

The Sharia Funding Risk Issues in Fintech Securities Crowdfunding: Realization of Legal Certainty in the Shari'ah Perspective

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The Sharia Funding Risk Issues in Fintech Securities Crowdfunding: Realization of Legal Certainty in the Shari'ah Perspective

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Article Info Keywords: Legal Certainty, Sharia Funding, Investors, Protection	Abstract Introduction: In the era of globalization and information technology, fintech is transforming the financial sector, including fintech securities crowdfunding, which is a funding model based on the participation of many small investors. In the context of sharia, sharia principles regulate financial transactions and services, while crowdfunding fintech securities is a popular phenomenon in sharia funding, but requires investor protection regarding investment risk and legal protection. Purposes of the Research: This study aims to analyze the legal certainty of protection for investors who invest in Islamic funding through fintech securities crowdfunding in Indonesia and identify and analyze the risks faced by investors in this context. Methods of the Research: This study uses qualitative normative legal research methods to understand legal certainty and investor protection in Islamic funding through Fintech Securities Crowdfunding. An analytical descriptive approach is used to analyze in detail data from laws and regulations related to the Islamic financial system and fintech in Indonesia. Data collection was carried out through literature study and then analyzed qualitatively to identify patterns, themes and related issues. Results / Findings / Novelty of the Research: Sharia funding through Fintech Securities Crowdfunding in Indonesia provides attractive Islamic investment opportunities but also involves various risks such as business risk, liquidity, legal, sharia, and others. Legal certainty regulated by OJK and DPS is the key in providing protection to investors. OJK regulations ensure information transparency and compliance with sharia principles, so that investors can invest with confidence according to sharia values. Thus, an investment ecosystem that has integrity and is inclusive within the sharia framework can be realized.	

1. INTRODUCTION

In the era of globalization and advances in information technology, the financial sector has undergone a significant transformation. One of the important developments in this sector is the emergence of fintech platforms that provide a variety of digital financial

services, including crowdfunding fintech securities.¹ In principle, crowdfunding is a funding model that involves the participation of many small investors to support certain projects or businesses. In the context of sharia, financial transactions and services are governed by sharia principles which include the prohibition of usury (interest), gharar (uncertainty), maisir (gambling), and usury (injustice). In addition, in this digital era, fintech has also become a disruptive force in the financial sector, including sharia funding. Sharia funding through crowdfunding fintech securities is becoming an increasingly popular phenomenon in the modern financial industry.² Fintech provides technological innovation to facilitate fast, efficient and easy financial transactions, while crowdfunding enables individuals and companies to raise funds from a large number of investors through online platforms.

The combination of these two models, namely Fintech Securities Crowdfunding, especially sharia-based ones, has attracted investors who wish to invest in accordance with sharia principles. Bagi para pemodal, pendanaan syariah melalui mekanisme crowdfunding menawarkan peluang investasi yang menarik dengan potensi keuntungan yang menguntungkan. However, as with any other form of investment, there are risks involved in Islamic financing.³ Therefore, in dealing with the development of crowdfunding fintech securities, investor protection in sharia funding is essential. Sharia principles need to be considered carefully to ensure that investments and funding are made according to religious requirements. Legal certainty in the protection of investors related to risk in Islamic funding through Fintech Securities Crowdfunding is a crucial issue in the world of Islamic finance. In the context of the sharia economy, legal certainty is one of the main principles that must be upheld to ensure that financial transactions run according to Islamic teachings. Risk in investing is a natural thing, but on the other hand, protection for investors is a top priority in efforts to reduce these risks.⁴ The phenomenon of Fintech Securities Crowdfunding or collective funding through financial technology has become a popular choice for investors to invest in projects that comply with sharia principles. However, efforts to seek comprehensive legal certainty from a sharia perspective to protect investors from risk are necessary, because transactions and regulations in this context are still in the development stage and are often in a gray area.

In an environment of sharia funding through Fintech Securities Crowdfunding, investors must be ensured that they receive adequate protection regarding risks that may occur. Some of the relevant risks include default risk, liquidity risk, risk of failure of the funded company, and risk of alignment with sharia principles.⁵ Therefore, legal clarity and protection mechanisms are needed for investors to ensure that their investments are carried out safely and in accordance with sharia principles. In the context of investor protection in sharia funding through crowdfunding fintech securities, there are several relevant laws and regulations that need to be considered, including:

- a. Law Number 21 of 2008 concerning Islamic Banking: This law regulates the principles of Islamic banking which form the operational basis of Islamic financial institutions, including in terms of funding and investment

¹ Galih Raka Siwi, 'PERLINDUNGAN HUKUM NASABAH BANK DALAM HAL PEMBERIAN INFORMASI NASABAH KEPADA PIHAK FINTECH LENDING BERDASARKAN PRINSIP KERAHASIAAN', *Esensi Hukum*, 3.1 (2021), 41–54 <<https://doi.org/10.35586/esensihukum.v3i1.50>>.

