




Construction of Law Regarding The Role of The Regional Government In Providing Incentives For Micro Businesses Through Equity Crowdfunding

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Abstract

Introduction: The policy complementary to regional investment is governed in Article 278 of Law Number 23 of 2014 and Government Regulation Number 24 of 2019. The availability of incentives and supporting facilities, however, remain to be the problems amidst shrinking regional budgets following the pandemic affecting economic sectors. The Regional Government of Batu City, among others, has perceived this effect and is on its way to reviving micro businesses to back up the local tourism.

Purposes of the Research: This research aims to find out and analyze the role of the Regional Government in providing incentives for micro businesses through equity crowdfunding.

Methods of the Research: This research employed normative-juridical methods with research data collected from library research and Focus Group Discussion discussed held in the Regional Government of Batu.

Results of the Research: The regulatory framework in Batu city regarding micro businesses complies with Regional Regulation Number 1 of 2016, implying that the operation of the Integrated Business Services Center (PLUT) serves as a vital aspect in the development of Micro, Small, and Medium Enterprises (MSMEs) in Batu, and this is expected to help develop the MSMEs in the city. The regulation also implies that the local government is responsible for funding MSMEs by providing grants, requesting international funds, giving incentives that ease permit requirements, reducing tariffs imposed on infrastructure and facilities, and other forms of incentive. Existing potentials and opportunities must be used to enhance the capacity of human resources as the facilitators at PLUT in Batu.

1. INTRODUCTION

Law Number 25 of 2007 concerning Capital Investment was amended to Law Number 1 of 2020 concerning Job Creation. Several implementation models in several regional areas are intended to back up capital investment and people's businesses. Investment in regional areas is governed by regional governments in line with regional necessities. Regional governments are subject to full autonomy which gives them the freedom to regulate, handle, and develop

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regional areas according to local economic potential.¹ Capital investment is intended to expedite economic growth and improve public welfare on a regional scope. Departing from this elaboration, regulations concerning investment must be economic growth- and public welfare-oriented. Regulating investment is within the authority of local governments to increase the people’s welfare.

Capital investment has been a part of the development of the national economy, and it also aims to enhance the economy at a regional level. Capital investment in regional areas is seen to have played an essential role in increasing people’s income and hiring more local workers. Regional governments in their autonomy play a dominant role in giving rise to a positive condition attractive to investors to help develop industries or businesses at a regional level. Regional Governments should be able to assure security and legal certainty and provide encouraging incentives for investors. Thus, policies governing capital investment are vital to encourage more investors to invest their money in regional areas. Relaxing requirements or providing incentives for capital investment are some of the policies to be taken into account. Provisions regarding incentive and/or relaxation are outlined in Article 278 of Law Number 23 of 2014 concerning Village Governments, amended to Law Number 9 of 2015 concerning the Second Amendment to Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Village Governments, stating “In order to boost the participation of the public and private sectors in regional development, Regional Government administrators can provide incentive and/or relaxation to the public and/or investors, as governed in Government Regulation in compliance with the legislation”.

The mandate of the Law concerning Regional Governments regarding the provision of incentives and/or relaxation is specifically governed in Government Regulation Number 24 of 2019 concerning Incentive and Investment Relaxation in Regional Areas. This incentive can be given as financial aid as capital to micro businesses². This measure is congruent with the authority of the Regional Governments in regencies/municipalities in terms of the Empowerment and Development of Micro Businesses at a regional level, as governed in Annex Letter Q of Law concerning Regional Governments concerning Distribution of Governmental Tasks in Cooperatives, Small and Medium Enterprises in the Empowerment and Development of Micro, Small, and Medium Enterprises (henceforth referred to as MSMEs):

Table 1

The Authority of Regional Regulations of the Regencies/Municipalities in the Empowerment and Development of Micro Businesses

No	Sub-Subject Matter	Central Government	Province	Regency/ Municipality
1	2	3	4	5

¹ Juanda, *Hukum dan Pemerintahan Daerah*, (Bandung: Alumni, 2009), p. 122

² Article 6 Paragraph (1) Letter c PP 24 of 2019 concerning Incentives and Relaxation in Investment in Regional Areas

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1	Cooperative empowerment and protection	Empowerment and protection of cooperatives covering the members across provinces	Empowerment and protection of cooperatives covering the members across regencies/municipalities in one province.	Empowerment and protection of cooperatives covering the members within a regency/municipality
2	Micro, Small, and Medium Enterprises (MSMEs) empowerment	Empowerment of medium businesses that involves data collection, partnerships, permit issuance process relaxation, institutional reinforcement, and coordination with stakeholders.	Empowerment of small businesses that involves data collection, partnerships, permit issuance process relaxation, institutional reinforcement, and coordination with stakeholders.	The empowerment of micro businesses that involves data collection, partnerships, permit issuance process relaxation, institutional reinforcement and coordination with stakeholders
3	The Development of MSMEs	The development of medium businesses oriented more on the transformation of businesses into large-scale businesses.	The development of small businesses oriented more on the transformation of businesses into medium-scale businesses.	The development of micro businesses oriented more on the transformation of the businesses into small-scale businesses

Batu City, among others, is inviting related parties to invest in local tourism. The investment ranges from large-scale investments in hotels and tourist spots to small-scale investments in restaurants and souvenir shops that have massively grown in number to support tourism. Some data reported that MSMEs have been growing in number in Batu city every year. In 2016, the number of MSMEs accounted for 14,669. This figure rose to 23,000 in 2018,³ then the outbreak came in 2020, significantly affecting MSMEs in Batu. In 2021, these businesses tried to gain back power. Stimuli and facilities are expected to bring back the success of the MSMEs in Batu.

