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## OFFERING SHARIA SECURITIES THROUGH TECHNOLOGY BASED CROWDFUNDING SERVICES BASED ON SHARIA PRINCIPLES ACCORDING TO MUI FATWA

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### ABSTRACT

This study aims to provide an understanding to the public regarding sharia securities offerings to avoid losses through crowdfunding services as organizers of legal entities that provide, manage, and operate crowdfunding services. This study used a qualitative method by reviewing related literature on information technology-based crowdfunding services based on sharia principles. Fatwa of the National Sharia Council (DSN) MUI FATWA NO: 140/DSN-MUI/VIII/2021 concerning Information Technology-Based Financing Services based on Sharia Principles explaining that sharia securities services through crowdfunding must avoid usury, graham, and deadlines. This research makes investing in sharia securities in technology-based crowdfunding services based on sharia principles easier. This research has implications that it can make a significant contribution in protecting investors oriented to sharia principles, can have an impact on increasing public trust in crowdfunding services provided by legal entities and has an impact on increasing access to Islamic finance for individuals and groups who want to fund or finance projects in accordance with sharia principles.

**Keywords:** sharia, crowdfunding, technology, crowdfunding.

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### INTRODUCTION

Financial technology often referred to as (fintech), is a technology-based financial system in the digital era whose existence plays an important role in supporting financial service activities and the creative industry's growth (Kreatif, 2018). Financial technology was developed to provide convenience for several financial sectors that cannot be run by conventional financial systems. In Indonesia, crowdfunding is a financial technology currently being developed and starting to be recognized by the public. Crowdfunding is a funding scheme that collects funds from the internet-based crowd (Arifin & Wisudanto, 2017). The amount of funding imposed on society is often relatively small nationally. However, because the number of people participating is large, the funds collected can be very large. The public can use several types of crowdfunding, one of which is equity crowdfunding (Lukkarinen & Schwienbacher, 2023).

Information Technology-Based Crowdfunding Services, from now on referred to as Crowdfunding Services, is a mechanism for collecting public funds openly to be used as business capital or to finance a business that uses digital or information technology-based platforms (Hutomo, 2019). Sharia Securities are securities that meet the provisions and criteria based on sharia principles, as referred to in the law. Sharia Securities Offering Through Crowdfunding Services (Prasetia, 2017), referred to as Sharia Securities Offering, is a mechanism for issuing Sharia Securities

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by Issuers to Investors through Crowdfunding Services that meet sharia terms and criteria (Kadir, 2021).

Organizers have an important role in implementing this stock investment-based crowdfunding service. As a party that obtains a permit from the OJK (Financial Services Authority), the organizer must ensure investment safety and maintain the smooth running of the equity crowdfunding process. Organizers related to good agreements between organizers and investors and organizers with publishers. Certain requirements must be met by companies wishing to apply for crowdfunding services. These conditions must be met because they involve the ability of the organizers to carry out crowdfunding activities. Less credible organizers will result in losses for users. Therefore, the OJK (Financial Services Authority) has a role in selecting companies that will apply as organizers of equity crowdfunding.

Along with the development of digital-based businesses, various innovations have begun to appear that aim to facilitate the transaction process with platforms used as a medium for procuring funds for a project. Crowdfunding into four types, namely donation, reward, debt-based, and equity-based. However, the OJK (Financial Services Authority) classifies them into three types: donation-based or gifts, debt-based and equity-based.

Crowdfunding with sharia principles first appeared in Singapore in the form of ethics Pte, which was established in March 2014 with the acquisition of 2.5 million Singapore dollars (Rp. 24.2 billion) to finance the purchase of affordable new homes in Indonesia (Fattah et al ., 2022). Where the number of achievements can be used to increase the profits of Islamic banks. However, the great potential of sharia-crowdfunding in Asia and the Middle East is hampered by the existence of regulations governing the implementation of sharia crowdfunding mechanisms, as is the case in Indonesia; legally, it is still vulnerable to several cases of cybercrime, the credibility of the investee. Suitability of the contract used. Sharia principles must be the main factor in implementing sharia crowdfunding, which serves as special protection for sharia banking customers.

Based on the background above, the purpose of this research is to find out and analyze how the mechanism is implemented in the crowdfunding system through Islamic stock offerings and how the concept system for Islamic securities offering contracts is crowdfunding through Islamic stocks based on information technology (equity crowdfunding) according to the fatwa DSN MUI No. 140 concerning Sharia Securities Offering Through Information Technology-Based Crowdfunding Services Based on Sharia Principles (Islamic Securities Crowd Funding).