² Indriana and others, 'Fintech Equity Crowdfunding Syariah Sebagai Solusi Akses Permodalan UMKM', *BISNIS : Jurnal Bisnis Dan Manajemen Islam*, 10.1 (2022), 1 <<https://doi.org/10.21043/bisnis.v10i1.13142>>.

³ Komite Nasional Ekonomi Keuangan Syariah, *Modul Securities Crowdfunding (SCF) Syariah Untuk Investor*, 2022.

⁴ Amalia Syarifah and others, 'Layanan Equity Crowdfunding Perspektif Prinsip', 2021.

⁵ Siti Anisah, 'Perlindungan Hukum Terhadap Pemodal Atas Risiko Securities Crowdfunding', *Prosiding Seminar Nasional Hukum Perdana*, 2021.

- b. Law Number 11 of 2020 concerning Job Creation: This law includes regulations related to the economic and investment sectors, including efforts to encourage the development of fintech in Indonesia
- c. Financial Services Authority (OJK) Regulation No. 37/POJK.04/2018 concerning Fintech Services: This regulation regulates general principles in the implementation of fintech services in Indonesia, including in terms of consumer protection
- d. Financial Services Authority (OJK) Regulation No. 39/POJK.04/2019 concerning Technology-Based Financing Companies: This regulation regulates more specifically technology-based financing companies, which are also relevant in the context of crowdfunding fintech securities.
- e. Law Number 8 of 1999 concerning Consumer Protection: This law is important because investors in sharia funding through fintech securities crowdfunding can be considered as consumers who are entitled to legal protection of their rights.

By understanding this background and researching the relevant laws and regulations, this research has the following problem formulation

1. What is the legal certainty of protection for investors investing in sharia funding through fintech securities crowdfunding in Indonesia, based on the applicable laws and regulations?
2. What are the risks faced by investors in sharia funding through Fintech Securities Crowdfunding, and how is legal certainty regulated to protect investors from these risks from a sharia perspective?

The research objective of the two problem formulations is to analyze the legal certainty of protection for investors investing in Islamic funding through crowdfunding fintech securities in Indonesia and to identify and analyze the risks faced by investors in this context. This study aims to evaluate the effectiveness and suitability of related laws and regulations as well as investigate how legal certainty is regulated to protect investors from risks such as default, liquidity, business and legal risks. This research is expected to provide in-depth insight into these issues and identify efforts that can be made to increase investor protection in Islamic funding through crowdfunding fintech securities. Thus, this research will make a significant contribution to the overall development of the Islamic finance and fintech market, as well as strengthening the principles of shari'ah in the modern financial industry..

2. METHOD

This study uses normative legal research methods that are qualitative in nature to explore an in-depth understanding of the legal certainty of protection for investors investing in Islamic funding through Fintech Securities Crowdfunding. The qualitative approach allows the researcher to comprehensively explore the perceptions, views, and understanding of the research subject.⁶ In this approach, analysis of statutory law and the context of shari'ah. This study uses an analytical descriptive approach. A descriptive approach is used to describe and analyze in detail the legal certainty and protection that exists for investors in sharia funding through Fintech Securities Crowdfunding. An analytical approach is used to describe and analyze data obtained from various sources in order to gain a deeper understanding of risk and legal certainty from a shari'ah perspective.

⁶ Umar Sidiq and Moh. Miftachul Choiri, *Metode Penelitian Kualitatif Di Bidang Pendidikan*, CV. Nata Karya (Ponorogo, 2019) <[http://repository.iainponorogo.ac.id/484/1/METODE PENELITIAN KUALITATIF DI BIDANG PENDIDIKAN.pdf](http://repository.iainponorogo.ac.id/484/1/METODE%20PENELITIAN%20KUALITATIF%20DI%20BIDANG%20PENDIDIKAN.pdf)>.

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The sources of legal material in this study include relevant laws and regulations related to the Islamic financial system and fintech in Indonesia, such as Law Number 21 of 2008 concerning Islamic Banking, Financial Services Authority (OJK) regulations related to fintech, and regulations related to crowdfunding. In addition, sources of legal materials also include legal literature, articles, journals, and shari'ah guidelines relating to the protection of investors in sharia and fintech investments. Data collection was carried out through literature study to identify and analyze relevant laws and regulations. The data obtained is then analyzed qualitatively to identify patterns, themes, and issues related to legal certainty and investor protection in sharia funding through Fintech Securities Crowdfunding from a sharia perspective.

