetwork.co.id/en/difference-between-litigation-and-non-litigation/, accessed on March 3, 2023.

2. Overview of Crowdfunding

This literature review will provide an overview of crowdfunding. Crowdfunding is a method of raising funds for a project or business that involves members of the general public. Money is submitted by a large number of people who are enthusiastic about the concept of establishing a new activity or business. Securities are financial instruments that represent the shareholding position in a public company. Securities reflect the ownership of a person or business entity over an asset.[16] SCF is a fundraising method with a joint venture scheme by businesses or business owners to start or develop their businesses. Later, investors can buy and obtain ownership through shares, proof of debt ownership, or joint ownership certificates (*Sukuk*). The percentage of the contribution amount received from the business's claims. Security Crowdfunding can Sell shares in our company to Investors. The System is not lending the money, nor are you selling them any of your products or services. This means you can own several percent of any company stock when the company offers these shares in an application.[17] There are several types of Crowdfunding. First Donation-based, a crowdfunding company based on donations, sponsorship, and philanthropy, seeks donations. So, in this project, donors who contribute may not have the desire to return the funds they have

[16] Della Octavilia, *Apa Itu Sekuritas: Definisi, Jenis, dan Tips Memilih Sekuritas Terbaik,* https://landx.id/blog/apa-itu-sekuritas-definisi-jenis-dan-tips-memilih-sekuritas-terbaik/, accesed on March 6, 2023.

contributed. Crowdfunding companies can provide rewards through greetings or placards to attract donors.[18]

Second, reward-based crowdfunding operates in two combinations: donation-based and reward-based. Investors contribute to a company and will get returns or non-financial benefits. Usually, there are creative project activities with rewards, for example, in the form of gifts or merchandise.[19] Third Debt-based, this crowdfunding company offers loans, in which individuals who need money can borrow on a project to form a return in the form of interest. Fourth Securities Based, Article 1 point 1 POJK 1. Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020 regarding Securities offering through information technology-based crowdfunding services. Law Number 8, the Year 1995 Concerning Capital Markets or SCF, is a funding scheme that raises funds through the capital market. This scheme can help business actors or individuals obtain capital market funding. The reason is that the funds collected in this securities crowdfunding scheme will also be limited for a certain period.[20]

F. Research Method

1. Type of Research

[18] Sentot Imam Wahjono, Anna Marina, & Tri Kurniawati, *" Crowdfunding Untuk Danai UKM dan Bisnis Startup"*,(Banda Aceh, Penerbit Syiah Kuala University Press, 2021). p.10

[19] *Ibid*, p.11.

[20] *Ibid*, p.13.

The type of this research is normative legal research which means carried out using literature (library) or Secondary Data and looking for as many sources as possible through reading materials and interviews.[21] The data sources of this research consist of primary, secondary, and tertiary legal materials. This study applies normative research methods it is related to normative research methods because in research related to "Legal Protection for Security Crowdfunding Investor Through Information Technology-Based Stock Offering."

2. Method of Approach

In this research, the author will use several approaches such as:

a. Statue Approach. The legal approach is research that is based on legal or regulation products.[22] In this approach, the researcher will examine all laws and regulations related to the research that will be researched based on Indonesian law.

b. Conceptual Approach. Legal Research with this Conceptual Approach departs from the doctrines and views developed in the science of law. By studying the philosophies, the researcher will find ideas, and the researcher can generate legal notions, legal concepts, and legal principles that are relevant to the issue at hand.[23]

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[21] I Gusti Ketut Ariawan, "Metode Penilitian Hukum Normatif", *Jurnal Hukum* Vol. 1 No. 1, Desember , 2013, p.23.

[22] Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum,* Bandung, Mandar Maju, 2008, p.92.

[23] Annisa Fianni Sisma, *Menelaah 5 Macam Pendekatan dalam Penelitian Hukum, https://katadata.co.id/agung/berita/634ecdc698b51/menelaah-5-macam-pendekatan-dalam-penelitian-hukum,* accessed on March 20, 2023.

3. Object Research

The object of this research is Legal Protection for Security Crowdfunding Investor Through Information Technology-Based Stock Offerings.

4. Source of Research Data

Since this research applies normative legal analysis, the data source used is secondary data, namely documents or libraries, by collecting and examining or tracing documents and libraries that can provide the information researchers need for legal materials used in this research area**.**

a. Primary Legal Material

Namely, binding legal materials consisting of applicable laws and regulations or applicable provisions, including:

1) Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020 regarding Securities offering through information technology-based crowdfunding services.
2) Regulation of the Financial Services Authority Regulation No.1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector.
3) Regulation of the Financial Services Authority of the Republic Indonesia No.6/POJK.07/2022 concerning consumer and public protection in the financial services sector.

4) Law No.8 of 1999 Consumer Protection.

5) Law Number 8 of 1995 concerning Capital Markets.

b. Secondary Legal Material

Secondary legal materials are legal materials that use regulations to support and explain primary legal materials, either in theory as a fundamental principle, interpretation, or legal opinion. Secondary legal materials are data obtained from journals and literature books to support this research.

c. Tertiary Legal Material

Tertiary legal materials are materials that provide explanations for primary legal materials and secondary legal materials, namely the Big Indonesian Dictionary and Big English Dictionary.

5. Method of Data Collecting

The data collection method is collected through the literature study approach, sourced from secondary data. Likewise, some data are taken from primary, secondary, and tertiary legal materials related to the research object.

6. Data Analysis

The data analysis method used in this study is descriptive analysis, namely data obtained from written materials such as legislation and books that are described qualitatively and analyzed. The method of data analysis that will be used is by the process of qualitative-descriptive, which will be carried out firstly by providing an overview in the form of an explanation of the legal

provision in the primary legal material related to ‘’Legal Protection for Security Crowdfunding Investor Through Information Technology-Based Stock Offering’’.

G. Structure of Writing

This research is structured by dividing into 4 (four) chapters, as follows:

CHAPTER I is an Introduction consisting of the Background of the Study, Problem Formulation, Research Objectives, originalities of Research, Operational Definitions, Literature Review, Research Methodology, and Structure of Writing.

CHAPTER II is a Theoretical Review. This chapter will focus on the theories relevant to the issue formulations in this research, namely the Legal Protection for Securities Crowdfunding Investors Through Information Technology-Based Stock Offering.

CHAPTER III is Finding and Results. This chapter will answer the two problem formulations. First, answer the problem formulation about the dispute resolution regarding the risks investors face in crowdfunding-based investment in Indonesia. Second, answer the problem formulation about how the SCF System Works.

CHAPTER IV is the Conclusion and Recommendation. In this chapter, the conclusion will be drawn from a summary of the answers to two problem formulations. After studying and determining the solutions to the two problem formulations, recommendations will be given based on the author's ideas.

CHAPTER II
LITERATURE REVIEW

A. Overview of Legal Protection

1. Definition of Legal Protection

In terminology, "legal protection" can be interpreted from a combination of two definitions, namely "protection" and "law." KBBI defines protection as a thing or action that protects and is a place of shelter.[24] Meanwhile, according to Black's Law Dictionary, the term protection is the word protection which means "the act of protecting."[25] In KBBI, the law can be interpreted as official regulations or customs. According to Hans Kelsen, the law is a social tool to regulate people's conduct rather than a natural science.[26] The law exists to integrate and organize numerous opposing interests to reduce these conflicts. From the definition above, legal protection is an attempt to offer protection to a person as a legal subject, and the protection is based on existing regulations and laws. It is possible to gain the whole meaning of a phrase through sources sourced from dictionaries, laws, or expert opinions. First, Based on the understanding above, the experience or report related to information then expands regarding scholars, namely :

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[24] KBBI Daring, *Perlindungan*, https://kbbi.kemdikbud.go.id/entri/perlindungan, , accessed on March 16, 2023, accessed on March 22, 2023.

[25] Bryan A.G., Black's Law Dictionary; 9th edition, St. Paul: West Publisher, 2009, 1343.

[26] Jimmy Asshiddiqie and M.Ali S., *Teori Hans Kelsen Tentang Hukum*, Jakarta, Sekretariat Jenderal & Kepaniteraan Mahkamah Agung RI, 2006, p.27.

a. According to Sajipto Raharjo, legal protection is an activity that governs the demands of the community so that there are no conflicts of interest. It can exercise all of its legal rights.[27]
b. According to Philipus M.Hadjon, Legal protection is the preservation of human dignity and human rights based on the rule of law derived from Pancasila and the rule of law.[28]

According to Sajipto Raharjo's definition, legal protection is a legal remedy that governs all of the community's obligations and interests to avoid problems from developing. Therefore, Philipus M. Hadjon's perspective may be seen as providing the community with protection for its dignity. This safeguard adheres to Pancasila's legal norms and the rule of law. The majority of scholars held opposing views on legal protection. All of their definitions, however, serve the same purpose and are linked. Legal protection is a type of protection provided by government legal entities to each legal subject in the form of a guarantee that any rights owned will be protected against interference and acts that may eliminate or damage the legal subject's rights. In other words, legal protection illustrates the function of law, namely the concept that the law can provide justice, settlement, and certainty.