Availability of funds as capital for the businesses remains to be the main problem. MSMEs have been dependent on conventional lending provided by banks to keep their businesses running. Local governments are expected to provide funds to back up MSMEs, and this demand seems to be another problem amidst a limited regional budget. However, the aid is not only restricted to funds, but the government could also provide facilities and

³ <https://jatim.tribunnews.com>, Terus Membengkak, UMKM di Kota Batu Naik kelas dan Tembus 23 Ribu retrieved on 5 September 2021

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mentoring in line with the principle of the welfare state. Along with current development, crowdfunding, among other funding sources, offers information and technology-based lending services to the public/prospective investors to invest their money in MSMEs with profits obtained in the form of a dividend. This concept is not much different from the stock exchange, but crowdfunding is only simpler. The capital assistance governed in Regulation of Financial Services Authority Number 37/POJK.04/2018 concerning Information and technology-based Equity Crowdfunding is different from what is governed in MSMEs Law concerning loans provided by banks or other conventional lending companies or sharia lending finances. With crowdfunding, micro businesses are expected to have a chance to grow according to the requirements set forth by Financial Services Authority (henceforth referred to as OJK).

In recent years, research related to providing incentives for micro businesses through equity crowdfunding has become one of the focuses of study by experts in various fields, especially in the field of law. In the Scientific Journal, Indriasari, Suryanti, and Afriana "analyze the legality of MSME financing originating from online fundraising through the Patungan.net site and the extent of the responsibility of the manager of the Patungan.net site as an intermediary for MSME actors as project owners and supporters in the absence of contracts that form the basis of legal relations in MSME financing.⁴ Hakim analyzed the optimization of crowdfunding securities as an alternative financing, especially for micro businesses where financing is the main problem for micro business actors today in the digital era.⁵ Nurmalita analyzes that the legal protection of equity crowdfunding users does not meet the aspects of legal certainty and the value of justice. Publishers are not protected by copyright and investors do not yet have legal certainty regarding the guarantee of investment security.⁶ Ramadhani and Dorkareshza analyzed the position of Financial Services Authority Regulation Number 57 of 2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services in Indonesia's Legislation System in regulating crowdfunding securities and resolving disputes against risks faced by investors in crowdfunding securities in Indonesia.⁷ Suryanto analyze the transformation of small and medium enterprise (SMEs) financing in Indonesia, the phenomenon of SMEs, which often face problems in financing. However, on the other hand, financial institutions find it difficult to find a database of SMEs to channel their loans.⁸ Although research on to providing incentives for micro businesses through equity crowdfunding has been carried out by many experts, related to the role of the Regional Government in providing incentives for micro businesses through equity crowdfunding, no further studies have been conducted. Micro businesses, among others, need capital assistance to keep

⁴ Alivia Indriasari, Nyulistiwati Suryanti, and Anita Afriana, "Pembiayaan Usaha Mikro, Kecil dan Menengah melalui situs Crowdfunding "patungan net" dikaitkan dengan UU No 20 Tahun 2008 tentang UMKM", *Acta Diurnal Jurnal Hukum Kenotarian & Ke-PPAT-an*, 1, no. 1 (2017), 87-102, <https://jurnal.fh.unpad.ac.id/index.php/acta/issue/view/10>

⁵ Lukmanul Hakim, "Securities Crowdfunding Sebagai Alternatif Pembiayaan Pada Pelaku Usaha Mikro Dalam perspektif Teori Hukum Pembangunan", *Res Nullius Law Journal* 4 no. 1 (2022), 32-41, <https://doi.org/10.34010/rnlj.v4i1.4578>

⁶ Luluk Nurmalita, "Kebijakan Equity Crowdfunding Dalam Rangka Inovasi Pendanaan Bagi Usaha Mikro Kecil Menengah (UMKM)", *Airlangga Journal Of innovation Management* 1, no 1 (2020), 115-130, <https://doi.org/10.20473/ajim.v1i1.19362>

⁷ Nur Indah Putri Ramadhani, Rianda Dorkareshza, *Penyelesaian Sengketa Terhadap Risiko Yang Dihadapi Pemodal Pada Securities Crowdfunding Di Indonesia*, *Jurnal Ius Constituendum* 6, no. 2, (2021), 306-327, <https://doi.org/10.26623/jic.v6i2.3774>

⁸ Suryanto, "Securities Crowdfunding : Transformasi Pembiayaan Usaha Kecil Dan Menengah Di Indonesia", *AdBispreneur Jurnal Pemikiran dan Penelitian Administrasi Bisnis dan Kewirausahaan* 6, no. 2 (2021), 163 -171, <https://doi.org/10.24198/adbispreneur.v6i2.33225>

running. Thus, the Regional Government of Batu is helping the businesses back to normal by providing capital assistance through institutional reinforcement and mentoring given to the people running their micro businesses to allow them to receive financial aid from equity crowdfunding.