## **METHODS**

This study used a qualitative method by examining related literature on information technology-based crowdfunding services based on sharia principles according to DSN MUI fatwa No.140. This research is evidence of efforts in considering the possibility of applying the theory of sharia agreements, the theory of sharia banking, which is associated with the provisions in the DSN MUI fatwa No. 140 concerning Sharia Securities Offering Through Information Technology-Based Crowdfunding Services Based on Sharia Principles (Islamic Securities Crowd Funding). This research is useful as input to increase knowledge about Islamic equity crowdfunding. Besides that, as

alternative information to add to the body of knowledge in the sharia agreements and contemporary sharia banking field.

## **RESULTS AND DISCUSSION**

### **Sharia Shares**

Shares or stocks are proof of ownership of a limited company's capital share (Pakpahan, 2003). According to another opinion, shares are also certificates showing proof of ownership of a company whose shareholders have rights over the claims and assets of the company. The form of shares is a piece of paper that explains that the paper's owner is the company that issues the securities (Luthfi, 2018).

Shareholders are also the owners of the company (Ruonavaara, 2012). The bigger the shares owned, the more power they have over the company. Every shareholder has the right to receive dividends, which are profits derived from the company. This dividend distribution will be determined at the closing of the financial statements based on the general meeting of shareholders (Manzaneque et al., 2016).

Sharia shares are certificates that show proof of ownership of a company issued by issuers whose business activities and management do not conflict with Sharia principles (Ali, 2016). Owning shares means representing equity participation in a company.

In shares with Sharia principles, equity participation is made in companies that carry out business activities in compliance with Sharia principles. Complying with sharia principles means that the company's business must not contain prohibited elements such as gambling, usury, speculation, and producing prohibited goods. Equity participation in shares can be made based on musyarakah and mudharabah agreements.

Musyarakah contracts are generally made for private companies, while mudharabah contracts are generally made for shares of public companies. A share can be categorized as an Islamic share if the share is issued by (Nurlita, 2015):

- a) Issuers and Public Companies clearly state in their articles of association that the business activities of Issuers and Public Companies do not conflict with sharia principles.
- b) Issuers and Public Companies that do not state in their articles of association that the business activities of Issuers and Public Companies do not conflict with sharia principles but meet the following criteria:
  1. Business activities do not conflict with sharia principles as stipulated in regulation IX.A.13, namely not carrying out business activities: gambling and games classified as gambling; trading that is not accompanied by the delivery of goods/services; trading with fake offers/asks; interest-based banks; interest-based finance companies; buying and selling of risks that contain elements of uncertainty (gharar) and gambling (maisir), including conventional insurance; produce, distribute, trade and provide goods or services that contain illegal substances (haram li-dzatihi), goods or services that are illegal not because of their substances (haram li-ghairihi) determined by the DSN-MUI; and, goods or services that damage morale and are harmful; conduct transactions that contain elements of bribery (risywah);
  2. The ratio of total interest-based debt to total equity is not more than 82%, and;

3. the ratio of total interest income and total other non-halal income compared to total operating income and other total income is not more than 10%.

There is no clear and definite law regarding Sharia shares yet in the Al-Qur'an and hadith. Contemporary ulemas and jurists try to find their legal conclusions using *ijtihad* regarding stocks that follow sharia principles. There are differences of opinion among contemporary jurists regarding the treatment of greetings. Some contemporary jurists allow the sale and purchase of shares, and some do not. In the opinion of Wahbah Al-Zuhaili, it is permissible to have *muamalah* (conducting transactional activities on) legal shares because the shareholders are partners in the company according to the shares they own (Hartati, 2021). The opinion of the scholars who allow the sale and purchase of shares and the transfer of ownership of a security is based on the stipulation that all of this is agreed upon and permitted by the owner of another portion of a security. The decision of the 7th Congress of *Majma' Fiqh Islami* in 1992 in Jeddah also stated that it is permissible to sell and pledge shares while considering the regulations that apply to the company (Ulya, 2020).

The Fatwa of the Indonesian National Sharia Council, in the DSN-MUI Fatwa No.40/DSN-MUI/2003, has formulated that buying and selling shares is permissible (Batubara, 2020). The DSN-MUI has also issued several fatwas related to the Islamic capital market as part of Islamic stocks. However, the fatwas are non-binding. In practice, the DSN-MUI fatwa is one of the references in developing the Indonesian Islamic capital market (Lutfiyah et al., 2022). DSN-MUI, since 2011 has actively participated in making fatwas on the Islamic capital market. Until now, there are 17 DSN-MUI fatwas related to the Islamic capital market.