Second, the Law Dictionary defines legal protection as "Legal" and "Protection." Legal protection is defined as coercive norms governing human conduct. Regulatory authorities create these regulations, and violations will

[27] Sajipto Raharjo*, Ilmu Hukum*, Bandung, PT. Citra Aditya Bakti, 2000, p.53-54.
[28] Philipus M. Hadjon, *Perlindungan hukum bagi rakyat Indonesia,* Surabaya, Bina Ilmu, 1987, p.25.

result in action.[29] In line with the description above, people must have legal protection. Human conduct is governed so that it does not contradict current laws so that other people may get along.

Third, Legal protection is closely related to a person's right to be legally protected and feel safe. This is already associated with Article 28G of the 1945 Constitution, which states:[30]

1. *Everyone has the right to protection for themself, their family, honour, society, dignity, and property under their control, and to feel safe and protected from threats of fear to do or not do something that is a human right.*
2. *Everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country.*

According to Article 28G of the 1945 Constitution, every citizen can get security from the state. Each individual has the right to be secure and protected from threats to act or from acts that violate human rights.

2. Theory of Legal Protection

Legal protection can be understood as an attempt to safeguard the government or authorities through various current rules. Legal security is a function of the law itself, which provides defense. Legal security, including civil law protection, consumer law protection, child protection, and others, illustrates a type of protection or category. The author of this thesis will define legal protection. Customer Legal Protection is the legal defence.

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[29] Tim hukum online, P*engertian Perlindungan Hukum dan cara mendapatkannya*, https://www.hukumonline.com/berita/a/perlindungan-hukum-lt61a8a59ce8062?page=all, accessced on March 29, 2023.

[30] Article 28G of 1945 Constitution.

According to Muchsin, legal security involves protecting legal subjects through specific relevant laws and regulations and enforcing their execution with a consequence. Legal protection can be separated into two, namely:[31]

a. Preventive Legal Protection is a protection given by the government to prevent it before a violation occurs. This is contained in the regulations and legislation to prevent breaches and provide signs or limitations in carrying out an obligation.
b. Repressive Legal Protection is absolute protection in the form of sanctions such as fines, imprisonment, and additional penalties if a problem has occurred or an offense has been committed.

Preventive legal protection refers to legal protection to prevent possible problems from occurring. The attempt to carry out preventive legal protection is to educate people and provided by the authorities. Repressive legal protection can be carried out through institutions or bodies entitled to handle or resolve disputes. If the policy raises a conflict, there are still efforts to protect the law against the community by submitting a settlement through Litigation or non-litigation.

The Government has established preventive and repressive legal protection with Law Number 8 1999 concerning Consumer Protection. Specifically, Article 44 stated that:[32]

> *(1) The government recognizes non-governmental consumer protection organizations that meet the requirements.*

[31] Muchsin, *Perlindungan dan kepastian hukum bagi investor di Indonesia,* Surakarta, Universitas Sebelas Maret, 2003, p.20.

[32] Article 44 of law number 8 of 1999 concerning Consumer Protection.

(2) Non-governmental consumer protection institutions can play an active role in realising consumer protection.

(3) The tasks of non-governmental consumer protection institutions include the following activities:

a. They are spreading information to improve awareness of consumers' rights, obligations, and prudence in consuming goods and services.

b. Provide advice to consumers who need it;

c. cooperating with relevant agencies in efforts to realize consumer protection;

d. assist consumers in fighting for their rights, including receiving consumer complaints or complaints;

e. carry out joint government and public supervision on implementing consumer protection.

(4) Further provisions regarding the duties of non-governmental consumer protection institutions, as referred to in paragraph (3), are regulated in a Government Regulation.

This regulation is expected that the Consumer Protection Act can encourage a healthy business climate and encourage the birth of companies that are resilient in facing existing competition by providing quality goods/services. And can increase the prestige and dignity of consumers, which will raise awareness, knowledge, concern, and ability and develop the attitude of business actors who are responsible for not doing actions that can harm consumers.

3. The Principles of Legal Protection

Regarding formulating a principle of legal protection in Indonesia, the foundation is Pancasila. Because Pancasila is the ideology of the state. The principle of legal protection in Indonesia is the principle of recognition and protection of human dignity based on Pancasila. The concept of legal protection for people in Western countries is based on "Rechtstaat" and "Rule of The Law." By using the Western conception as a framework for thinking

based on Pancasila.[33] According to Philipus M. Hadjon, the principles of legal protection for the people based on Pancasila are divided into two, as follows:[34]

a. The Principle of Recognition and Protection of Human Rights, The principle of legal protection for the people against acts of government which rests on and originates from the concepts of recognition and protection of human rights, is directed at limitations as well as placing obligations on society and the government. Thus, formulating the principles of legal protection for the people based on Pancasila begins with describing the concept and declaration of human rights.
b. The principle of the rule of law, second principle that underlies the formation of legal protection for the people against acts of government is the principle of the rule of law. Associated with the principle of recognition and protection of human rights, recognition and protection of human rights is given the central place and is said to be the goal of the rule of law. According to the definition, legal protection is defending the community against the dignity and worth of every legal subject against arbitrary acts by authorities over particular interests that do not obey the rule of law.

B. Overview of Crowdfunding

1. Definition of Crowdfunding

Comprehending crowdfunding needs more profound knowledge than simply knowing what it entails. Finding the essence entails examining and

[33] Philipus M.Hadjon, *Op.Cit*, p.38.
[34] *Ibid,* p.19.

analyzing current concepts and comparing them to a more evolved idea. Many people, particularly in Indonesia, are unfamiliar with "crowdfunding." The term crowdfunding can be seen from the formulation of experts' understanding. The term crowdfunding derives from the term crowdsourcing. Crowdsourcing is a technique for gathering work, information, or views from a large number of individuals for a particular objective. Crowdfunding is a broad phrase that refers to a wide range of financing activities. Crowdfunding is a type of open offer for investors to make the investment desire, and Crowdfunding is a company financing activity. Crowdfunding is made from the terms "Crowd" and "Funding." According to the Cambridge Dictionary, a crowd is a large group of people who have come together.[35] Crowd means many people with similar purposes moving together to achieve their goals. According to the Cambridge Dictionary, funding is money a government or organization gives for an event or activity.[36]

Based on Gerrit K.C. Ahlers, Crowdfunding is an umbrella term used to describe an increasingly widespread form of fundraising whereby groups pool money, individual contributions, to support a particular goal.[37] Frank Kleeman, an economist in his writing in the journal Science, Technology & Innovation Studies, states that the definition of crowdfunding is:[38]

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[35] Crowd 2023, *Cambridge Dictionary Daring*, https://dictionary.cambridge.org/dictionary/english/crowd, accessed on April 4, 2023.

[36] Funding 2023, *Pada Cambridge Dictionary Daring*, ,https://dictionary.cambridge.org/dictionary/english/funding, accessed on April 4, 2023.

[37] Gerrit K.C. Ahlers, Doughlas Cumming, Christina Günther, and Denis Schweizer, "Equity Crowdfunnding", 2015, p.1

[38] Kleemann, F., Voß G., & Rieder, K, Un(der)paid Innovators: *The Commercial Utilization of Consumer Work through Crowdsourcing*, Science, Technology & Innovation Studies Vol. 4, No. 1, 2008, p. 11.

> *"Crowdfunding is defined as an open call over the Internet for financial resources in the form of a monetary donation, sometimes in exchange for a future product, service, or reward. Crowdfunding uses web technologies and existing online payment systems to facilitate transactions between creators (people who request funds) and funders (people who give money)."*

Based on the definition above, Crowdfunding is believed to be able to fund various activities that are difficult to do with access to conventional funding, such as banks and investors whose processes require multiple requirements, and Crowdfunding is easy to access. This is because Crowdfunding is online-based and has several systems to offer.

2. History of Crowdfunding

Crowdfunding has been around for a long time in this society. Crowdfunding obtains funds for many enterprises, such as product ideas, companies, or events. Crowdfunding has been a popular method of venture capital financing in recent years. At first appearance, the concept of crowdfunding appears to be cutting-edge. This crowdfunding technique, however, has been going on for years. Many people suppose to familiarize themselves with crowdfunding rather than investment, economics, or banking. Crowdfunding is popular because it is easier to obtain funds than at a bank, and the terms are more straightforward. Crowdfunding is based on microfinance and crowdsourcing systems. The crowdfunding system already occurs in the 1700s.[39] Jonathan Swift makes a variety of funds available to the

[39] Marion K. Poetz, Schreier, "The Value of Crowdsourcing: Can User Reall Compete With Professionals in Generating New Products Ideas?", Journal of Product Innovation Management, Vol.29, No.2, 2012, p.245-246.

underprivileged for use as company financing. Jonathan did not take advantage of it; it was just charitable.