Therefore, it is important to describe and analyze the provisions of micro businesses as the party receiving capital assistance from information and technology-based equity crowdfunding and describe and formulate how the construction of law takes place regarding the role of the Regional Government in providing incentives for micro businesses with information and technology-based equity crowdfunding (A study in the Government of Batu city). This research referred to statutory and conceptual approaches as explained by Abdulkadir Muhammad⁹ implying that legal research is intended to rediscover the legal concepts, legal materials, legal facts, and legal systems that once existed to be more developed or improved, or modified in congruence with the need of society. This research is mainly intended to analyze the normative fundamental of the regulation regarding the provisions of micro businesses as the party receiving the capital from equity crowdfunding, and analyze and formulate the legal argumentation over the role of the regional government in providing incentives for micro businesses facilitated by equity crowdfunding.

2. METHOD

This research employed normative-juridical methods with the data collected from library research and focus group discussion (FGD). This approach was intended to allow for a discourse of elaboration on the materials of the research studied in the form of a focus group discussion held in Batu City.

3. RESULTS AND DISCUSSION

3.1 General Conditions In Batu City

Batu is one of the cities with the biggest tourist spots in Indonesia. It has the biggest number of visitors to the city along with Bali and Yogyakarta. Batu city offers tourist attractions, not like others. The natural scenery and highland fresh air of the city always manage to attract more tourists. Batu, often dubbed the city of apple, lies on Java Island with countless unique tourist spots to offer.

In East Java, Batu is in the Quadrant I area indicating that this city is in a significant economic performance and high competitiveness. Regencies/cities located in the Quadrant I area tend to be within industrial areas or areas with comparative and competitive excellence. MSMEs in Batu city are growing vastly as a city of tourism. The products of MSMEs could be marketed anywhere to sell and it is promising for businesses in Batu city.

3.2 Challenges and Issues of MSMEs In Batu City

In terms of funding, the governments provide ongoing facilities of access to lending services provided by finance companies, either banks or non-banks for small and medium businesses. Bank loan interest subsidy, Non-bank insurance,

⁹ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: PT. Citra Aditya Bakti, 2004) p. 37

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venture capital, funding taken from saved profits gained by State-owned Enterprises (BUMN), grants, and others are provided as subsidies by the regional government.¹⁰

In terms of tasks and functions and along with the development of Batu in five years to come, issues of MSMEs in Batu city are specifically listed below: People are not enthusiastic about participating in cooperatives so the growth of cooperatives seems slow; Lack of business partnership between entrepreneurs of micro, small, medium, and large businesses or cooperatives; Low competitiveness between cooperatives and MSMEs; Limited access for cooperatives and MSMEs to funding and capital sources; Lack of mastery in information and technology and appropriate technology to back up the productivity of MSMEs; The incapability of legality and standardization of products to penetrate modern markets and national retail; Lack of capacity to participate in gaining market opportunities; Lack of promotion, marketing, and distribution channels; and Low human resources quality to manage cooperatives and MSMEs.

To allow for competitiveness among micro businesses, it is important to raise the capacities of human resources involved in micro businesses, production quality, standardization, or process. Improvement of access to capital assistance and product marketing and the provision of protection of businesses from large-scale competitors are also required to allow micro businesses to be more independent. Thus, to realize *Desa Berdaya Kota Berjaya* (Empowered Village Prosperous City) by improving economic competitiveness, strategic issues in micro businesses can be identified as follows: The significant numbers of labor-intensive micro businesses and their involvement in the regional economy that contributes to the inclusivity of economic growth achieved; Generally low informal education levels of micro business people as an indication that they need comprehensive and upstream and downstream mentoring; Restricted access to capital assistance for micro businesses; Product quality and production processes that are not up to national standards; and Low capability to build marketing networks and business partnerships.

Cooperatives, micro, small, and medium industries, and trades serve as vital potentials for the local economy other than agriculture and tourism. As set forth in *nawacita*, development starts from peripheral areas by strengthening regional areas and villages into the structure of the unitary state of the Republic of Indonesia. The vision of the Regent of Batu to improve the quality of the village as a pillar of urban development with the slogan *Desa Berdaya Kota Berjaya* has put micro, agricultural, and tourism businesses as primary components in the structure of a competitive regional economy. This is regarded as a solution to eradicate poverty and narrow income gaps among people.

3.3 Regulatory Framework In Batu City

The regulatory framework in Batu regarding micro businesses adheres to Regional Regulation Number 1 of 2016 concerning Empowerment and Development of Micro, Small, and Medium Enterprises, consisting of 47

¹⁰ Suryanto, *Op.Cit*, p. 166.