45 3. RESULTS AND DISCUSSION

3.1 The Legal Certainty for Protection for Investors Investing in Sharia Funding Through Fintech Securities Crowdfunding in Indonesia

Sharia funding through Fintech Securities Crowdfunding has become one of the investment trends that is attracting interest in Indonesia. In an era where financial technology continues to grow rapidly, this method offers an attractive alternative for investors who wish to invest in sharia. In a sharia funding scheme, a crowdfunding platform offers an opportunity for investors to invest in a business or project in accordance with Islamic sharia principles. However, like other financial developments, the presence of this crowdfunding platform also raises questions about legal certainty and protection for investors. In the investment context, investors bear risks that need to be managed wisely.⁷ It is in this context that it is important to understand the rules and regulations that apply in Indonesia to protect the rights and interests of investors. The role of the Financial Services Authority (OJK) as a supervisory and regulatory body for capital and financial markets is key in creating a safe and reliable investment environment. In this discussion, we will explore the various risks faced by investors in Islamic funding through Fintech Securities Crowdfunding in Indonesia. These risks include business risk, liquidity risk, legal and regulatory risk, sharia risk, platform failure risk, loss of capital risk, information disclosure risk, and issuer or issuer bankruptcy risk.

Each risk has its own implications for investors and must be well understood before they make investment decisions. On the other hand, legal certainty is also a crucial factor in providing protection for investors from these risks. Rules and regulations issued by the Financial Services Authority (OJK) become the legal umbrella governing crowdfunding platforms and sharia finance companies. OJK ensures that platforms and securities issuers must provide clear, accurate and transparent information to investors about the risks associated with the investment being offered. In addition, investors have the right to know that the investment they are making is in accordance with sharia principles.⁸ In the sharia context, legal certainty also stipulates that crowdfunding platforms and sharia finance companies must operate in accordance with sharia principles that have been established by the Sharia Supervisory Board (DPS) or the relevant sharia authority institution. It is

⁷ Mohammad Yunies Edward and others, *CROWDFUNDING DI INDONESIA* (Jepara: UNISNU Press, 2021).

⁸ Ananthia Ayu, Titis Anindyajati, and Abdul Ghoffar, 'Perlindungan Hak Privasi Atas Data Diri Di Era Ekonomi Digital', *Pusat Penelitian Dan Pengkajian Perkara, Dan Pengelolaan Perpustakaan Kepaniteraan Dan Sekretariat Jenderal Mahkamah Konstitusi*, 2019, 101.

important to ensure that investments are made ethically and in accordance with Islamic teachings.⁹

Through existing regulations, investors who invest in Islamic funding through Fintech Securities Crowdfunding in Indonesia are expected to receive some form of protection. Information transparency required by OJK regulations provides a better understanding of investment products and the associated risks. Consumer protection regulated in OJK regulations ensures that the rights of investors are maintained and provides a dispute resolution mechanism if there are problems. The existence of DPS as a sharia authority institution also ensures conformity of investment products and processes with established sharia principles. In this discussion, dig deeper into the risks faced by investors in sharia funding through Fintech Securities Crowdfunding in Indonesia, as well as how legal certainty regulated by the OJK helps protect investors from these risks from a sharia perspective. With a deeper understanding of this matter, it is hoped that investors can make wiser investment decisions and stick to the highly upheld sharia principles.

In the context of increasingly popular Islamic finance, it is important for investors and business actors in this industry to understand the implications of binding laws and regulations. By ensuring compliance with applicable regulations, we can create an investment ecosystem with integrity and encourage inclusive economic growth within the sharia framework. The legal protection for investors investing in Islamic funding through Fintech Securities Crowdfunding in Indonesia is still related to the rules and regulations set by the Financial Services Authority (OJK) as the supervisory body for the financial sector in Indonesia.