Crowdfunding originated in 18th-century Ireland with the establishment of the Irish Loan Fund by Jonathan Swift. The fund might make loans to low-income Dublin people. The loans were sometimes made by vast groups of wealthy persons who regarded them as a means to help the impoverished collectively. Consequently, it is similar to what we currently term crowdfunding or, more particularly, crowdlending.[40] The first online crowdfunding platform was created in 1997 by the British band Marillion, who launched a fundraising using digital contributions for their reunion tour. More crowdfunding platforms emerged shortly after, and the industry grew consistently yearly.[41] The word crowdfunding was coined in 2006 when a writer called Michael Sullivan sought a simple name to convey this collaborative fundraising technique.[42] Crowdfunding has spread to practically every corner of the globe in its evolution. Crowdfunding makes it simple to access and collect funds fast and effectively. Utilising the internet in the system makes it easy for customers to locate all channelled initiatives. In Indonesia, the crowdfunding system began to enter in 2012, and this crowdfunding is engaged in non-profit social fields, such as health, education,

[40] Critian Froneo, *"History of Crowdfunding"*, https://smallbrooks.com/history-of-crowdfunding/, accessed on April 6, 2023.

[41] Fundable, *"The History of Crowdfunding,"* https://www.fundable.com/crowdfunding101/history-of-crowdfunding#:~:text=The%20first%20recorded%20successful%20instance,dedicated%20crowdfunding%20platform%20in%202000, accessed on April 6, 2023.

[42] Zhao, Ying. et al. "Crowdfunding Industry History, development, policies, and potential issues." *Journal of Public Affairs*. 2019, p.1-9.

environment, and culture. The crowdfunding system has been around for a long time in Indonesia, for example, kitabisa.com. The application is a type of crowdfunding, namely, donation-based crowdfunding. Then, following the development of world investment, especially the development of equity crowdfunding, the Financial Services Authority (OJK) formed regulations in 2018 that became the basis for equity crowdfunding in Indonesia.

The rise of global investment, particularly equity crowdfunding, the Financial Services Authority (OJK) created legislation in 2018 that became the foundation for equity crowdfunding in Indonesia. This regulation is OJK Regulation Number 37/POJK.04/2018 concerning Equity Crowdfunding Services, which is OJK Regulation Number 57 /POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services was later changed to OJK Regulation Number 16/POJK.04/2021.

3. Types of Crowdfunding

Crowdfunding provides a new type of financing world, and crowdfunding activities are also increasing. One type of Crowdfunding is Securities Crowdfunding. Growth in 2022 SCF continues to accelerate. OJK noted that fundraising through crowdfunding or SCF reached IDR 567.45 billion as of August 2022. Publisher listed on 11 platforms also increased to 266 MSMEs with

120,422 investors.[43] Crowdfunding categories into four types based on the purposes, such as [44]

a. Donation Crowdfunding entails Anyone may see from the name that Crowdfunding collects cash through a contribution method. Typically, this sort of crowdsourcing is utilized for social aid, such as disaster relief and the construction of social organizations. We may explain to the public what kind of business you operate, the advantages, the product you wish to produce, and the possibilities for the future.
b. Debt Crowdfunding is crowdfunding that operates more a loan service. According to the system, the loan seeker would come to the borrower and borrow money for business or commercial objectives. After a profit is made, the lender might repay it through incentives such as interest. This system is comparable to peer-to-peer lending. There is, however, a distinction between debt crowdfunding and peer-to-peer lending. The funds in crowdfunding are donations, three parties are involved, and the fundraising is for social needs.
c. Equity crowdfunding, or ECF, is a kind of finance providing investors with shares. ECF is best suited for startups and medium-sized firms that require considerable cash. The method is designed so that you, as a business owner, can offer firm shares with a specific amount of money within a certain time frame. Afterward, investors with an OJK permit can purchase substantial shares on a platform. Next, using the provisions on the forum, all money will

[43] Umar Tusin, *"Pertumbuhan Securities Crowdfunding di Indonesia,* https://landx.id/blog/pertumbuhan-securities-crowdfunding-di-indonesia/, Accessed on April 7, 2023.

[44] Julian Costley, *Op.cit,* p.7-10.

be logged and whether or not they have reached the aim. It is similar to investing in shares. We will split business gains based on the amount of money each investor contributes.

d. Reward crowdfunding is a sort of funding in which funders or investors are attracted by offering incentives. As a result, the compensation system is ideal for small enterprises or startups that are just getting started. Another frequent type of crowdfunding is rewards-based crowdfunding, generally used to generate cash for a new firm or organization providing a product or service.[45]

Based on the explanation above, there are four types of Crowdfunding. Every Crowdfunding has a different purpose. Equity-based Crowdfunding is a popular kind of Crowdfunding among the general population. This kind is beneficial in assisting potential new entrepreneurs in launching their projects or enterprises when these prospective entrepreneurs want assistance in locating donors or investors to offer initial funding for their firms. As a result, this sort of Equity Crowdfunding is advantageous and rapidly expanding among individuals. Only equity crowdfunding has stricter laws in Indonesia than all other kinds of Crowdfunding.

4. The Parties in Crowdfunding

In Crowdfunding, several parties in the program want to be implemented outside of the OJK. Crowdfunding parties are publishers and investors. In the Republic of Indonesia Financial Services Authority Regulation

[45] Gofundme, *"5 Types of Crowdfunding Explained"*, https://www.crowdfunding.com/types-of-crowdfunding/, accessed on April 7, 2023.

No.16/POJK.04/2021 concerning Amendments to the Financial Services Authority Regulation No.57/POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services. There are several parties involved in organizing Crowdfunding, namely :

a. Organizer

Organizer is a legal entity that is active in crowdfunding services. With this, Providers can cooperate with providers of Information Technology-based financial services following the provisions of laws and regulations. The organizers must do more than carry out their activities. There are several things that the Organizer must fulfill to be able to carry out its activities. Organizing requirements for carrying out its activities, namely :

1) Limited Liability Companies, Securities Companies that have obtained approval from the Financial Services Authority to carry out other activities as Organizer.
2) Certain cooperatives.
3) Organizers must have paid-up capital of at least 2.5 billion when applying for a license.
4) Organizers must have: a. human resources with knowledge and/or experience in information technology; and b. human resources with the ability to examine publications.

b. Publisher

A Publisher is a legal or business entity that offers shares through crowdfunding services. Several requirements must be met by the publisher, namely:

1) Directly controlled business entities and public companies.
2) The maximum limit for collecting funds through Crowdfunding Services for each Publisher is within a maximum duration of twelve months, which is 10 billion.
3) Publishers must submit reports to organizers and investors regarding using funds and crowdfunding results.

When raising funds through crowdfunding, the Publisher needs to provide documents and/or information to the crowdfunding platform organizer, such as the deed of establishment, type and the number of securities offered, business or project strategy, and projected revenue; the lowest financial statements are created according to small and medium microenterprise financial accounting requirements; and the Publisher must make payments for dividends or returns. The annual reports for share publishers, monthly reports for debt instruments or Sukuk publishers, and incidental accounts are turned in to the organization and publicized on the organizer's website.[46] Publishers have an obligation to disclose information. Publishers are required to provide information about the companies they manage, including material

[46] Siti Anisah, *Perlindungan Hukum Terhadap Pemodal Atas Risiko Securities Crowdfunding*, Prosiding Hukum dan Prinsip Syariah : Problematika Hukum dan Penerapan Prinsip Syariah di era digital, Yogyakarta, 2021, p.47.

changes that may influence investors' investment decisions. Information disclosure must also involve at least business risks, investment, liquidity, scarcity of dividend distribution, dilution of share ownership, and failure of electronic systems. Risks related to electronic system failure can be a) the platform experiencing an error when the user uses it (unable to log in) due to a lack of management of the company's software. b) If the management of the company's software is not done correctly, electronic system failure will occur. This can result in transactions not being updated properly, c) loss of consumer database after the information is registered on the company's platform, and d) certain banks cannot be accessed because the bank's security system is constantly being updated, and fintech companies have to adjust. Information regarding these risks must be uploaded on the organizer's website, and both the publisher and organizer, individually and jointly, are fully responsible for the accuracy of all information contained in the equity crowdfunding service. [47]

c. Investor

An investor is an individual who purchases Publisher's shares through the Operator. Investors who can transact shares through Crowdfunding Services can buy shares of the publishers, have knowledge of crowdfunding, and meet the requirements as investors. The criteria for investors in the Securities Crowdfunding service include the following:

[47] Ratna Hartanto, *Hubungan Hukum Para Pihak Dalam Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi,*Jurnal Hukum, Ius Quia Iustum, No.1, Vol.27, Yogyakarta, 2020, p.164.

1) Investors who want to acquire securities using crowdfunding platforms must have a securities account with a custodian bank expressly for keeping securities and funds, know the publishers, and have limits on acquiring securities.
2) Every Investor possessing an annual income of up to IDR 500,000,000.00 (five hundred million rupiah) is allowed to buy Securities using Crowdfunding Services at a maximum of 5% (five percent). Each Investor with a yearly profit exceeding IDR 500,000,000.00 (five hundred million rupiah) may purchase Securities through Crowdfunding Services at a maximum of 10% (ten percent) of their annual revenue.
3) Securities purchases by investors in offering securities through crowdfunding services occur by giving a specified quantity of funds in an escrow account per the agreement signed. An Escrow Account is an account opened specifically for a specific purpose to accommodate funds entrusted to Bank Indonesia based on certain conditions following a written agreement. In this case, the purpose of using an escrow account is to prohibit the organizer from collecting public funds through the organizer's account. To support the use of virtual accounts and escrow accounts, organizers must collaborate with banks.[48]

5. The Advantages and Disadvantages of Securities Crowdfunding

[48] *Ibid, p. 161.*

Crowdfunding is a means of generating finances from a large number of people using online platforms to support specific projects or enterprises, in addition to employing a small amount of capital from a large number of people to finance new business endeavors. Aside from that, there are various advantages and disadvantages to adopting crowdsourcing. There are several benefits of using crowdfunding, namely:[49]

a. Extending Your Prospects, Crowdfunding activities help company owners locate investors interested in financing finances. Furthermore, crowdfunding can promote interaction between different fundraising efforts with one another.
b. Become an opportunity to present a business or a fundraising campaign that is carried out by offering information about the new firm. For example, the attractiveness, product, and target market add to the company's worth.
c. Doing marketing, Business owners may promote in various methods, including fundraising via different channels such as social media and email, as well as other marketing tactics. This is beneficial for completing fundraising tasks more easily.