Articles and 15 Chapters. Some crucial articles in the regulation involve the following:

Paragraph (1) Business development involves facilities, counseling, mentoring, and reinforcement. Paragraph (2) Development, as intended in Paragraph (1), is facilitated by regional governments to increase productivity, product quality, and competitiveness in: Production and process; marketing; human resources; and design and technology. Paragraph (3) To run the facilities as intended in Paragraph (1), Regional Governments establish PLUT. Paragraph (4) The PLUT serves as the development center for MSMEs and integrated cooperatives. Paragraph (5) Services of integrated businesses involve: Business consultation; Business counseling and mentoring; The facility of access to lending, marketing, and promotion; Business training; network; and entrepreneurship references. Paragraph (6) The development as intended in Article (1) is actively performed in businesses, professional agencies, education institutions, and society. Paragraph (7) Further provisions regarding the procedures of facilitating business services in product marketing of MSMEs or the business world as intended in Paragraph (5) are governed in Mayor's Regulation.

From the above provisions, it is obvious that PLUT is a vital instrument for the development of MSMEs in Batu. The PLUT is expected to serve as the center of the development of MSMEs in Batu. PLUT for cooperatives and MSMEs (henceforth referred to as PLUT-KUMKM) in Batu was established in 2013 directly under the responsibility of the central ministry, meaning that all activities are directly regulated by the ministry and all control is executed by the ministry. However, in 2014, PLUT-KUMKM was delegated to the municipality/regency directly managed by cooperatives, MSMEs, and trades.

PLUT-KUMKM is an institution providing comprehensive and integrated non-financial services for cooperatives and MSMEs to improve the production and marketing performance and access to funding and human resources development via activities intended to increase entrepreneurship, technical, and managerial capacity and organizational performance to increase the competitiveness among cooperatives and MSMEs.

Mentoring is given by consultants in cooperation with an independent party. Mentoring consultants work according to their domains as follows: Organizational domains: formation and establishment of cooperatives and MSMEs, legality facilities, the interaction of the centers of small and medium businesses/clusters/areas, data collection, registration, permit process, cooperatives, and MSMEs, advocacy of protection of cooperatives and MSMEs; Human resources: cooperative, entrepreneurship, and internship training; Production: access to raw materials, product development (increasing the quality, design, trademark, and packaging), product diversification, product standardization and certification, and application of technology; Lending: business proposal drafting, facilities, and mediation with Bank and non-Bank finance institutions, financial management, and capital advocacy and Marketing: information on market, promotion, improvement of access to market, the development of marketing network, partnership, and utilization of information and technology (e-commerce) and the development of cooperatives and MSMEs database.

Article 23 Lending as intended in Article 22 Paragraph (2) letter a is provided to: Extend funding sources and facilitate MSMEs in regional areas to allow them to access loans provided by banks and non-bank finances; Increase the amounts of funds and expand the network to give access to MSMEs in regional areas; Give access to efficient, appropriate, affordable, and non-discriminative loan provisions according to the legislation; and help MSMEs in regional areas to access loans and other financial services/products provided by banks and non-bank finances, including those adhering to either conventional or sharia concepts.

As mentioned above, the responsibility of the government of Batu is related to the access to funding for MSMEs. Both the government and regional government provide funds for micro and small businesses through grants, international funding, or from other funding sources that are legal and not binding for micro and small businesses, incentive in the form of relaxation in the permit process, infrastructure, and facility tariff relaxation, and another form of incentive as intended in Article 21 of MSMEs Law. Article 22 of MSMEs Law governs the measures taken by the Government to grow funding sources for MSMEs as follows: growing funding sources from both banks and non-bank finances; developing venture model organizations; institutionalizing factoring transactions; Increasing partnerships between micro and small businesses through saving and loan cooperatives and conventional financial service cooperatives and shariah cooperatives; and Expanding other funding sources according to the provisions in the legislation. Such as KUR (Business Loans) and KKPE (Food and Energy Resilience Loan). Linkage Model is one of the financial services that integrates the non-governmental groups or commonly known as KSM, and this model has been done in one package with KUR¹¹.

3.4 Equity Crowdfunding Development Description

Telecommunication Enterprise and Business Service Director, Muhammad Awaluddin, points out that there are three weaknesses in small and medium businesses in terms of access to capital assistance, commerce or marketing, and competence of the businesses in global competition. The segment of micro, small, and medium businesses are regarded as having the strength and serving as foundations during the two momentums of economic crises in Indonesia. However, this segment, due to the weaknesses it holds, is risky when lending is granted.¹² People are preoccupied more with how to pay back the loan than thinking about the products and the development of marketing segments.¹³

The positive side of self-financing is that it gives no risks of losses since it does not have any interest imposed or does not leave any obligation to return the money, especially amidst the pandemic that gives no certainty. It seems that business people feel more secure when they receive funds from self-financing and there is no pressure to return the money. However, self-financing does not encourage businesses to work harder since they do not bear any responsibility to pay back on

¹¹ Darwin Syamsulbahri, "UMKM Dalam Perspektif Pembiayaan Inklusif Di Indonesia", *Jurnal Ekonomi dan Pembangunan* 26, no.1, (2018), 59-76, <https://doi.org/10.14203/JEP.26.1.2018.59-76>

¹² Rahmat Taufiq Dwi Jatmika, "Masalah yang dihadapi Usaha Kecil Menengah di Indonesia", *El-Ecosy Jurnal Studi Ekonomi Syariah* II Edisi 6, (2016)/1438H.