In Indonesia, peer-to-peer (P2P) fintech platforms that offer crowdfunding funding or financing services must be registered and regulated by the OJK. At that time, crowdfunding platforms that offered sharia products had to comply with the same regulations as conventional P2P platforms, but taking into account sharia principles in their operations. Legal certainty of protection for investors investing in sharia funding through Fintech Securities Crowdfunding in Indonesia is based on several relevant laws and regulations.¹⁰ The following are important points regarding the legal certainty of protection for investors:

1. Law Number 8 of 1995 concerning Capital Markets (Capital Market Law)
This law is the main legal basis that regulates the capital market in Indonesia. The articles in this law provide a broad framework for protecting the interests of investors and ensuring the integrity of the capital market, including provisions regarding public offerings of securities, information obligations, and investor protection.
2. Regulations of the Financial Services Authority (OJK)
 - POJK Number 77/POJK.01/2016 concerning Conducting Securities Company Business Activities: This regulation regulates the requirements and procedures for securities companies, including crowdfunding platforms, to obtain permits and licenses from OJK before they can operate. OJK will check the company's qualifications and feasibility to protect investors from untrusted entities.
 - POJK Number 9/POJK.03/2016 concerning Sharia Financing Companies: This regulation regulates sharia finance companies, which may be involved in sharia funding through fintech crowdfunding. These companies must comply with

⁹ Muh. Arafah, 'Peluang Dan Tantangan Pembiayaan Online Syariah Dalam Menghadapi Pinjaman Online Ilegal', *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita*, 11.1 (2022), 65–77 <<https://doi.org/10.46367/iqtishaduna.v11i1.540>>.

¹⁰ Ryan Randy Suryono, Indra Budi, and Betty Purwandari, 'Detection of Fintech P2P Lending Issues in Indonesia', *Heliyon*, 7.4 (2021), e06782 <<https://doi.org/10.1016/j.heliyon.2021.e06782>>.

- sharia principles and protect the interests of investors in their financial transactions
- POJK Number 1/POJK.05/2019 concerning Consumer Protection in the Financial Services Sector: This regulation provides an outline of consumer protection in the financial services sector, including fintech crowdfunding. This includes the obligation to provide clear, transparent and accurate information to investors, as well as handling disputes and investor complaints in a fair and timely manner.
 - POJK Nomor 13/POJK.02/2018 tentang Layanan Urut Dana Berbasis Teknologi (Fintech Lending): Regulasi ini mencakup persyaratan, kewajiban, dan tanggung jawab platform fintech lending, termasuk yang berfokus pada pendanaan syariah.
 - Peraturan OJK Nomor 37/POJK.04/2018 tentang Peer-to-Peer Lending: Peraturan ini mengatur platform peer-to-peer lending, yang mencakup platform crowdfunding yang menyediakan layanan pendanaan syariah. Peraturan ini meliputi persyaratan lisensi, kewajiban transparansi, manajemen risiko, dan perlindungan bagi para pemodal.
 - Peraturan OJK Nomor 12/POJK.03/2017 tentang Inovasi Keuangan Digital dalam Sektor Jasa Keuangan: Peraturan ini memberikan kerangka kerja bagi inovasi keuangan digital, termasuk platform crowdfunding yang menyediakan layanan investasi syariah.
3. Prinsip-Prinsip Syariah
- Dalam konteks pendanaan syariah, kepastian hukum dan perlindungan bagi pemodal bergantung pada kepatuhan terhadap prinsip-prinsip syariah yang relevan. Platform crowdfunding yang menawarkan pendanaan syariah harus memastikan bahwa produk dan layanannya sesuai dengan ajaran syariah Islam. Hal ini mencakup penghindaran riba (bunga), judi, gharar (ketidakpastian yang berlebihan), dan maysir (spekulasi yang berlebihan).¹¹
4. Transparansi dan Tanggung Jawab
- Platform crowdfunding yang sah harus beroperasi dengan transparansi tinggi dan bertanggung jawab terhadap pemodalnya. Mereka harus memberikan informasi yang jelas dan mudah dipahami mengenai produk investasi, risiko yang terlibat, dan tingkat pengembalian yang diharapkan.⁵¹ Selain itu, platform harus menjaga keamanan data pemodal dan menjalankan tata kelola yang baik untuk menghindari konflik kepentingan.¹²

Melalui peraturan-peraturan ini, pemodal yang berinvestasi dalam pendanaan syariah melalui fintech securities crowdfunding di Indonesia mendapatkan beberapa bentuk perlindungan:¹³

- Transparansi Informasi: Platform crowdfunding wajib memberikan informasi yang jelas dan akurat mengenai produk investasi, termasuk risiko yang terkait, tingkat pengembalian, dan syarat-syarat investasi.

¹¹ Wisnu Panggah Setiyono, Sriyono, and Detak Prapanca, *Buku Ajar Financial Technology*, Umsida Press, 2022 <<https://press.umsida.ac.id/index.php/umsidapress/article/view/1278>>.

¹² Astrid Athina Indradewi and others, 'Tinjauan Kewajiban Dan Perlindungan Hukum Oleh Penyelenggara Platform Equity Crowdfunding Dalam Aplikasi LandX', *Ajudikasi : Jurnal Ilmu Hukum*, 6.1 (2022), 105–24 <<https://doi.org/10.30656/ajudikasi.v6i1.4680>>.