Furthermore, Crowdfunding also has weaknesses namely:[50]

[49] Prasmuleli, "*Apa itu Crowdfunding,? Ini Pengertian , Manfaat, dan Jenis-Jenisnya"*, https://prasmul-eli.co/id/articles/Apa-Itu-Crowdfunding-Ini-Pengertian-Manfaat-dan-Jenis-jenisnya- , accesed on June 9, 202

[50] Bizhare, "*Apa itu Crowdfunding, Pengertian, Kelebihan, dan kekurangannya*", https://www.bizhare.id/media/investasi/apa-itu-crowdfunding , accesed on June 12, 2023.

a. Limited Funds, Not all investors can fund through the crowdfunding platform in a crowdfunding system with limited funds, particularly for borrowers who want considerable amounts.
b. Uncertainty, Crowdfunding has significant unpredictability for both company founders and investors.
c. Legal issues, Crowdfunding can trigger legal matters, including forgery or misrepresentation.

6. Islamic Perspective Towards Crowdfunding

Crowdfunding can be justified by Mudharabah contracts from an Islamic perspective since some models of conditions and transactions are nearly identical to the terms and systematics of transactions employing mudharabah contracts. There must be some substantial distinctions, which researchers will subsequently demonstrate in their research findings. Mudharabah Financing is a commercial partnership between the fund's owner (shahibul maal) and the fund manager (mudharib) in which gains are split. In general, the basic principles of Mudharabah reflect more on the recommendation to run a business. If the company suffers a loss, the shahibul mal will bear the loss as long as the loss is not the product of the mudharib's carelessness.

Meanwhile, the mudharib suffers losses due to the work, toil, and time invested in business operations. However, if the mudharib's carelessness caused the loss, the mudharib must be borne responsibility.[51] According to a

[51] Dimyauddin Zuhri Qudsy, *Pengantar Fiqih Muamalah,* Pustaka Pelajar, Yogyakarta, 2008, p.224.

previously agreed-upon arrangement, the investors absorb losses. Legal Basis of Mudharabah Based on Al-Hadith:[52]

> *"From Salih bin Shuhaib r.a. that the Messenger of Allah He said, "Three things in which there are blessings: buying and selling in a tough manner, muqaradhah (mudharabah), and mixing wheat with flour for household needs, not for sale." (Reported by Ibn Majah).*

In principle, in mudharabah, there is no guarantee for capital, but it is permissible. There are no irregularities. Mudharabah has a high risk. Thus, the contract must be written. There are witnesses, written aspects of the purpose of the mudharabah, profit sharing ratios, profit sharing period, costs that may be deducted from income, provisions for returning capital, matters considered as negligence by the fund manager, etc. According to mudharabah scholars, it is stated as follows:

a. According to the *Fuqaha*, Mudharabah is a contract between two parties. Both parties bear each other; one party surrenders his property to the other party to be traded with a predetermined portion of the profit.[53]
b. According to Imam Hanabilah, Mudharabah is a property owner handing over assets of a specific size to people who trade with a known portion of the profits.[54]

Mudharabah contains no particular provision for the amount of profit that any person who signs a Mudharabah agreement would own. The profit share

[52] Sunan Ibnu Majjah, Kitab As-Sunan Terjemah Ibnu, p.122.
[53] Sohari Sahrani & Ru'fah Abdullah, *Fikih Muamalah,* Ghalia Indonesia, Bogor, 2011, p.188-190.
[54] *Ibid*.

allocated between a typical firm's capital owner and executor may be equal or uneven. This is by a prior arrangement they signed. The primary notion of mudharabah is that the distribution is voluntary and does not damage or injure anyone. Crowdfunding and Mudharabah share some parallels in this scenario. They have common aims and methods, such as providing finance for company expansion and profit sharing. Mudharabah is an Islamic financial contract or partnership that occurs when one party contributes funds to other parties to start a company. The participants' profits from the experience are divided in a specified ratio, whereas the investor entirely pays the costs.

The owner operates the company and makes all operational decisions under a mudharabah contract, while the investor contributes funds and plays a passive role. Islamic finance often utilizes this collaboration, risk-sharing, and profit-sharing to offer capital for small enterprises and startups. Mudharabah is one of several contracts used by Islamic banking, including Murabaha, Ijara, and Musharakah. These contracts enable Islamic financial institutions to provide various economic goods and services that adhere to Shariah guidelines.

CHAPTER III
DISCUSSION AND RESULT

A. Legal Protection of SCF Investors through Technology-Based Stock Offerings under Regulation of Financial Services Authority No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020.

Based on the Constitution of Indonesia, legal protection is one of the aspects regulated in the Constitution. As stated in the 1945 Constitution in Article 28G Paragraph 1, that everyone, Article 28G paragraph 1, everyone has the right to protect property under the authority of the property owner. According to Sajipto Raharjo, legal protection is an activity that governs the demands of the community so that there are no conflicts of interest. It can exercise all of its legal rights.[55] In the short term, legal protection can be defined as a legal remedy that governs all of the community's obligations and interests to avoid problems from developing.

Technology-Based on Stock Offering based on Regulation of Financial Services Authority No.16 of 2021 can be found under Article 1 Number 1 of a quo regulation which states Securities Offering through Crowdfunding-Based Services Information Technology, from now on referred to as Crowdfunding Services, is the provision of securities offering services carried out by publishers to sell securities directly to investors through an open electronic network system. The development of Information Technology has also

[55] Sajipto Raharjo*, Ilmu Hukum … Loc. Cit.,* p.53-54.

influenced the development of the financial services industry. By providing Information Technology-based Security Crowdfunding Services, business actors have utilized Information Technology to obtain funding through the Capital Market. Through the Crowdfunding Service, it is hoped to expand access to financing for small and medium enterprises (MSMEs) and start-up companies to obtain funding through the Capital Market. Crowdfunding is raising funds from many people to fund a particular project or venture. Crowdfunding goals can vary depending on the type of Crowdfunding being done. Increasing access to financing, Crowdfunding can be alternative financing for micro businesses where financing is a significant problem for current micro business actors in the digital era.

The intention of conducting a business transaction through a crowdfunding scheme is to increase business capacity and offer convenience for business actors, particularly MSMEs, in obtaining funding for their business growth.[56] As an alternative to financing, Sharia Crowdfunding is a type of fintech that collects public funds to be distributed to parties or projects requiring financial aid while adhering to Islamic norms. Facilitate fundraising and donations. Crowdfunding can facilitate fundraising and donations by employing websites and mobile applications for people, groups, associations, or businesses for various donation goals, whether social, personal, artistic, or others.

[56] Lukmanul Hakim, *Securities Crowdfunding sebagai alternatif pembiayaan pada pelaku usaha mikro dalam perspektif teori hukum pembangunan*, Vol.4 No.1, 2022, p.35.

Crowdfunding services in the electronic system are divided into two participants: Publishers and Investors. The Publishers is an Indonesian business entity, whether in the form of a legal entity or other business entity, that issues Securities through Crowdfunding Services. The investor is a party that purchases Publisher's Securities through Crowdfunding Services. Before explaining the legal protection provided by publishers, publishers are Public Companies that must comply with Article 4, which contains:

1. The number of Publishers shareholders is more than 300 (three hundred) parties; and
2. The total paid-up capital of the Publishers is more than IDR 30,000,000,000.00 (thirty billion rupiah).

Because both parties are legal entities as stipulated in Article 8, both parties have legal rights and obligations regulated explicitly in this POJK Regulation. In every economic activity. There is a relationship between producers and consumers that needs to be regulated regarding the limits of their rights and obligations. In implementing securities crowdfunding, the user of securities crowdfunding acts as a consumer and the Organizing Company as a Producer. POJK securities crowdfunding has accommodated the operator's obligations to protect users, including investors and MSMEs. Based on Article 50 to Article 53 Regulation of Financial Services Authority No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020, Publishers have an obligation to publish financial reports prepared at least based on financial accounting standards for micro, small, and

medium entities to administrators, the OJK, and the public to monitor the actual use of funds. Everything is done by uploading documents and/or information online via the platform provided by the organizer. This procedure aims to assess the legality and legal risk aspects of the publisher's business through a due diligence process carried out by the organizer to guarantee the protection of investors' interests.