¹³ Suyadi, Syahdanur, Susie Suryani, "Analisis Pengembangan Usaha Mikor Kecil dan Menengah (UMKM) di Kabupaten Bengkalis-Riau, *Jurnal Ekonomi Kiat* 29 no. 1, (2018), 1-10, kiat@jurnal.uir.ac.id

time. This situation can hamper innovation for the development and continuity of the businesses.¹⁴

Article 7 of Law Number 20 of 2008 concerning MSMEs implies that regional governments support small and medium businesses to grow by giving access to financing. Furthermore, lending in Article 7 Paragraph (1) is intended to: expand funding sources and facilitate MSMEs to allow for access to banking credits and non-bank finance companies; grow the numbers of finances and expand networks to allow MSMEs to gain access to the facilities. allow businesses to easily access financial aid in no time, appropriately, affordably, and non-discriminatively in the services that comply with the legislation; help MSMEs to gain access to funding and financial services/products provided by banks or non-bank finances adhering to either conventional or sharia concepts with the securities provided by the government.

Departing from the above Article, the government opens access for small and medium businesses to the capital assistance facilitated by banks or non-bank finances. However, it is not open to all small and medium businesses due to some requirements. Securities seem to be the main problem not all businesses could fulfill since only a few have assets they could use as securities before gaining access to loans given by banks.

The *fintech crowdfunding* platform has been made attractive and innovative on websites. Investment proposals of companies running the project are always made in such a way that they attract prospective investors and give them choices regarding which proposals they prefer.¹⁵ There are some excellent offerings through this securities crowdfunding as an alternative funding sources for small and medium businesses.¹⁶ The procedures of issuing the securities are more relaxed like in the companies that go public. It usually requires registration before listing. However, securities offerings through the SCF platform do not have to take standard steps if the requirements set by OJK have been met; It is not only restricted to Limited Liability Companies of Business Entities to issue SCF. Other kinds such as firms, CV (Limited Partnership Business Entity), or Civil Partnership can also issue SCF; The securities offered to vary. Issuers could offer securities in the form of stocks, bonds, and *sukuk* to prospective investors. All these three securities could be used by issuers to access funding. However, only stocks could be exchanged in the secondary market, not bonds; Funds are collected gradually from SCF, especially *sukuk*, to a certain limit.

Aakar abyasa, a capital market practitioner and a founder of Jouska, assessed and argued that there has been a loophole in the funding of nonbankable MSMEs. He believes that equity crowdfunding not only serves as the way out but also encourages MSMEs to keep growing while adjusting to the current regulations in Indonesia.¹⁷ Technology-based capital assistance as intended in the Regulation of OJK Number 37/POJK.04/2018

¹⁴ Ridwansyah, Okta Supriyaningsih, Dania Hellin Amrina, "Peran Pembiayaan Terhadap Usaha Kecil Mikro dan Menengah (UMKM) Pada Era Covid 19 Di Provinsi Lampung", *Jurnal Akuntansi dan Pajak* 22 no. 02, (2021), 1-10, <http://dx.doi.org/10.29040/jap.v22i2.3695>.

¹⁵ Suryanto, *Op.Cit*, p 167

¹⁶ *Ibid*, p. 168

¹⁷ Yulya Puspita Bakti, Rafi Irfan Pranata, Muh Samsul Rijal Anwar, "Sistem Investasi Equity Crowdfunding Pada UMKM Di Indonesia Studi Pada Platform Bizhare PT Investasi Digital Nusantara", *Assets Jurnal Ekonomi, Manajemen dan Akuntansi* 11 no. 2 (2021), 309-323, <https://doi.org/10.24252/assets.v11i2.20956>

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refers to the capital assistance that can be obtained from technology-based crowdfunding. Obtaining capital from crowdfunding is different from the funding governed in Law concerning MSMEs, where the funding is facilitated by banks or conventional and sharia finances. This regulation was then revoked by the Regulation of OJK Number 57/POJK.04/2020 as amended to Regulation Number 16/POJK.04/2021. Some crucial articles in the provision of the regulation above are highlighted in the following: Article 2 Paragraph (1) Crowdfunding is categorized into financial services in the capital market sector. Paragraph (2) The parties involved in crowdfunding as intended in Paragraph (1) refer to the parties involved in financial service activities in the capital market sector.

This sets the basis implying that every party involved in the financial services of crowdfunding is involved in the activities of the financial services in the sector of the capital market. Financial service administration must comply with the principles set for the administration of financial services in the capital market. According to the definition of capital market in Capital Market Law, the financial activities involve the following: Public offerings according to Article 1 Point 15 of Law concerning Capital Market are defined as activities related to securities offering performed by issuers in securities trading with the members of the public. Issuers refer to parties opening public offerings, where they are required to issue a statement of registration to the authorities in charge of the capital market to allow them to open public offerings; Securities trading according to Article 90 of Law concerning Capital Market refers to offerings, buying, and selling securities within the scope of public offerings or stock exchange, or activities related to offerings, buying, and/or selling securities outside the stock exchange of the securities of the issuers or public companies; A public company according to Article 1 Point 22 of Law concerning Capital Market refers to a company whose shares have been held by at least 300 shareholders and which has at least Rp. 3,000,000,000 invested as capital or a number of shareholders and invested capital governed by Government Regulation; Professional agencies regarding securities according to Article 1 Point 9 of Law concerning Capital Market refer to those supporting capital market, clearing, and insurance agencies.