The principles of Islamic equity participation in Indonesia are not realized in the form of sharia or non-Sharia shares but in the form of formation. According to Alhabshi, the Islamic capital market in the context of Islamic stocks means that a company's business may not contain *ribawi* transactions or *gharar* transactions. Also, it may not engage in sectors prohibited by sharia (Ramadhan, 2016). This capital market should be free from unethical transactions such as market manipulation, insider trading, and short selling. According to Irfan Syauqi, buying and selling shares in the Islamic capital market may not be done directly. This is because, in the sale of shares in the conventional capital market, investors can buy and sell shares directly using the services of brokers or brokers, making it possible for price play by speculators (Choirunnisak, 2019). This results in changes in stock prices determined by market forces, not because of the intrinsic value of the stock itself anymore. Issuers give authority to agents on the floor of the stock exchange in the process of trading sharia shares. Agents are tasked with bringing together issuers and potential investors but do not aim to sell and buy shares directly. In the next stage, the shares are sold or bought because the shares are available and based on the first come – first served principle.

Contains provisions that business activities and ways of managing business are carried out based on Sharia principles in the capital market in its articles of association.

1. All types of businesses, contracts, and assets managed, how issuers manage them, and their products and services must not conflict with Sharia principles.
  2. These issuers and public companies have a board of directors and commissioners members who know and understand activities that conflict with and do does not conflict with Sharia principles.
- In its development, Malaysia and the United States have placed restrictions on a stock that can

be categorized as Sharia through the Dow Jones Islamic Index. Meanwhile, several world financial institutions have also made limitations for the category of Sharia shares through Citi Asset Management Group, Wellington Management Company, Islamic.com, and so on.

### Crowdfunding Services Based on Sharia Principles

#### QS Al-Ma'idah

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ...

It means:

*"O you who believe! Please fulfill the contracts..."*

Hadith of the Prophet narrated by Ibn Majah from 'Ubadah bin Shamit, narrated by Ahmad from Ibn 'Abbas, narrated by Malik from Yahya al-Mazini, narrated by Hakim and al-Daraquthni from Abu Sa'id al-Khudri:

لا ضرر ولا ضرار

It means:

*"It is not permissible to harm/harm other people and may not (also) repay harm (losses caused by other people) with harm (actions that harm them)."*

#### Fiqh Rules:

الضرر يزال

It means:

*"All dharar (harm/loss) must be removed."*

Fatwa of the MUI National Sharia Council (DSN) FATWA NO: 140/DSN-MUI/VIII/2021 concerning Information Technology-Based Financing Services based on Sharia Principles explains that sharia securities services through crowdfunding must avoid (Tektona, 2022) :

- a. Riba is an addition in exchanging usury goods (al always al-ribawiyah) and an addition given to the debt principal.
- b. Gharar is uncertainty in a contract regarding the quality and quantity of the object of the contract and the delivery.
- c. Maysir is any form of game or transaction that requires the existence of a material asset taken from the losing party to be given to the winning party.
- d. Tadlis is the act of hiding defects in the contract object, which the seller carries out to trick the buyer as if the object of the contract is not defective.
- e. Dharar is an action that can cause harm or harm to another party.
- f. Al-Ta'addi is doing an act that should not/should not be done.
- g. Al-Taqshir is not doing an act that should be done.
- h. Mukhalafah al-youth is violating the content and substance, or conditions
- i. agreed in the contract.
- j. Zhulm (persecution) contains elements of injustice and imbalance and harms other parties.
- k. Air is a sanction in the form of charging a certain amount of funds to a person or entity for committing a default to be more disciplined in carrying out their obligations and designated as social funds.
- l. Ta'widh (compensation) is an amount of money or goods that can be valued in money charged to a person or entity for committing a default resulting in a loss.

### **Contract on Sharia Securities Crowdfunding Services**

- a. A Syirkah contract is a partnership between two or more parties for a particular business. Each party contributes business assets/capital (ra's al-mal) provided that profits are shared according to an agreed ratio or proportionately. At the same time, losses are borne by the parties. Proportionally.
- b. A Syirkah Musahamah contract (Syirkah al-Musahamah Dzat ol Mas'uliyah al-Mahdudah) is a Syirkah contract in which the ownership portion (his shah) of Syarik's capital is based on paid-up capital as evidenced by shares and has limited liability.
- c. Syirkah Musahamah is a company whose establishment uses the Syirkah Musahamah Contract.
- d. An Ijarah contract is an art lease contract between the lessor (major) and the lessee (musta'jir) or between the musta'jir and the party providing the service (air) to exchange benefits and juror, both goods and services.
- e. A Wakalah contract is a power of attorney contract from the party giving a power of attorney (muwakkil) to the party receiving a power of attorney (representative) to carry out certain legal actions.
- f. Bai' contract is a property exchange contract that aims to transfer the ownership of the exchanged object (goods/media l/batsman) and price (saman).