Overall, several central points regarding protecting users of crowdfunding services are detailed in Article 72 to Article 81 POJK securities crowdfunding. Specifically related to the obligation to provide legal protection by the Operator is regulated in articles 72-81 of the POJK. Articles 72-81 explain that regarding the safety of Users in these Articles, more emphasis is placed on Operators to fulfil their obligations to Users. The explanation in this article is in the form of Education and User Protection Services for Crowdfunding Services. First, the Organizer must apply the basic principles of protection to Investors and Publishers who carry out securities offering activities on the Organizer's platform which means regulated according to Article 72 POJK SCF. Violations of these basic principles will also be subject to administrative sanctions based on Article 85, paragraph (1) POIK SCF.

Second, Article 73 POJK SCF states that the Operator must provide up-to-date and certainly not misleading information regarding the SCF Platform owned by the Operator. This is important for users as consumers so that they can know clearly and in detail about the implementation of SCF before starting to invest. This information on the organizer's website can also provide easy

access for the entire community to obtain SCF information without contacting the relevant agency independently. Third, the Organizer must provide information regarding the acceptance, postponement, or rejection of applications related to the SCF. If the application is rejected, the Operator must provide reasons that can be used as an evaluation for the User regarding what must be done so that later, when applying, it is not postponed or rejected again. Fourth, the operator must use simple and easy terms in Indonesian for users to understand in every electronic document. One example of an Electronic Document is the Standard Agreement between the User and the Operator at the beginning of the SCF implementation.

Organizers are required to follow the correct procedures for agreements based on statutory regulations and Standard contracts (*Perjanjian Baku*). Moreover, Organizers must include operational standards on their website and maintain data and/or information about users from parties not participating in the Crowdfunding Program. The position of the investors can be said to be lower than that of the organizers, as seen from the agreement between the investorss and the organizers, which means stated in the standard agreement, the funds of the investors are paid in full at the time of the shares offering. This creates risks that investors will face. Based on the possibility of existing risks, it becomes an interesting matter to discuss related to POJK's position as the legal basis for implementing securities crowdfunding and OJK as an institution that has a function in terms of regulation and supervision of all activities in the financial services sector, one of which means in the implementation of

securities crowdfunding.[57] Sixth, the Organizer is responsible for losses to Investors and Publishers due to errors and/or negligence of directors, employees and/or other parties who work for the Organizer while carrying out its business activities.

Seventh, the Organizer must create a Standard Operating Procedure (SOP) for SCF implementation on the Organizer's website. Eighth, the Organizer must uphold the confidentiality of data and/or information relating to parties in the implementation of the SCF to third parties, except in the circumstances specified in the SCF POJK. Concerning Consumer Protection, in preventing several actions that violate the implementing rules of the SCF, some sanctions have been regulated in Article 85 and Article 86 of the POJK SCF, which states that there are two types of sanctions for violators. First, the imposition of Administrative Sanctions. The OJK will impose this sanction as the institution that supervises and has the authority to impose sanctions on Crowdfunding Service Organizers as stated in Article 85 paragraph (3) POJK SCF.

Administrative sanctions can be imposed if the Crowdfunding Service Provider violates the provisions regarding the Protection of Crowdfunding Service Users which are regulated directly in POJK SCF. The types of administrative sanctions that can be imposed vary, ranging from written warnings, fines, restrictions on business activities, freezing of business

[57] Kasmir, "Bank Dan Lembaga Keuangan Lainnya Edisi Revisi," Jakarta, Rajawali Press, 2018, p.30.

activities, revocation of business permits, cancellation of approvals, and/or cancellation of registration based on Article 85 paragraph (4) POJK SCF.

Second, Article 86 explains that the OJK can impose other sanctions apart from Administrative Sanctions, namely in the form of sanctions for certain actions that have been regulated in the Elucidation to Article 86 of the POJK SCF. This action is in the form of stopping the sale of Security Securities by the Crowdfunding Service Provider for a certain period. After imposing the Administrative Sanctions or Certain Actions mentioned above, OJK can publish this matter to the public according to Article 87 POJK SCF. The principle of disclosure is an absolute requirement which means a consequence of a company going public. This is a requirement because public companies must comply with the principle of disclosure. Consequently, the general public can easily know all material information about public companies, including their competitors. With obligations related to disclosure (mandatory disclosure), the public will be protected from fraud and manipulation. This disclosure will give the public an assessment of Securities so that investors receive protection for the Securities they purchase. The principle of disclosure will also influence investors in deciding to conduct securities transactions. So, it is natural that information containing all the material facts must be accessible to the general public. The principle of disclosure is an absolute universal requirement in the capital market business to create a fair, orderly, and efficient capital market. Capital market players must apply the principle of disclosure to give investors optimal protection against detrimental practices. This transparency refers to universal

principles that apply to international capital market practices. Therefore, disclosure is the main principle that provides legal protection for capital market investors.[58]

Capital market disclosure is essentially part of Good Corporate Governance (GCG). GCG is a set of regulations that regulate the relationship between shareholders, company management, creditors, government, employees, and other internal and external stakeholders relating to their rights and obligations. The problem arises regarding the reasons for setting the principle of disclosure in implementing the SCF. This issue is essential, considering that SCF activities are activities in the form of a "mini IPO."[59] The responsibility of disclosure in the capital markets sector does not end with the initial public offering or trading of securities. However, the idea of transparency must be followed regularly. There is no duty to implement the concept of disclosure in the POJK SCF, as there is in capital market legislation in general. As previously indicated by the author, POJK SCF has declared unequivocally that SCF operations are included in capital market activity. If there are changes to material facts, the organizer is responsible for including this information. Therefore, transparency is the main principle that provides legal protection for capital market investors.

The agreement stems from Book III of the Civil Code (BW) under *Van Verbintenissen*, which means governed by four chapters. Chapter I of the Civil

[58] Inda Rahadiyan and Papipurna P. Sugarda, *Urgensi Pengaturan Prsinsip Keterbukaan Dalam Equity Crowdfunding Dan Implikasinya Terhadap Perlindungan Investor,* Jurnal Hukum, Ius Quia Iustum, No.1, Vol. 27, p.267-268.

[59] *Ibid*, p.269.

Code, which includes Articles 1233 to 1312, governs general engagements. Then, under Chapter II of the Civil Code, Articles 1313 to 1352 govern obligations deriving from agreements. Furthermore, Chapter III of Articles 1352-1380 of the Civil Code governs legal agreements. Chapter IV, which comprises Civil Code Articles 1381-1456, governs the agreement's abolition; ultimately, in Chapters V to Chapter XVIII, it is added to Chapter VII A or from Civil Code Articles 1457-1864, which regulates specific agreements.[60]

The agreement does not automatically become legal or legitimate for the parties who have agreed to commit themselves to an achievement. The legality of an agreement with legal implications must meet several conditions stipulated in Article 1320 of the Civil Code concerning the requirements for a valid engagement. Article 1320 of the Civil Code states, "For an agreement to be valid, four conditions are needed: 1) the agreement of those who bind themselves; 2) the ability to make an engagement; 3) a particular thing; 4) a lawful cause. Conveniently, the provisions regarding Article 1320 can be seen from the existence of 4 main points, each of which means a subjective and objective requirement of a legal agreement. Points 1 and 2 are points that are subjective requirements of an engagement. The purpose of the subjective terms is related to the subject who performs an engagement. The second requirement is points 3 and 4, called objective terms.

[60] H. Riduan Syahrani, *Seluk-Beluk dan Asas-Asas Hukum Perdata*, 2013, Bandung: Alumni, p. 200.

Article 1233 of the Civil Code states that obligations arise from both agreements and laws. Engagements that arise as a result of an agreement are based on Article 1313 of the Civil Code which states that an agreement is an act by which one or more people bind themselves to one or more other people. Then, obligations that arise from law are based on Article 1352 of the Civil Code which regulates that obligations that arise by law arise from law alone, or law as a result of someone's actions. Article 78 states that regarding standard agreements, what is meant by "standard agreement" in the Elucidation of Regulation of the Financial Services Authority No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020 is a written agreement specified unilaterally by the Operator and contains standard clauses regarding the content, form, and method of manufacture, and is used to offer services to Users in bulk. There are several opinions regarding the Standard Agreement based on experts.

The standard agreement is based on experts who admit that the standard agreement is an agreement, namely Asser Rutten also said that everyone who signs the agreement is responsible for the contents and what he signed. If someone signs a standard agreement form, the signature inspires confidence that the signatory knows and wants the contents of the signed form. It is only possible for someone to sign that the content is known. [61] However, on the other hand, several opinions regarding the standard agreement have counter-

[61] Amrul Partomuan Pohan, *Penggunaan Kontrak Baku (Standard Contract) Dalam Praktek Bisnis di Indonesia*, Dimuat dalam Majalah Hukum Nasional, BPHN, Departemen Kehakiman, Jakarta, 1994, p.64.

arguments with Asser Ruten, who reveals that the standard agreement is not an agreement. At the beginning of POJK No.37/POJK.04/2018 regarding Equity Crowdfunding, these regulations still needed to protect investors and had to be continuously updated. Article 22 states that the absence of further explanation regarding the Operator's responsibilities towards Users if the Operator is unable to continue its operational activities can give rise to 2 types of problems:

1. The lack of standards or minimum requirements for preparing a plan to fulfil the User's rights and obligations can result in consumer protection not being met because the plan prepared by the Organizer to fulfil the User's rights and obligations can be detrimental to Users, particularly Security crowdfunding investors.
2. The Operator does not need to tell its consumers that it would submit a permit return application to the OJK. The OJK should further describe the Organizer's obligations as a consumer protection guideline, specifically for Crowdfunding Service Users.