Providers are required to: assess issuers at least in terms of: The establishment of the legal entity or documents proving the legality of the business entity; The organ or the administrators of a legal entity or business entity; The legal aspect of capital assistance; The scope of issuers; Permit issuance regarding the business activities of issuers and/or projects funded from securities offerings or as the basis for the securities issuers to perform crowdfunding; and Documents and/or information that must be revealed by the issuers to providers. Upload documents and/or information as intended in letter a point 6 on a provider's website not more than two working days before offerings take place; assure the provision of securities offerings through crowdfunding until the rights and responsibilities of the users are fulfilled; report violations committed by issuers during the offering period and the violations of the responsibilities of issuers directly related to the end period of offerings to OJK; take measures to improve the education and literacy of the users; save documents and/or information given by issuers within the period of document saving according to Law concerning the company's documents; ensure that the limit of

crowdfunding in crowdfunding services done by every issuer is not exceeded; provide facilities for online communication between investors and issuers; outline the risks on the provider's website regarding: businesses; investment; liquidity; electronic system failure; completeness in dividend shares and/or dilution of share ownership if the securities issued refer to shares; and the condition of default regarding the securities as debt or *sukuk* if the securities issued refer to debt or *sukuk*.

Ensure that prospective investors planning to invest in crowdfunding have accounts where shares and/or funds are saved through crowdfunding; have the system to ensure that only investors that have confirmed the fulfillment of requirements of investment can invest in crowdfunding; use an Indonesian domain name; provide complaint service center according to the Regulation of OJK concerning complaint service center; insert information on costs and another spending as the responsibility of the users on the website; have refund mechanism in case of securities offerings through crowdfunding null and void; and use office building or office space under private ownership or under a rental agreement of the building or space.

In terms of the issuance of sharia securities in the form of shares, in addition to the responsibilities as intended in Paragraph (1), providers are required to assess: the articles of association of an issuer mentioning the activities or types of businesses and business management according to sharia principle; and the decision of General Meeting of Shareholders regarding the appointment of sharia supervisory council.

Assessment, as intended in Paragraph (1) letter a, the providers, must consider credit information from credit information management agency. Providers can involve the third party to perform the assessment as intended in Paragraph (1) letter a and Paragraph (2) regarding issuers. The third party as intended in Paragraph (4) refers to the party that must be registered and/or must gain approval from OJK. The provider and the third party, either collectively or individually, are responsible for the assessment results performed by the third party.

Like other stocks traded on the Indonesian Stock Exchange, stocks issued through equity crowdfunding platforms are also kept in the Custodian of the Indonesian Stock Center. Like the stocks on the Indonesian Stock Exchange, these stocks result in capital costs for issuers in the form of dividends shared with investors. Moreover, the entities of the issuers must pay fees and annual fees to the company as the provider facilitating the crowdfunding. Other costs that need to be paid by the issuers involve prospectives and business profiles, funding reports, monthly financial reports, semester financial reports, and annual financial reports submitted to OJK. All these costs must be considered by securities issuers before they invest their money in equity crowdfunding, considering that the maximum amount that can be invested is 10 billion rupiahs.¹⁸ Business prospectus and profiles are published by MSMEs on an Equity crowdfunding platform to help promote the businesses and products of MSMEs. With proper use, this mechanism can boost the popularity of MSMEs and attract more customers for more business values.¹⁹

¹⁸ Nibras Anny Khabibah, Risma Wira Bharata, "Equity Crowdfunding Sebagai Opsi Penyelamatan UMKM dari Krisis Akibat Pandemi", *Fokus Bisnis: Media Pengkajian Manajemen dan Akuntansi* 20 no. 1 (2021), 58-68, <https://doi.org/10.32639/fokusbisnis.v20i1.688>

¹⁹ *ibid*, p.65

Equity crowdfunding enables businesses to test products, develop trademarks, establish a strong basis of customers, or transform customers into investors.²⁰

According to the above provision, providers have the right to assess the conditions of issuers, and this process is known as legal due diligence. Legal due diligence has arisen from the development of law in Indonesia since the acceleration of the economy as in Initial Public Offering (IPO) or Go Public so that issuers are required by the authorities in the OJK to refer to legal consultants regarding the legal inspection of the companies concerned. This matter is governed in the Regulation of Capital Market Supervisory Board Number IX.C.2 point 5 letter o concerning the Forms and Contents of Prospectus and Brief Prospectus in Public Offerings.²¹ Article 80 of Law concerning Capital Market mentions four parties held accountable for information needed in registration as informed by OJK regarding the profession to support the capital market, opinions, or details regarding the approval inserted in the registration statement.²² The provision of Article 28 is not only restricted to equity securities but it could also refer to debt and *sukuk*, leaving the interest of the investors not protected. On the other hand, Article 31 serves as the benchmark for issuers to offer equity securities for more than one provider. Such an offer is essential since it affects the capital structure and dividends.