¹³ Fithriatus Shalihah and others, *Equity Crowdfunding Di Indonesia, Crowdfunding for Entrepreneurs*, 2022 <[https://dspace.uui.ac.id/bitstream/handle/123456789/29332/13931029 Muh Awal Satrio Nugroho.pdf?sequence=1&isAllowed=y](https://dspace.uui.ac.id/bitstream/handle/123456789/29332/13931029%20Muh%20Awal%20Satrio%20Nugroho.pdf?sequence=1&isAllowed=y)>.

- Perlindungan Konsumen: Terdapat aturan yang mengatur hak-hak pemodal dan mekanisme penyelesaian sengketa jika terjadi masalah atau ketidakpuasan terhadap layanan yang diberikan oleh platform.
- Kesesuaian Syariah: Bagi produk pendanaan syariah, platform crowdfunding harus memastikan kesesuaian dengan prinsip-prinsip syariah dan diawasi oleh Dewan Pengawas Syariah (DPS) yang independen.
- Pengelolaan Risiko: Platform crowdfunding harus memiliki kebijakan pengelolaan risiko yang memadai untuk melindungi kepentingan pemodal.
- Keamanan Data: Platform harus menjaga keamanan data pemodal dan memastikan bahwa informasi sensitif tidak disalahgunakan.

Dengan adanya kerangka hukum dan peraturan ini, para pemodal yang berinvestasi dalam pendanaan syariah melalui Fintech Securities Crowdfunding di Indonesia diharapkan mendapatkan kepastian hukum dan perlindungan yang memadai. Namun, penting bagi pemodal untuk selalu melakukan due diligence terhadap platform crowdfunding yang akan mereka gunakan, serta memahami risiko investasi yang terlibat sebelum melakukan transaksi.

Selain itu, perlindungan hukum bagi pemodal yang berinvestasi dalam pendanaan syariah melalui Fintech Securities Crowdfunding di Indonesia mencakup beberapa aspek yang perlu diperhatikan terkait kepastian hukum perlindungan bagi pemodal yang berinvestasi dalam pendanaan syariah melalui fintech securities crowdfunding di Indonesia.¹⁴

1. Otoritas Pengawas: Pastikan platform fintech crowdfunding tersebut terdaftar dan diawasi oleh otoritas yang berwenang di Indonesia. Saat ini, Otoritas Jasa Keuangan (OJK) adalah lembaga yang bertanggung jawab untuk mengawasi dan mengatur pasar modal, termasuk fintech crowdfunding di Indonesia. OJK memiliki peraturan dan persyaratan untuk melindungi kepentingan pemodal.
2. Legalitas Platform: Pastikan platform fintech crowdfunding tersebut memiliki izin resmi dari OJK untuk beroperasi sebagai penyelenggara layanan fintech. Periksa juga legalitas platform melalui situs resmi OJK atau sumber-sumber terpercaya lainnya.
3. Transparansi dan Informasi: Pastikan platform menyediakan informasi yang jelas dan transparan tentang proyek-proyek yang ditawarkan kepada pemodal, termasuk risiko yang terkait dengan investasi. Informasi yang lengkap dan akurat akan membantu pemodal untuk membuat keputusan investasi yang bijaksana.
4. Pemahaman Produk Syariah: Jika tertarik berinvestasi dalam pendanaan syariah, pastikan memahami prinsip-prinsip syariah yang diterapkan pada produk investasi tersebut. Fintech crowdfunding syariah harus sesuai dengan prinsip-prinsip syariah, seperti larangan bunga dan kegiatan bisnis yang diharamkan menurut hukum Islam.
5. Risiko Investasi: Investasi pada platform fintech crowdfunding memiliki risiko, dan pemodal harus menyadari bahwa tidak ada jaminan untuk pengembalian modal. Sebelum berinvestasi, pastikan telah melakukan riset dan analisis yang matang terkait proyek atau bisnis yang akan didanai.
6. Peraturan dan Regulasi: Pemerintah Indonesia memiliki lembaga-lembaga seperti Otoritas Jasa Keuangan (OJK) yang mengatur dan mengawasi sektor jasa keuangan, termasuk fintech dan investasi. OJK memiliki peraturan-peraturan yang mengatur operasional fintech, termasuk crowdfunding. Regulasi ini bertujuan untuk

¹⁴ Suriyadi Mamma, 'Perlindungan Hukum Pengguna Layanan Urutan Dana Melalui Penawaran Saham Berbasis Teknologi Informasi', *Jurnal Panorama Hukum*, 5.2 (2020), 159–68 <<https://doi.org/10.21067/jph.v5i2.4693>>.