The explanation of this Article concerning Security crowdfunding, particularly when the Organizer requests to return the permit to the OJK, is that the Organizer should notify its Users that the Organizer will request return permission from the OJK, accompanied by a plan that will be carried out to fulfil the User's rights and obligations. If the User does not agree with the Organizer's strategy, the User may cancel or return the shares they have acquired. If the Investor cancels or returns the shares they acquired because they disagree with the Organizer's plan, the Investor will not be entitled to any

compensation or penalties. According to Article 66, Paragraph 4 of the POJK Security Crowdfunding, the Financial Services Authority can only apply administrative sanctions. However, I believe there should be criminal penalties for POJK because it involves the public interests of investors who trust the platform with their money. Relying solely on administrative penalties is not enough to punish POJK for committing fraud with investor funds. Article 65 of the POJK Security Crowdfunding states that the Operator must implement an anti-money laundering program and prevent terrorism financing for Users, following the laws and regulations on anti-money laundering and terrorism financing prevention. If a publisher is proven to have engaged in money laundering or terrorism financing, both the Publisher and the Organizer should face criminal penalties.

It is fair to bring organizers into the picture for criminal penalties, as the article clarifies that they are obligated to implement anti-money laundering and terrorism financing prevention programs. Therefore, organizers are also at fault for not fulfilling the requirements outlined in the article. Organizers are indirectly responsible because the platform they manage becomes a space for money laundering and terrorism financing. After the existence of OJK Regulation No. 57 /POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services was later changed to OJK Regulation Number 16/POJK.04/2021. Investor protection is getting stronger, but this problem regarding public accountability still needs to be resolved. The changes to OJK regulations do not change matters related to

public accountability because the report provided is more accessible and not practical. OJK's decision aims to make it easier for publishers to register with the Crowdfunding Service. However, this might present issues, mainly if the Publisher's financial disclosures need to be revised, making it difficult for Investors to exert control over the Publishers.

Munir Fuady put forward this opinion that a standard contract is a written contract made only by one of the parties to the contract. Often, the contract has even been printed (boilerplate) in the form of certain forms by one of the parties, which, in the case of This is when the contract is signed, generally the parties only fill in specific informative data with little or no changes in the clauses, where the other parties to the contract have no opportunity or only little opportunity to negotiate or change the clauses that have been made by one of the parties so that standard contracts are usually very one-sided.[62] In Practice contracts, for example, namely:

a. On granting credit to banks

b. On the insurance agreement

Based on the dualism of expert opinion regarding the standard agreement, the researcher, in this case, is adamant that the standard agreement is still stated as an agreement. The researcher's opinion is based on the legal assumptions stipulated in the elucidation of Article 78, paragraph 2 of the POJK. Because in that article, that standard agreement is included in the agreement. The Financial Services Authority, in this regard, has made adequate

[62] Munir Fuady, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis) Buku Kedua,* P.T. Citra Aditya Bakti, Bandung, 2003, p. 76.

rules; this refers to the Regulation of the Financial Services Authority No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020 contains an agreement regulating the rights and obligations. One of the Financial Services Authority (OJK) authorities governs the protection of consumers of Indonesian financial services. Legal Protection is an activity to protect a person following applicable values or rules from actions not by the rule of law that aim to realize justice, order, and peace in one's life. Based on the legal protection theory developed in the previous chapter, legal protection is divided into Repressive and Preventive Legal Protection.

The forms of legal protection implemented by the OJK for consumers are preventive and repressive. Based on the provisions of Article 78 paragraph (1) of the POJK, according to the author, one of the forms and efforts of both the Organizer and the consumer is to bind themselves to their respective rights and obligations. In contract law, the principle "*Pacta sunt servanda*" means that the agreement binds both parties. In this case, if it is reviewed based on Article 62 paragraph (4) of the related POJK as a form of manifestation of preventive legal protection. Regarding the risks experienced by investors in SCF, four articles mention the word "risk", namely Article 16, paragraph (1) letter I, Article 24, paragraph (2), Article 47, paragraph (1) letter m, and Article 66. Article 16, paragraph (1) contains an obligation for administrators to include risks on their website, including business, investment, liquidity, electronic system failures, and default risks.

Meanwhile, Article 47 paragraph (1) letter m limits the publisher's obligation to submit documents to the administrator, at least the main risks the publisher faces. These four articles attach risks to obligations for administrators and publishers related to risk mitigation; there are limitations on parties who have obligations and types of risks, namely users (investors, publishers, and organizers. This regulation provides legal clarity for novice business actors who wish to obtain alternative sources of equity-based public funding by utilizing information technology. As a form of legal protection for investors, platform organizers must be responsible for losses caused by the parties concerned.

B. The Comparison of the Republic of Indonesia Financial Services Authority Regulation No.16/POJK.04/2021 and America Regarding Securities Crowdfunding Towards Investor Protection.

The concept of crowdfunding is the actualization of the movement contained in Pancasila related to the idea of *gotong royong*. *Gotong royong* is a local wisdom of helping others with the help of several parties. Crowdfunding has helped many foundations, social institutions, personnel, and businesses that need more funds to complete their projects. Crowdfunding provides an opportunity for individuals and businesses to raise funds, engage with audiences, and bring their ideas to life with the support of a supportive community. Crowdfunding provides space for micro businesses that still need to be bankable to participate in obtaining funding. In addition, crowdfunding has other advantages, such as raising funds without high costs and unique

guarantees, which are very suitable for micro and small companies. In general, crowdfunding is defined as informing a project or business activity through information technology by parties needing funds to obtain large amounts.[63] Crowdfunding can be an alternative source of funding that can be used by start-up companies and MSMEs who wish to develop their businesses. Usually, a start-up company experiences many cases of difficulty obtaining loans from banks because of a lack of trust in the company regarding loan repayment. No collateral for assets can be used if the indebted company defaults. The crowdfunding scheme will open up funding opportunities for start-up businesses and MSMEs. In addition, funds through crowdfunding are usually charged at a lower cost than borrowing from a bank.[64]

In addition to funding, crowdfunding provides a higher return on deposits than banks despite the higher risk. Crowdfunding is also expected to have a positive external effect, namely by supporting people's desire to become entrepreneurs because getting funding through crowdfunding is very easy. Injecting funds through crowdfunding is one of the uniqueness of the product. At the same time, crowdfunding, which means mainly internet-based, will make it easier for the public to access investments to encourage the birth of new investors. Crowdfunding is an alternative instrument to increase the absorption of investment funds from the public and invite the Indonesian people to take

[63] Cindy Indudewi Hutomo, Layanan Urun Danan Melalui Penawaran Saham Berbasis Teknlogi Informasi, Jurnal Perspektif : Kajian Masalah Hukum dan Pembangunan,Vol.24 No.2, 2019, p.66.

[64] Rachmawan Budiarto, Pengembangan UMKM: Antara Konseptual dan Pengalaman Praktis, Penerbit Gadjah Mada University Press, Yogyakarta, 2018, p.33.

part in driving economic growth in Indonesia. In Indonesia, two terms that developed related to crowdfunding consist of equity crowdfunding and securities crowdfunding. Previously, the term equity crowdfunding began to be known through the Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Share Offerings, namely POJK No. 37 / POJK.04 / 2018. However, through the Financial Services Authority Regulation Number 57/POJK.04/2020 concerning Securities Offering Through Information Technology-Based Crowdfunding Services. In 2021, the regulation was changed again to Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020. The term equity crowdfunding was changed to securities crowdfunding. This change does not remove the activity from equity crowdfunding itself but rather only expands the scope and subject matter of crowdfunding services.[65] The purpose of the rule change is to improve on previous regulations, thus giving users of Securities Crowdfunding legal protection and legal certainty.

SCF, as an investment instrument in the Capital Market, has continued to experience positive growth since it was first launched in 2018. For 2020, there are still 4 publishers. However, SCF has been used by 127 publishers with 51,414 investors and funds raised, amounting to IDR 184.90 billion. Meanwhile, last year, in 2021, SCF experienced positive growth with 7

[65] Fithriatus Shalihah, "Equity Crowdfunding di Indonesia," cet.1, Yogyakarta, Universitas Ahmad Dahlan Press, 2022, p.10.

organizers with 195 publishers, as well as investors who invested in SCF to support MSMEs, increasing to 93,733 investors and funds raised, reaching IDR 413.19 billion. As of November 18, 2022, organizers for SCF have reached 11 platforms, publishers have reached 314, the number of investors or investors has reached 129,958, and total funds collected have reached IDR 661.32 billion.[66] SCF platforms also continue to emerge. Based on March 2023 data, there are 28 SCF companies in the Financial Services Authority (OJK) licensing process. Currently, 16 SCF companies have permits. As of July 7, 2023, 16 SCF organisers have obtained permits from the OJK with 423 publishers, 156,632 investors, and a total funds raised of IDR 911.35 billion.[67]

On the other hand, the author explained that the form of the agreement made in the SCF is a standard agreement (*Perjanjian Baku*). The standard agreement between the organizer and the investor provides the legal consequence that the investor does not have the opportunity to negotiate the terms of the agreement but only has the option to accept or reject the agreement's contents (take it or leave it). Suppose the investor decides to accept the provisions in the standard agreement. In that case, the investor only needs to click agree on a particular button provided by the organizer on their system. The standard form of the agreement between the investor and the organizer can

[66] Rizki, *Pertumbuhan Securities Crowdfunding (SCF) dari 2018-2022, dan Target Tahun 2023*, https://www.emitennews.com/news/pertumbuhan-securities-crowdfunding-scf-dari-2018-2022-dan-target-tahun-2023, accessed on June 13, 2023.