The provision of Article 56 governs the requirements that investors have to fulfill. This provision aims to ensure the financial capacity of the investors and their experience in the capital market, considering that not all are familiar with the rules set in the capital market. This assessment is to minimize the risks that may arise and allow the investors to understand more about their rights and responsibilities. Although the dynamic in crowdfunding services is not as fast as that of the capital market in a stock exchange, experience and risk awareness are vital for investors before they invest their money in crowdfunding.

Hartono and Harjito (2002) mention the following as the risks investors will probably face:²³ Purchasing power risk is related to the probability of inflation that causes real revenue value to be lower; Business risk refers to the decreasing capacity of a company to gain profit, which causes a decrease in the company's capability to pay interest and dividends; Interest rate risk refers to the rising interest rate that keeps the price of securities lower; Market risk refers to the condition where a bullish market will generally increase stock values. On the other hand, a bearish market tends to bring the values down; and Liquidity risk is related to the capability of securities to be traded without bearing any significant losses.

Risk is inevitable and, generally, risk arises from three possibilities, (Brigham dan Houston, 2004):²⁴ A huge amount of investment value is better than a small amount of investment, especially in terms of failure; Reinvestment of cash flow refers to whether a company is willing to receive a 24% investment project for two

²⁰ Saul Estrin, Daniel Gozman, dan Susanna Khavul, "The evolution and adoption of equity crowdfunding: entrepreneur and investor entry into a new market", *Small Business Economics*, Volume 51 Nomor (2) (2018), 425-439, <https://doi.org/10.1007/s11187-018-0009-5>

²¹ Yonita, Badriyah Rifai, Muhammad Ashri, "Penerapan Legal Due Diligence (LDD) Pada Akuisisi Perbankan", Program Magister Kenotariatan, Fakultas Hukum, Universitas Hasanuddin, Makassar, p. 4.

²² *ibid*

²³ Martono dan Harjito, Agus. *Manajemen Keuangan*. (Edisi Pertama. CV.Adipura. Yogyakarta, 2002)

²⁴ Brigham and Houston, *Fundamentals Of Financial Management*. Ali Akbar Yulianto. (Penerjemah). *Dasar-dasar manajemen Keuangan (terjemahan)*, (Edisi 10 . Salemba Empat. Jakarta, 2006)

years or give 20% profit for four years. It all depends on the amount gained from the 24% reinvestment. If the risk arising from the reinvestment is huge, the project with 20% profit is preferred; In terms of cash flow deviation, company cash flow is obtained from the profit received in the future.

This system lacks the details on risk mitigation in case of any risks that harm investors or issuers. Providers must provide information for all parties to allow them to be informed. The absence of information can cause some losses to the parties involved, especially investors. The unavailability of further information on the implementation of risk mitigation to give preventive legal protection can spoil the trust of investors in equity crowdfunding.²⁵ The provision of Article 57 imposes responsibilities on securities issuers for debt and *sukuk* to provide objects of securities. Debt-based bonds do not require any underlying assets that serve as the basis of transactions in the issuance of *sukuk*. This asset comprises tangible objects such as lands, buildings, and building projects, and intangible ones such as services, the right to use lands, the right to use buildings, or the right to use the equipment.²⁶ The protection over the losses the users have to bear refers to a mistake and/or negligence arising when the administration takes place, either by directors, staff, and or other parties working for providers. When this is the case, the providers are held accountable for all the losses caused.²⁷

On the other hand, like other investment instruments, investment in *sukuk* also poses some risks:²⁸ Default refers to the incapability of a security issuer to pay the profit or to pay off the due-date *sukuk*; Interest rate refers to the movement of the bond price set by the standard interest rate with an inverse relationship. If investors predict that the standard interest rate decreases, they will tend to hold or buy bonds, or vice versa; Market risk refers to the probability of capital loss for investors when the price of *sukuk* in the secondary market experiences a decrease due to some factors affecting the performance of the whole financial market, including the changes in the interest rate and economy, and unstable political conditions; Liquidity risk refers to the condition where bonds cannot be sold in the secondary market until the next due date.

The provisions of Article 63 and Article 64 regulate the agreement between an issuer, provider, and investor. Principally, in terms of the agreement between an issuer and a provider, the position of an investor is represented by the provider according to the agreement concerned. That is, there is no direct relationship between an investor and an issuer. The investor, in this case, trusts the provider with the investor's interest. SCF and ECF share a similar meaning, where both are investment platforms that serve as alternative funding sources for MSMEs, and both offer solutions to retail investors. These platforms offer securities issued by businesses to all investors in Indonesia on an application or a website owned by providers. This mechanism looks more like crowdfunding involving multiple

²⁵ Viodi Childnadi Widadi, Dona Budi Kharisma, "Problematika Perlindungan Hukum Terhadap Para Pihak Dalam Transaksi Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (Equity-Based Crowdfunding)", *Jurnal Privat Law* VIII no. 2 (2020), 230-236, <https://doi.org/10.20961/privat.v8i2>.