- memastikan bahwa platform crowdfunding beroperasi dengan prinsip keadilan, transparansi, dan keamanan bagi pemodal.
7. Pemisahan Dana: Perlindungan bagi pemodal juga dapat melibatkan pemisahan dana investasi dengan aset perusahaan fintech. Ini bertujuan untuk mencegah penggunaan dana investasi oleh perusahaan untuk kepentingan operasionalnya sendiri. Pemisahan ini biasanya diatur dalam peraturan OJK.
 8. Perjanjian Investasi: Setiap pemodal yang berinvestasi melalui fintech crowdfunding akan mengikuti perjanjian investasi. Perjanjian ini harus mencantumkan hak dan kewajiban pemodal, mekanisme pengembalian dana, serta persyaratan-persyaratan lainnya. Dengan memiliki perjanjian ini, pemodal memiliki dasar hukum yang kuat untuk melindungi hak-haknya.
 9. Penanganan Keluhan dan Sengketa: Platform crowdfunding yang sah harus memiliki mekanisme penanganan keluhan dan sengketa yang efektif. Jika pemodal menghadapi masalah atau ketidakpuasan, mereka dapat mengajukan keluhan melalui mekanisme ini. Hal ini dapat membantu pemodal dalam menjaga hak-hak mereka.
 10. Pendidikan Keuangan: Selain perlindungan hukum, edukasi keuangan juga penting bagi pemodal. Pemahaman yang baik tentang jenis investasi, risiko, dan potensi keuntungan akan membantu pemodal membuat keputusan yang lebih terinformasi dan bijaksana.

3.2 Risiko yang Dihadapi oleh Pemodal dalam Pendanaan Syariah Melalui Fintech Securities Crowdfunding dan Kepastian Hukum Diatur untuk Melindungi Pemodal dari Risiko dalam Perspektif Syariah

Pendanaan syariah melalui Fintech Securities Crowdfunding di Indonesia merupakan opsi investasi yang menarik bagi para pemodal yang ingin berinvestasi sesuai dengan prinsip-prinsip syariah. Namun, investasi ini juga menyiratkan berbagai risiko yang perlu dipahami dengan baik sebelum memutuskan untuk berpartisipasi.¹⁵ Risiko-risiko tersebut meliputi risiko bisnis, risiko likuiditas, risiko hukum dan regulasi, risiko syariah, risiko kegagalan platform, risiko kehilangan modal, risiko pengungkapan informasi, dan risiko kepailitan emitent atau penerbit.

Oleh karena itu, kepastian hukum menjadi hal yang sangat penting dalam memberikan perlindungan bagi pemodal dari risiko-risiko tersebut. Regulasi yang dikeluarkan oleh Otoritas Jasa Keuangan (OJK) memastikan bahwa platform crowdfunding dan perusahaan pembiayaan syariah harus memberikan informasi yang jelas dan transparan kepada pemodal mengenai risiko-risiko yang terkait dengan investasi yang ditawarkan.

Selain itu, OJK juga memastikan bahwa platform crowdfunding dan penerbit efek beroperasi sesuai dengan prinsip-prinsip syariah yang telah ditetapkan oleh Dewan Pengawas Syariah (DPS) atau lembaga otoritas syariah yang relevan. Ini adalah langkah penting untuk memastikan bahwa investasi dilakukan secara etis dan sesuai dengan ajaran Islam. Perlindungan konsumen juga menjadi fokus dalam regulasi OJK, yang mengatur hak dan kewajiban pemodal serta menyediakan mekanisme penyelesaian sengketa jika terjadi masalah atau ketidakpuasan terhadap layanan yang diberikan oleh platform.¹⁶

¹⁵ Suci Ramdania and others, *Modul Securities Crowdfunding (SCF) Syariah Untuk Penerbit/UMKM*, 2022.

¹⁶ Iswi Hariyani, 'Perlindungan Hukum Dan Penyelesaian Sengketa Bisnis Jasa PM-Tekfin', *Jurnal Legislasi Indonesia*, 14.3 (2017), 345–58 <<https://e-jurnal.peraturan.go.id/index.php/jli/article/view/136/pdf>>.