### **Sharia Securities Offering in the Form of Sukuk**

- a. Sukuk issued through Crowdfunding Services must have useful al-shukuk (the asset on which the Sukuk is issued) that complies with sharia principles;
- b. Each Sulruk unit issued through the Crowdfunding Service must have the same value (mutasawiyah al-qimah);
- c. Arfiara Contracts Executors with Investors (Sukuk Holders) in Sharia Securities Offerings
- b. in the form of Sukuk through Crowdfunding Services is a Wakalah contract for investment. Investors as muwakkil, and Operators as
- c. representative in dealing with the Issuer;
- d. The contract between the Organizer and Issuer in a Sharia Securities Offering is in the form of Sukuk through Crowdfunding Services
- e. is a contract, Wakolah to get investors; Issuer as muwakkil, and organizer as a representative in dealings with other parties;
- f. Issuers are required to pay investment profits to investors (Sukuk holders) in the form of profit sharing/margin/fees periodically or at maturity in the case of a profit-making business and return the Sukuk funds at maturity following the contract scheme used;
- g. Ownership of Sharia Securities in the form of Sukuk issued through Crowdfunding Services can be transferred (intiqaal al-milkiyyah) to Issuers and other parties following contracts that do not conflict with sharia principles and provisions of laws and regulations.

### **Sharia Securities Offering in the Form of Shares**

- a. The offering of Sharia Securities in the form of Shares through Crowdfunding Services may only be made by Issuers whose business activities are based on sharia principles or Issuers issuing Shares that meet sharia criteria;

- b. Offering Sharia Securities in the form of Shares through Crowdfunding Services using the Syirkah Musahamah contract;
- c. The purpose of the Issuer to offer Sharia Securities in the form of Shares is to obtain additional business capital so that the Investor's status will become Sharik (shareholder/partner) after equity participation occurs through Crowdfunding Services;
- d. The legal relationship between Investors in Sharia Securities in the form of Shares is a capital partnership using a Syirkah Musahamah Contract, which has limited liability and is prohibited from terminating the contract unilaterally (faskh) until the syirkah is dissolved;
- e. As a shareholder, an investor is entitled to obtain returns in the form of dividends proportionally based on the number of shareholdings;
- f. Ra's al-mal (business capital), which the shareholders include, becomes the property of the Issuer, and conversely, the Issuer becomes the property of the shareholders who perform syirkah;
- b. Organizers may receive power of attorney and act as representatives of Investors in dealings with Issuers based on Wakalah contracts;
- c. Ownership of Sharia Securities in the form of Shares issued/offered through Crowdfunding Services can be transferred (intiqaal al-milkiyyah) to Issuers and other parties following contracts that do not conflict with sharia principles and provisions of laws and regulations;
- d. Shareholders may terminate the Syirkah contract in an Offering of Sharia Securities in the form of Shares through Crowdfunding Services following agreements and provisions of laws and regulations.

#### **Sharia Securities Trading Mechanism**

- a. The organizer can provide a Sharia Securities trading mechanism through the Crowdfunding Service platform;
- b. Sharia Securities Trading through Crowdfunding Services must be protected from actions that are not following sharia principles and free from prohibited elements, including Riba, Gharor, Maysir, Tadlis, Dharar, Zhulm, and immorality;
- c. The Operator can submit a fair price that is used as a reference by sellers and buyers in trading Sharia Securities;
- d. The reference price set by the Operator may not be detrimental to the parties trading Sharia Securities
- e. and must not conflict with sharia principles;
- f. Ownership of Sharia Securities can be transferred using Bai' contract (buying and selling), grants, waqf, infaq/alms, zakat, inheritance, dowry, gifts, and other means that are not contrary to Sharia and applicable laws and regulations;
- g. The transfer of returns on Sharia Securities can be carried out with grants, endowments, infaq/alms, zakat, gifts, and other methods that are legally permissible and do not conflict with sharia;
- h. Sharia Securities trading mechanism through the Crowdfunding Service platform using a Bai' (buying and selling) contract;
- i. Trading mechanisms for Sharia Securities issued through Securities Offering Crowdfunding Services may not conflict with sharia principles and provisions of laws and regulations.

## CONCLUSION

With SCF, investors and parties who need funds can easily be brought together through an online platform (information technology-based application system). Investors will benefit from dividends or profit sharing from the business profits, which are distributed periodically. Through SCF, the dream of MSME scale companies to obtain additional capital to increase business capacity by issuing shares or other securities to the public will come true. Through public participation in buying shares, bonds, or sukuk, MSME actors will get a source of funds for business expansion and increasing the scale of their business with very light obligations, namely giving, or sharing profits from operations. SCF is almost the same as investing in the capital market. Namely, there are issuers (companies offering their company shares), crowdfunding service providers, and investors. This research can focus on assessing investment risks on the SCF platform, such as liquidity risk, credit risk, market risk, operational risk, and reputational risk. In this study, researchers can identify and analyze factors influencing investment risk on the SCF platform and develop effective risk mitigation strategies

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