[67] Otoritas Jasa Keuangan (OJK), Siaran Pers OJK Dorong Pembiayaan UMKM melalui Securities Crowdfunding, SP 75/DHMS/OJK/VII/2023.

provide an excellent opportunity for the organizer to include provisions that the organizer has the rights over the organizer itself, to add or replace any provisions in the agreement, or change, suspend, or terminate services at any time.[68]

Apart from that, Security crowdfunding investors need to understand their rights. As shareholders of a limited liability company, shareholders have the right to attend and vote at the general shareholders' meeting and receive dividends and remaining assets resulting from the company's liquidation. However, the rights of shareholders in Security crowdfunding differ from those of shareholders of companies listed on the shares exchange. This is because trading in Security crowdfunding currently needs to be included in trading on the shares exchange, considering that Security crowdfunding has a primary and secondary market separate from the exchange. Investors as shareholders in Security crowdfunding cannot sell their shares at any time like shareholders of companies listed on the shares exchange. Based on Article 32 POJK concerning Securities crowdfunding, organizers can provide a system for investors to trade publisher shares sold through the Crowdfunding Services they organize. This provision uses the word "can," which means that the organizer can provide a secondary market or not provide a secondary market. Of course, based on this, the liquidity risk of shares owned is something that investors must understand. Investors in equity crowdfunding have very little chance of getting capital gains,

[68] Lin Lin, *Managing the Risks of Equity Crowdfunding: Lessons from China,* Journal of Corporate Law Studies – Centre For Banking and Finance Law. National University of Singapore, 2017, p. 14.

like shareholders of companies listed on the shares exchange. Protection of share prices in issuing companies has also not been regulated as regulated in trading on the shares exchange.[69] It has offered stronger protection than previously by adopting Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020. Currently, two organizers, Santara and Bizhare, are launching secondary marketplaces. The goal of establishing a secondary market is to allow investors to sell or purchase shares for themselves. However, there is no electronic system of reporting in which organizers may provide reports to the OJK, and the POJK regulations do not currently control the secondary market implementation mechanism (Secondary Market). For example, one of the publishing companies registered with the OJK is Bizhere, which provides a secondary market with certain restrictions. The secondary market is opened twice a year. The share price offered on the secondary market is the same as the initial purchase price. Thus, the term capital gain is unknown in the Bizhere secondary market, and investors only receive profit-sharing value from their investments. However, Bizhere strives to minimize this liquidity risk by providing requirements for publishers to buy back a certain percentage of shares circulating in the secondary market.[70] SCF is a financial services activity in the capital markets sector. The SCF is not a public offering or does not carry out an Initial Public Offering (IPO) on the Indonesian Stock Exchange, but only offers shares

[69] Ratna Hartanto, *Op.cit,* p. 165.
[70] *Ibid*, p. 166.

through the ECF service under the supervision of the OJK. In capital market activities, SCF does not call it an IPO (Initial Public Offering) but a Public Offering of Shares. Since the publication of POJK.37/POJK.04/2018, Crowdfunding has been included in the Capital Market.

Since the Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/POJK.04/2020, OJK appointed the Indonesian Crowdfunding Services Association (ALUDI) as an official association within the SCF.[71] However, the problem that occurs is that ALUDI's authority is only limited to overseeing the organizers who will provide the platform at SCF.[72] According to POJK 16/2021, the Association is exclusively entrusted with making suggestions to the OJK for prospective organizers. Because of its limited jurisdiction, the Association cannot assist the OJK in supervising the implementation of crowdfunding. One solution to this problem is to create internal Association rules. According to POJK 16/2021 Article 83, the organizer must be a member of the Association. ALUDI can utilize this to create internal rules that bind its members (organizers) as a means of monitoring the crowdfunding implementation. This is merely a temporary fix for the unsatisfactory regulation of crowdfunding oversight. Because ALUDI's

[71]. Mochamad Dandy Hadi Saputra dan Vika Annisa Qurrata, *Securities crowdfunding: Bagaimana Relevansinya pada Nilai-Nilai Pancasila?*, Prosiding Seminar Nasional Ekonomi Pembangunan, Vol. 1 No. 1, Tahun 2021, p. 29

[72] *Ibid,* p.32

power in arranging crowdfunding is merely that of a recommender, crowdfunding law should have addressed this issue from the start.

To take a concept from capital market supervision, the Indonesian Shares Exchange (BEI), as the capital market's organizer, serves as a Self-Regulatory Organization (SRO). The SRO has the legal authority to self-regulate the conduct of its functions.[73] BEI regulations, as BEI itself, may execute SRO by overseeing capital market activity. This can guarantee that capital market operations are carried out in an orderly, fair, and efficient manner. These measures simplify and improve the effectiveness of OJK's capital market oversight.[74] On the other hand, the requirement for organizers to submit reports to the OJK should be viewed as a preventive step to avoid market failure. Based on the information presented, the OJK should be able to identify potential problems and work to prevent them from occurring. OJK controls and requires security crowdfunding organizers and publishers to submit reports to OJK. The OJK requires organizers to provide yearly, semi-annual, and incidental reports. Publishers registered on the Security Crowdfunding Organizer platform must always furnish the OJK with yearly reports for monitoring purposes. PUJK frequently reports differently from the actual scenario, only reporting what is deemed appropriate to report, so that OJK only knows that PUJK is doing well by doing what it is supposed to do. Apart from that, this report is helpful for investors to monitor the running of the Publisher's

[73] Ni Putu Sunari Dewi dan I Ketut Markeling, *Peran Bursa Efek Indonesia Terhadap Pengawasan Perdagangan Waran*, Jurnal Universitas Udayana, Vol. 6 No. 11, Tahun 2018, p. 7.
[74] *Ibid,* p.8.

business. Article 53 of the OJK only requires the Publisher's financial reports to be prepared based on accounting standards without public accountability. The OJK's intention in determining this is to make it easier for Publishers to register with the Crowdfunding Service. However, this can cause problems, especially if the financial reports produced by the Publishers need to be better, so it can become an obstacle for Investors to exercise control over the Publishers.

The Security crowdfunding mechanism must be implemented in the United States. Most notably, there were challenges in developing this legislation since it was required to fulfil the Securities Act of 1933 regulations. However, the introduction of Title III of the Jumpstart Business Start up Act (JOBS) in 2012 and the publication of Securities and Exchange Commission Regulations in 2015 eventually made Security crowdfunding lawful in the United States.[75] In America, two institutions oversee Security Crowdfunding: the United States Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA). America also has two legal protection systems like Indonesia, namely, Preventive and Repressive legal protection. The SEC is an independent institution from America primarily responsible for supervising the implementation of securities trading rules and regulating the share exchange trading market. This institution was established based on the 1934 Law

[75] Stephani Lee Black*, US Equity Crowdfunding: A Review of Current Legislation and A Conceptual Model of the Implications for Equity Funding, The Journal of Entrepreneurship, vol 27 (1) February* 2018, p. 85.

(Securities Exchange Act Of 1934) led by five members of the Commission.[76] The SEC's mission is to safeguard investors, uphold order, justice, and market efficiency, and promote capital creation. The SEC's mission is to develop capital markets and provide various financial possibilities for retail and institutional investors, entrepreneurs, publicly traded corporations, and other market players.[77] Jumpstart Our Business Startups (JOBS) is a 2012 statute approved in the United States. The JOBS Act intends to boost economic growth by making it easier for startups to obtain finance. This law modified various securities rules and established several new methods, such as investment crowdfunding, allowing businesses to receive funds from individual investors using Internet platforms. Preventive Legal Protection, The SEC also provides education to investors before carrying out investment activities in Crowdfunding. Things you can do to prevent investment fraud based on the SEC include:[78]

1. Research before you invest. Understand a business company and its products or services before investing. Search the company's financial statements in the filing system EDGAR SEC. You can also view many investments with the search for EDGAR.
2. Take the time to check out the person offering investment before you invest, even if you have to get to know the person socially. Always find

[76] U.S Securities Exchange Commission, SEC Strategic Plan Fiscal Year 2018-2022, US: Strategic Plan, 2018: 2.

[77] SEC, *about the sec,* www.sec.go.id , accessed on December 20, 2023.

[78] U.S Securities and Exchange Commission, "What You Can Do to Avoid Investment Fraud?", www.investor.gov , accessed on December 20, 2023.

out if the contacting securities dealer has permission to sell securities in your state and what they are. Alternatively, their company has had dealings with other investors.