²⁶ Nisful Laila, "Pengembangan Sukuk Negara di Indonesia- Analisis Komprehensif dalam menggali Alternatif Solusi dan Strategi Pengembangan Sukuk Negara Indonesia, p. 31

²⁷ Suriyadi, "Perlindungan Hukum Pengguna Layanan Urunan Dana Melalui Penawaran Saham Berbasis Teknologi Informasi, *Jurnal Paronama Hukum* 5 no. 2 (2020), 159-168, <https://doi.org/10.21067/jph.v5i2.4693>.

²⁸ Abdul Malik, "Ini Ciri Khas, Jenis-jenis dan Perbedaan Sukuk dengan Obligasi Konvensional, <https://www.bareksa.com/berita/belajar-investasi/2021-02-22/ini-ciri-khas-jenis-jenis-dan-perbedaan-sukuk-dengan-obligasi-konvensional>

investors to help develop businesses. This mechanism results in mutual relationships between issuers (businesses that issue securities) and investors (the parties buying securities issued from SCF).

The fundamental differences are that equity crowdfunding (ECF) represents the platforms that issue securities for MSMEs or startup businesses to help them expand. Like the above, securities offerings and all transactions of investment are performed digitally. Unlike ECF, SCF has several investment instruments investors and issuers can choose from, along with some investment instruments accommodated by SCF. Stocks refer to proof of capital investment or parties or business entities in a company. With this presence of proof, investors will gain profit share called dividend regularly, in addition to another profit gained from the gap between buying and purchasing values of the stocks if investors sell the stocks to the secondary market.

Sharia stocks refer to securities in the form of stocks not contravening the principle of sharia in the capital market. The definition of stocks in a sharia scope is not different from the stocks governed in both the law and other regulations of OJK. In a sharia scheme, issuers must not run businesses contravening Islamic values and the merit of the people. The inappropriate business practices that contravene these values involve gambles or games regarded as gambling or do not involve the transfer of services/goods, or they are referred to as trading with false offerings/demands. The businesses should not involve any usury aspects such as credits based on the interest rate as offered by banks or non-bank finances. The businesses should not involve transaction of risk that gives uncertainty (*gharar*) and/or gambling (*maisir*). The businesses must not produce, distribute, or trade, and or provide goods and services carrying haram substances (*haram li-dzathi*), *haram lighairihi* as governed by DSN MUI, and goods and services destroying capital and/or that is *mudarat*. The businesses must not involve any transactions that carry the aspect of bribery (*risywah*). Furthermore, there is another requirement for the issuers in terms of the total debt with interest rate compared to the total asset not exceeding 45%. The total amount earned from interest and non-halal gain compared to total revenue and other kinds of revenue does not exceed 10%. Another difference lies in the form of a legal entity serving as an issuer. Equity crowdfunding (ECF) is only for limited liability companies, while securities crowdfunding (SCF) accepts others than limited liabilities companies such as CV, NV, and firms.

3.5 Follow-Up

Upon conducting the above analyses, the research could refer to some matters that need follow-up from the Government of Batu City to facilitate the MSMEs sector to allow for access to capital assistance through crowdfunding: Giving a further introduction to MSMEs regarding crowdfunding, considering that most people involved in MSMEs are still new to this. Opportunities should be appropriately used, and MSMEs should be well informed about crowdfunding services by presenting a speaker representing the Crowdfunding Service Association to share the working mechanism of crowdfunding services and by presenting a speaker from OJK to speak about the legality and supervision conducted by OJK in crowdfunding services. All these approaches are intended to shed a light for MSMEs in Batu city on the potential of funding sources and capital assistance other than conventional ones; In terms of increasing the capacity of

human resources as facilitators in PLUT in Batu, human resources are encouraged to understand how to access capital assistance on crowdfunding, and they are expected to provide mentoring services in PLUT regarding legality and requirement needed by issuers in crowdfunding.

4. CONCLUSION

The regional government in providing incentives for micro businesses through equity crowdfunding (A Study In The Regional Government of Batu) This measure is taken as a solution to eradicate poverty and narrow income gaps, as intended in the logical framework of integrated achievement planning mission-3 of the Regional Medium Term Development Plan (RPJMD). One of the key elements in MSMEs in Batu is the existence of PLUT in the area, and this center is expected to serve as the development center for MSMEs in Batu, or PLUT-KUMKM of Batu city. PLUT-KUMKM is an organization providing whole and integrated non-financial services for cooperatives and MSMEs to help increase production and marketing performance and access to funding services, and human resources development by increasing entrepreneurship, technical, and managerial capacity and institutional performance in order to boost the competitiveness among cooperatives and MSMEs. Furthermore, micro businesses regulation of Batu city implies that the city is responsible for providing access to funding services for MSMEs. The Central Government and Regional Governments aim to provide lending services for micro and small businesses including grants, international financial aid, or other sources of funding that are legal and not binding, incentives in the form of relaxation of a permit issuance process, relaxation of infrastructure and facility tariffs, and other forms of incentive. Therefore, it is essential to give a further introduction to the MSMEs regarding crowdfunding services. Potential and opportunities should be properly used to increase human resources capacity as facilitators in PLUT in Batu

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