Dalam menghadapi risiko-risiko tersebut, pemodal diharapkan untuk melakukan riset dan analisis yang teliti sebelum berinvestasi. Memahami risiko-risiko yang terkait dengan investasi syariah melalui Fintech Securities Crowdfunding akan membantu pemodal membuat keputusan investasi yang bijak dan sesuai dengan nilai-nilai syariah yang dipegang teguh. Dalam perspektif syariah, investasi harus dilakukan dengan penuh pertimbangan etika dan moral, menghindari larangan-larangan seperti riba, gharar, dan maysir. Dengan adanya kepastian hukum dan kepatuhan terhadap prinsip-prinsip syariah, pemodal diharapkan dapat berinvestasi dengan keyakinan dan percaya bahwa investasi mereka sesuai dengan nilai-nilai syariah yang dijunjung tinggi.

Dalam pembahasan ini, digali lebih dalam mengenai risiko-risiko yang dihadapi pemodal dalam pendanaan syariah melalui Fintech Securities Crowdfunding di Indonesia, serta bagaimana kepastian hukum yang diatur oleh OJK membantu melindungi pemodal dari risiko-risiko tersebut dalam perspektif syariah. Dengan pemahaman yang lebih mendalam tentang hal ini, diharapkan pemodal dapat memutuskan investasi dengan lebih bijak dan berpegang teguh pada prinsip-prinsip syariah yang dijunjung tinggi.

Pemodal yang berinvestasi dalam pendanaan syariah melalui Fintech Securities Crowdfunding di Indonesia menghadapi beberapa risiko yang perlu dipahami dengan baik sebelum memutuskan untuk berinvestasi. Risiko-risiko tersebut dalam perspektif syariah dapat meliputi:

1. Risiko Bisnis

Investasi dalam pendanaan syariah melalui fintech crowdfunding membawa risiko bisnis seperti kegagalan proyek atau bisnis yang diinvestasikan. Risiko ini terkait dengan performa bisnis dan tingkat keberhasilan proyek yang dijalankan oleh penerima dana (entrepreneur atau perusahaan pembiayaan).

Perlindungan Syariah:

Platform harus memberikan informasi yang akurat dan lengkap mengenai proyek atau bisnis yang akan didanai. Pemodal memiliki hak untuk menilai risiko dan peluang proyek atau bisnis berdasarkan informasi yang diberikan.

2. Risiko Likuiditas

Investasi dalam pendanaan syariah biasanya memiliki jangka waktu tertentu, sehingga pemodal mungkin menghadapi risiko likuiditas atau kesulitan menjual kembali investasinya sebelum jatuh tempo, terutama jika tidak ada pasar sekunder yang aktif.

Perlindungan Syariah:

Kepastian hukum diatur melalui kewajiban platform untuk memberikan informasi yang jelas mengenai jangka waktu investasi dan potensi likuiditas yang rendah. Pemodal harus memahami bahwa investasi dalam proyek pendanaan syariah mungkin bersifat jangka panjang.

3. Risiko Hukum dan Regulasi

Terdapat risiko perubahan peraturan atau ketidaksesuaian dengan regulasi yang berlaku, yang dapat berdampak pada investasi pemodal.

Perlindungan Syariah:

Platform crowdfunding harus menjaga pemodal tetap terinformasi mengenai perubahan hukum dan regulasi yang dapat mempengaruhi investasi mereka. Pemodal memiliki hak untuk mengetahui dampak perubahan hukum tersebut terhadap proyek atau bisnis yang didanai.

4. Risiko Syariah

Risiko ini terkait dengan pemastian bahwa investasi dan pengelolaan dana sesuai dengan prinsip-prinsip syariah. Pemodal harus memastikan bahwa platform crowdfunding dan penerima dana berkomitmen untuk mematuhi prinsip-prinsip syariah yang telah ditetapkan.

Kepastian Hukum:

OJK dan Dewan Pengawas Syariah (DPS) memastikan bahwa platform crowdfunding yang menawarkan investasi syariah mematuhi prinsip-prinsip syariah yang ditetapkan. DPS berperan dalam memberikan penilaian terhadap produk dan proses investasi untuk memastikan kesesuaian dengan prinsip syariah.

5. Risiko Kegagalan Platform

Pemodal menghadapi risiko jika platform crowdfunding mengalami kegagalan atau menghadapi masalah keuangan. Hal ini dapat mempengaruhi pelaksanaan investasi dan kemungkinan pemulihan dana.

Kepastian Hukum:

OJK memiliki peraturan yang mengatur persyaratan operasional dan modal minimum bagi platform crowdfunding. Hal ini dimaksudkan untuk meminimalkan risiko kegagalan dan memastikan bahwa platform beroperasi dengan prinsip-prinsip yang sehat dan berkelanjutan.

6. Risiko Kehilangan Modal

Pemodal berisiko kehilangan sebagian atau seluruh modal yang diinvestasikan dalam proyek pendanaan syariah. Keberhasilan proyek atau bisnis yang didanai tidak selalu dapat dijamin, dan pemodal mungkin menghadapi risiko gagalnya proyek atau bisnis tersebut.