3. Be careful if you receive an unsolicited offer to invest in a company or see it touted online. However, you do not need help finding up-to-date financial information about it from independent sources. This could be a money laundering scheme.

The Financial Industry Regulatory Authority (FINRA) is a private, non-profit organization that regulates certain aspects of the securities industry. If an entity wishes to become a securities broker or broker-dealer in the United States, it must first obtain approval from FINRA. The FINRA organization works closely with the SEC to accomplish four main tasks, namely::

1. Create and enforce rules. The rules created and enforced by FINRA are designed to regulate the activities of all registered broker-dealers and registered brokers in the United States.
2. Supervise brokers and dealers in the United States to ensure they follow established rules. If brokers and dealers do not follow the rules, they will be severely penalised and expelled from the investment community.
3. Foster Market Transparency. Specifically, FINRA's primary interest is ensuring that brokers and broker-dealers share adequate and accurate financial information about their proposed investment opportunities.

4. Educate Investors. Lastly, FINRA aims to educate investors, ensuring they know how their brokers should treat and the information available before investing.

FINRA has that the most essential aspect of protecting investors is education. To that aim, we offer free, unbiased materials and tools to assist investors in evaluating investment products and experts and better understanding markets and investing concepts. Investor Alert, FINRA, offers investors the information they need to safeguard their money and avoid fraud and other investing issues.[79] FINRA delivers the information investors need to protect their money and avoid other investment problems and fraud. FINRA provides detailed information about investment categories such as select, bond, and other investments.[80]

As a form of legal protection provided by FINRA in the form of educational instruments to investors to avoid fraud as follows:

1. Investors can use FINRA's Brokercheck to learn about the status of FINRA-registered businesses and brokers, financial advisers, and their representatives.
2. Fund observers help capital provide information regarding comparing company costs and expenses on the shares exchange and provide alternatives for obtaining investment costs.
3. Understanding professional database designations helps investors determine which investments suit their needs.

[79] Finra-go, Putting Investors First Your Guide to FINRA and its Investor Services, Washington, DC, 2013, www.finra,org, accessed on December 20, 2023.

[80] Carla Cabarle, *Using Benford's Law to Predict the Risk of Financial Statement Fraud in Equity Crowdfunding Offerings*, Engaged Management ScholarshIPOip (EMS) conference, p.5

FINRA and SEC agencies always protect Security crowdfunding, adjust the rules and try to monitor the system for any fraud.[81] As a form of legal protection for investors, some are categorized as "bad actors" who cause the most harm to investors because the person intends to cheat, so an allowance event must be carried out.

1. Rule 503 of the Crowdfunding Regulations offers measures for disqualifying "bad actors" to weed out bad actors. Disqualification might be punishment, administrative consequences, or other legal punishments.
2. Program for Opting Out Criminal law, arrest or court orders, specific final orders of state and federal regulations, disciplinary orders, SEC secrecy order, suspension or deportation from membership in a self-regulatory organization; SEC agency halt order suspending delivery of regulation A; and False messengers from the United States postal service are all examples of disqualification. [82]

The repressive protection carried out by FINRA is dispute resolution utilizing arbitration and mediation. Mediation and arbitration are two different ways to resolve securities problems between organizers, publishers, and investors, and they are done quickly and cheaply. Investors can seek mediation or arbitration assistance through FINRA when they have problems involving such activities.[83] Meanwhile, the advantages of the SCF system in the USA are in the form of a law, namely the JOBS ACT title III Law, and the SEC as a financial supervisory

[81] Ross S. Weinstein, *Crowdfunding in The U.S and Abroad: What to Expect When You're Expecting*, Cornell International Law Journal, vol. 46 (2), p.449.
[82] Sec.gov, *Loc.Cit.*
[83] *Ibid.*

institution in the USA places great importance on protection for investors, namely by making it stricter that startup companies must register with the SEC or FINRA and both institutions also provide education. which is massive for investors who are not accredited or have no experience in making investments. And requires every publisher to provide education on their respective websites. Based on data from one of the applications in America, namely KICKSTARTER, they list the total funds and projects they have carried out. They Say Since their launch, on April 28, 2009, 23 million people have backed a project, $7,925,115,429 has been pledged, and 256,372 projects have been successfully funded.[84] The weakness of the SCF system in Indonesia is that the regulations are still in the form of OJK Regulations, and not yet in the form of Laws, and the only one who carries out supervision is the OJK, where the OJK is the supervisory institution for almost the entire financial system in Indonesia which will not be optimal in carrying out supervision, it must A new institution was formed that supervision was more optimal. The advantage of the regulations in Indonesia is that they are complete enough for a developing country that will present a secondary market even though the organizing company only received permission from the OJK in the last year, this is real progress for the development of SCF in Indonesia.

Comparison Table of Crowdfunding in Indonesia and America:

Indonesia	America

[84] Admin, Stats, https://www.kickstarter.com/help/stats?ref=global-footer, accessed on April 4, 2023.

Previously, OJK was the only institution that supervised, regulated, imposed sanctions and resolved disputes. Then, OJK appointed ALUDI as the management institution.	FINRA and the SEC are institutions that regulate, supervise activities, provide sanctions, and help resolve disputes.
Still in the form of POJK.	It is already in the form of law.
Indonesia has a relatively new legal framework for crowdfunding, with the Financial Services Authority (OJK) as the main regulator in this regard. Crowdfunding regulations are regulated in OJK Regulations, such as Regulation Number 37/POJK.04/2018 concerning Limited Liability Company Share Offerings Through Information Technology-Based Public Offerings and becoming POJK.16/POJK.04/2021.	The United States has a more mature and comprehensive legal framework for crowdfunding, especially after the enactment of the JOBS Act in 2012. The JOBS Act introduced Regulation Crowdfunding (Reg CF) and Regulation A+, which are administered by the Securities and Exchange Commission (SEC).
The POJK regarding Crowdfunding has undergone three changes. In 2018, 2020, and 2021.	America is included in the JOBS Act Title III of 2012 which was amended in 2015.
In Indonesia, dispute resolution is through litigation and non-litigation.	Dispute resolution in America can be done through arbitration and mediation assisted by FINRA.

Without realizing it, this acceleration of innovation has contributed to the transformation of Indonesia's business style towards technology-based digital, better known as financial technology. This transformation occurs to achieve precise business projections, namely practical innovation accessibility for economic actors in reaching the market. Wider area and more economical operational costs.[85] Based on the data above, the amount of funds collected by

[85] Posma Sariguna Johnson Kennedy, *Literature Review: Tantangan terhadap Ancaman Disruptif dari Financial Technology dan Peran Pemerintah dalam Menyikapinya, Prosiding Forum Keuangan dan Bisnis Indonesia*, Vol. 6, 2017, p.172-173.

organizers, Publishers, and investors always increases yearly. That means the Indonesian people already believe and feel safe about the legal protection provided by Regulation of the Financial Services Authority of the Republic of Indonesia No.16/POJK.04/2021 Concerning Amendments to Regulation of the Financial Services Authority No.57/ POJK.04/2020.

CHAPTER IV
CLOSING

A. Conclusion

1. Financial Services Authority Rule Number 16/POJK.04/2021 emphasizes investor protection, showcasing OJK's commitment to boosting confidence in the capital market. Key provisions mandate companies repurchase devalued shares, reinforcing OJK's dedication to enhancing investor protection and trust. The rules hold companies accountable for compensating losses due to mismanagement. These measures aim to fortify investor protection, ensuring legal certainty and fostering sustainable growth in the capital market.
2. Security Crowdfunding poses inherent risks, including potential platform hacking and misuse, leading to financial losses for users. Securities crowdfunding services in Indonesia are regulated in POJK 16/POJK.04/2021, an amendment to POJK 57/POJK.04/2020, while in the United States, it is governed by the JOBS Act Title III of 2012, amended in 2015. The regulatory systems of these two countries are quite similar in implementing terms and conditions for users of these services. However, in Indonesia, the organizing platform must be registered with the OJK for conducting a public offering on SCF, whereas in the United States, public offerings are supervised by the SEC and FINRA.

B. Recommendation

1. In the future, the Financial Services Authority as a supervision institution in Indonesia can integrate Security Crowdfunding, so there is stringent cyber monitoring of a financial technology institution. Due to the increase of cybercrime and the need to fight it, the Financial Services supervision should arrange institutions under its control. Detrimental to the public in using the Security Platform Crowdfunding, as a result, requires continuity between one another. Furthermore, due to the lack of sufficient monitoring, the platform's vulnerability generates substantial losses to the community due to fraud by parties that take advantage of the platform's shortcomings.
2. To promote the development of Information Technology-Based Crowdfunding Services in Indonesia, the government must strengthen the existing legal frameworks. This should be done by drawing inspiration from the JOBS Act Title III Crowdfunding in the United States. The Financial Services Authority (OJK) must play a key role in enhancing regulations, with a specific focus on ensuring legal protections for investors. Additionally, ALUDI, as the newly designated supervisory body for Securities Crowdfunding (SCF), should optimize its role similar to the Securities and Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA) in the U.S. This is essential for safeguarding the interests of investors and building public trust in Indonesian investments. Ultimately, establishing a secure crowdfunding environment is vital for fostering rapid growth, strengthening the industry, and providing necessary legal protection.

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