Perlindungan Syariah:

Kepastian hukum diatur melalui peraturan OJK yang mewajibkan platform crowdfunding untuk memberikan informasi yang jelas dan akurat kepada pemodal tentang risiko yang terkait dengan investasi yang ditawarkan. Pemodal harus mendapatkan gambaran yang jelas mengenai potensi risiko yang mungkin terjadi sebelum membuat keputusan investasi.

7. Risiko Pengungkapan Informasi

Risiko ini terkait dengan kebenaran dan kelengkapan informasi yang diberikan oleh platform crowdfunding kepada pemodal. Jika informasi yang disampaikan tidak akurat atau tidak lengkap, pemodal dapat mengambil keputusan investasi yang salah.

Kepastian Hukum:

Kepastian hukum diatur melalui peraturan OJK yang mengharuskan platform crowdfunding untuk memberikan informasi yang transparan, akurat, dan lengkap kepada pemodal. Pelanggaran terhadap aturan ini dapat dikenakan sanksi oleh OJK.

8. Issuer or Issuer Bankruptcy Risk

Issuers or issuers of securities offered in crowdfunding can experience financial problems or bankruptcy, which has the potential to harm investors.

Sharia Protection:

Legal certainty is regulated through transparency requirements and information disclosure regarding the financial condition of the securities issuer. Investors have the right to know the latest information regarding the issuer's financial condition and performance.

Legal certainty is regulated to protect investors from these risks in a sharia perspective in various ways:

1. Transparency and Information: Regulations require crowdfunding platforms to provide clear and accurate information about investment products, including the associated risks. Investors have the right to understand these risks before they invest.
2. Proper Implementation of Sharia Business: Recipients of funds or sharia finance companies must operate in accordance with sharia principles that have been established by the Sharia Supervisory Board (DPS) or the relevant sharia authority institution.
3. Legitimate Sharia Contracts: Investments in Islamic finance are based on valid Islamic contracts and comply with Islamic principles. Legal certainty is needed to ensure that the contract is valid and binding.
4. Consumer Protection: Consumer protection regulations regulate the rights and obligations of investors as well as a dispute settlement mechanism, so that investors have a legal mechanism to protect their interests if there is a problem.
5. OJK Oversight and Regulation: The Financial Services Authority (OJK) is responsible for overseeing and regulating crowdfunding platforms and Islamic finance companies, ensuring they comply with applicable regulations and standards.

In a sharia perspective, it is important to ensure that investments are made ethically and in accordance with Islamic teachings. Legal certainty and compliance with sharia principles are expected to provide protection for investors and minimize risks associated with sharia investments through Fintech Securities Crowdfunding in Indonesia. Investors are expected to invest in projects or businesses that comply with sharia principles, including the prohibition of usury (interest), gharar (excessive uncertainty), and maysir (speculation or gambling). Legal certainty in this context is about keeping crowdfunding platforms and securities issuers complying with sharia principles, providing honest and accurate information to investors, as well as providing transparent monitoring and reporting mechanisms. Thus, investors can make investment decisions that are wise and in accordance with upheld sharia values.

4. CONCLUSION

Sharia funding through Fintech Securities Crowdfunding in Indonesia offers an attractive alternative for investors who wish to invest in sharia. However, this investment also implies various risks that need to be well understood before participating. These risks include business risk, liquidity risk, legal and regulatory risk, sharia risk, platform failure risk, loss of capital risk, information disclosure risk, and issuer or issuer bankruptcy risk. In facing these risks, legal certainty is very important in providing protection for investors. The Financial Services Authority (OJK) as a supervisory and regulatory body for capital and financial markets plays an important role in creating a safe and reliable investment environment. Regulations issued by the OJK ensure that crowdfunding platforms and Islamic finance companies provide clear and transparent information to investors about the risks associated with the investments offered. In a sharia perspective, it is important to ensure that investments are made ethically and in accordance with Islamic teachings. Legal certainty and compliance with sharia principles regulated by the OJK and the Sharia Supervisory Board (DPS) are expected to provide protection for investors and minimize risks associated with sharia investments. Legal certainty in this context is about keeping crowdfunding platforms and securities issuers complying with sharia principles, providing honest and accurate information to investors, as well as providing transparent monitoring and reporting mechanisms. Thus, investors can invest with confidence and believe that their

investment is in accordance with upheld sharia values. In dealing with applicable rules and regulations, as well as ensuring compliance with sharia principles, it is hoped that this will create an investment ecosystem with integrity and encourage inclusive economic growth within the sharia framework.

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